

June 1, 2022

Gregg Adam
235 Montgomery Street, Suite 828
San Francisco, CA 94104

RE: Response to May 26, 2022 Letter Regarding Drug and Alcohol Testing

Dear Gregg:

I am in receipt of your May 26, 2022 letter regarding the City's proposed Drug and Alcohol Testing side letter presented to the San Jose Police Officers' Association (POA) on May 11, 2022. In your letter you requested responses to seven questions. The City's responses to those questions are below.

- 1. What is the City's intent in moving to a random drug testing model? In other words, how does the City see the policy balancing between, on one hand, capturing those using, or abusing, drugs and alcohol on or off duty and, on the other, offering help to officers who are experiencing drug, alcohol, or health problems?**

If it is determined that an Officer is under the influence of drugs and/or alcohol in the workplace, either through for cause drug and/or alcohol testing or a random drug and/or alcohol test, an investigation will be conducted and the consequences of any sustained violation of the City's Substance Abuse Program and Policy will be determined on a case-by-case basis.

- 2. Given increasingly liberalized drug laws in California, how do we navigate between illicit drugs and the use of legal drugs and alcohol? Should the policy spell out what illegal drugs are being tested for (example: anything under 11550 HS, versus marijuana, which is (arguably) not illegal)?**

The City recognizes that marijuana and alcohol are legal substances in the State of California; however, being under the influence of either while on duty is a violation of City policy. As noted above, each situation will be handled on a case-by-case basis depending on the circumstances.

- 3. Does the City also intend to discuss re-examining rehabilitation efforts?**

We are unclear as to what is meant by re-examining rehabilitation efforts. As you know, the City has an Employee Assistance Program (EAP), and while EAP does not treat substance abuse, EAP can recommend counseling within the EAP system if an Officer's substance use is not

severe or EAP can refer the Officer to their medical plan for treatment. As we have discussed on prior occasions, healthcare plans are required by law to provide substance abuse treatment.

4. How will a positive marijuana test be treated, given that a positive marijuana test does not equal impairment? Marijuana use is not illegal under state law by anyone over 21 and can stay in a user's system for up to 60 days.

As noted above, each situation will be handled on a case-by-case basis depending on the circumstances.

Relatedly, how does the City propose to address marijuana use by family and co-habitants, or in topicals, supplements or other digestives, which could show up in a drug test?

The City does not intend to drug test family members or other cohabitants. If it is determined that an Officer is under the influence of drugs and/or alcohol in the workplace, either through for cause drug and/or alcohol testing or a random drug and/or alcohol test, an investigation will be conducted and the consequences of any sustained violation of the City's Substance Abuse Program and Policy will be determined on a case-by-case basis.

5. Questions concerning when testing occurs, including compensability for off-duty impacts. Additionally, how will the policy address long-term absences such as injuries, Sick/FMLA/CFRA, administrative leave, vacation, etc.?

Testing will occur on duty. Employees who are on leave due to injuries, sick leave, FMLA, CFRA, vacation, or other approved time off will not be required to submit to drug and/or alcohol test while on leave.

As you know, employees who are on Administrative Leave may be directed and required to report to work during their assigned work shift. As such, employees on Administrative Leave will be subject for cause drug and/or alcohol testing or a random drug and/or alcohol testing during their assigned work shift.

6. How will the random selection process be truly random? How will employees be notified that they have been randomly selected?

We are unclear as to the difference between random selection and truly random selection. If the concern is