

RESOLUTION NO. 2592

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, ADDING SECTION 6.3.6 AND AMENDING SECTIONS 6.8.1 THROUGH 6.8.3 OF THE TOWN OF PAYSON PERSONNEL MANUAL ADDRESSING MEDICAL MARIJUANA.

WHEREAS, on or about February 27, 1986, the Town of Payson adopted a Personnel Rules and Procedure Manual pursuant to Ordinance Number 266; and

WHEREAS, on or about August 3, 1995, the Town of Payson adopted Ordinance Number 447, allowing amendments to the Town of Payson Personnel Rules and Procedure Manual to be enacted by resolution of the Mayor and Common Council; and

WHEREAS, on or about November 5, 2009, the Town of Payson adopted the current version of its Personnel Rules now know as the Town of Payson Personnel Policy Manual ("the Personnel Manual"); and

WHEREAS, on November 2, 2010, the voters of Arizona approved Proposition 203 entitled the Arizona Medical Marijuana Act ("the Act"), codified as A.R.S. §36-2801 et. seq.; and

WHEREAS, section 36-2813(B) of the Act contains restrictions on an employer's ability to discriminate against a person based on a person's status as a medical marijuana card holder or a qualifying patient's positive drug test for marijuana; and

WHEREAS, the Town desires to protect its employees and the public they serve while complying with the Act; and

WHEREAS, the Town of Payson desires to add Section 6.3.6 and amend Sections 6.8.1, 6.8.2 and 6.8.3 (Addressing Substance Abuse) of the Personnel Manual to serve such purposes,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. Section 6.3.6 of the Personnel Manual is hereby added and as added shall read as follows:

- 6.3.6 No employee or an employee's spouse shall:
- a. own, work, or be employed by a Medical Marijuana Dispensary;
 - b. receive from or have any financial interest in a Medical Marijuana Dispensary;
 - c. be an agent, consultant, principal officer, board member, or medical director of a Medical Marijuana Dispensary;

- d. appear in any media endorsing or soliciting business for a Medical Marijuana Dispensary; or
- e. be a designated medical marijuana caregiver.

Section 2. Section 6.8.1 (Definitions) of the Personnel Manual is hereby amended and as amended shall read as follows:

6.8.1 - DEFINITIONS

"Illegal drug" means any controlled substance listed in schedules I through V of the federal Controlled Substances Act (21 U.S.C. § 812), medication, or other chemical substance that (1) is not legally obtainable; or (2) is legally obtainable, but is not legally obtained, is not being used legally, or is not being used for the purpose(s) for which it was prescribed or intended by the manufacturer. Thus "illegal drug" may include even over-the-counter medications, if they are not being used for the purpose(s) for which the manufacturer intended them. "Illegal drug" shall not include "Medical Marijuana."

"Drug" or "drugs" used without any modifier means illegal drug(s), legal drug(s), and/or medical marijuana.

"Legal Drugs" means prescribed or over-the-counter drugs that are legally obtained by the employee and used for the purpose(s) for which the manufacturer intended or a doctor prescribed.

"Medical marijuana is any marijuana used or possessed in strict compliance with A.R.S. §36-2801 et. seq. (The Arizona Medical Marijuana Act) and all associated regulations.

"Town property" and "Town equipment, machinery, and vehicles" means all property, equipment, machinery, and vehicles owned, leased, rented, or used by the Town.

"On duty" means all "hours worked", as defined by the Fair Labor Standards Act, as well as meal periods and break periods.

Section 3. Section 6.8.2 (Work Rules) of the Personnel Manual is hereby amended and as amended shall read as follows:

6.8.2 - WORK RULES

- a. Substance Abuse by Employees.
Employees who violate this Section will be subject to discipline, up to and including termination.

- b. Alcohol.
Non exempt employees may not report to work, be on duty, or operate Town of Payson equipment, machinery, or vehicles with detectable levels of alcohol in their system, with the exception of the proper use of medication that may contain alcohol. ~~This subsection shall not apply to exempt employees.~~

Exempt employees may not work or be at Town offices while impaired by alcohol. Exempt employees may not operate Town of Payson equipment, machinery, or vehicles with detectable levels of alcohol in their system, with the exception of the proper use of medication that may contain alcohol.

- c. Illegal Drugs.
Employees may not possess, ~~engage in the~~ use, or be under the influence of illegal drugs while on duty, while on Town property, or while operating Town equipment, machinery, or vehicles.

Employees may not work or report to work with detectable levels of an illegal drug or the metabolites of an illegal drug in their systems.

Employees may not use, manufacture, grow, distribute, dispense, transfer, or sell illegal drugs.

- d. Legal Drugs/Medication.
Any employee who has reason to believe his/her use of legal drugs, such as a prescribed medication, may pose a safety risk to any person or interfere with the employee's performance of his or her job must immediately report such to his or her supervisor who shall ~~and~~ take appropriate steps to prevent the employee from placing himself/herself ~~themselves~~ or the public in danger. The Town shall then determine whether any work restriction or limitation is necessary. Failure to report the use of legal drugs that may pose a safety risk could result in disciplinary action.

- e. Medical Marijuana
Employees may not work or report to work while under the influence of or impaired by medical marijuana.

Employees may not possess or use medical marijuana on the Town's premises, in Town vehicles, or at any other location during the employees' work hours.

The following Employees may not work or report to work with a detectable level of medical marijuana or its metabolite in their system:

- (1) Employees required to have a CDL
- (2) Employees subject to federal grant restrictions or other federal requirements requiring that the employee not use any drug listed in schedules I - V of the federal Controlled Substances Act,
- (3) Sworn law enforcement officers or any other employee authorized to carry a deadly weapon within the scope of his/her employment.

fe. Criminal Drug Convictions.
Any employee who is convicted of violating any criminal drug statute ~~while in the workplace~~ will be subject to discipline up to and including termination.

Employees are required to report any criminal drug conviction ~~occurring in the workplace~~ to his/her immediate supervisor within five calendar days.

Section 4. When a scientific standard of marijuana impairment, based upon chemical analysis, is available, it is the Town' intention to re-evaluate the provisions of Section 6.8.2(e)(3) of the Personnel Manual.

Section 5. Section 6.8.3 (Drug and Alcohol Testing) of the Personnel Manual is hereby amended and as amended shall read as follows:

6.8.3 - DRUG AND ALCOHOL TESTING

The Town requires employees and applicants to provide blood, urine, breath, and/or other samples for drug and alcohol testing under any of the following circumstances:

- a. Post-Offer, Pre-Employment Testing.
Pre-employment drug screens may be part of the application process.
- b. Reasonable Suspicion Testing.
The Town may require any employee to undergo drug and alcohol testing if an employee's supervisor has a reasonable suspicion that the employee:
 - (1) Has violated the Town 's written work rules prohibiting the use, possession, sale, or transfer of illegal drugs or the use, sale, or transfer of alcohol while on duty, while on Town property, or while operating Town equipment, machinery, or vehicles; or

- ~~(2) — Is under the influence of or impaired by alcohol and/or illegal drugs while on duty, while on Town of Payson property, or while operating Town of Payson equipment, machinery, or vehicles.~~
- (2) Is under the influence of or impaired by alcohol, illegal drugs, or medical marijuana while on duty, while on Town of Payson property, or while operating Town of Payson equipment, machinery, or vehicles; or
- (3) Is impaired by legal drugs while on duty, while on Town of Payson property, or while operating Town of Payson equipment, machinery, or vehicles.

c. Testing for:

Alcohol: If a supervisor has reasonable suspicion that an employee is under the influence of or impaired by alcohol, the employee will not be permitted to work until he/she has taken an alcohol test and test results show a concentration of 0.02 or less.

Illegal Drugs and/or Medical Marijuana: If a supervisor has reasonable suspicion that an employee is under the influence of or impaired by drugs, the employee will not be permitted to work until he/she has taken a drug test and the results show negative.

Legal Drugs: If a supervisor has reasonable suspicion that an employee is impaired by legal drugs, the employee will not be permitted to work until such employee is no longer impaired by such legal drugs.

d. Post-Accident Testing.

The Town requires any employee to undergo drug and alcohol testing:

- (1) as soon as practicable after a work-related accident;
- (2) if medical attention was required after a work-related accident;
- (3) if material or equipment damage was sustained;
- (4) if the Town believes that the individual may have contributed to the cause of the accident; or
- (5) if the accident involves the death of a person(s).

The instant or quick test is sufficient for non-DOT drug screens; however, if the result is positive the person must report to a lab for testing.

e. Post-Injury Testing.

The Town may require any employee to undergo drug and alcohol testing who has sustained a work-related injury where there is

reasonable suspicion that drugs and/or alcohol were involved.

f. Random Testing.

All on-duty employees who carry a firearm and who may be required to use deadly force in the regular course of their duties are subject to periodic unannounced random ~~illegal~~ drug and alcohol testing.

(1) Employees to be tested shall be randomly selected.

(2) Random tests will be unannounced and the dates for their administration will be spread reasonably throughout the year. Human Resources or the employee's supervisor will notify the employee if or when he/she is selected.

(3) If an employee is notified of a random alcohol or drug test, he/she must proceed to the test site immediately or within two (2) hours.

g. Treatment Program Testing.

Any employee who has been referred by the Town for chemical dependency treatment or evaluation or who is participating in a chemical dependency treatment program may be required to undergo drug and alcohol testing without prior notice during the evaluation or treatment period and for up to two (2) years following the employee's return to work.

h. In addition to the chemical analysis of blood, urine, breath, or other samples, the Town may require employees to submit to other tests to determine the presence of and/or impairment by any drug or alcohol, including physical testing or medical examination. Such other tests may be administered by a certified peace officer, a paramedic, any person having training in the detection of the presense of drugs or alcohol and/or drug or alcohol impairment.

Section 6. If any section, sentence, or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution. The Town Council declares that it would have adopted this Resolution and each section, sentence, or portion thereof, irrespective of the fact that any one or more sections, sentences, or portions may be declared invalid or unconstitutional.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this _____ day of _____, 2011, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

ATTEST:

Silvia Smith, Town Clerk

Kenny J. Evans, Mayor

APPROVED AS TO FORM:



Timothy M. Wright, Town Attorney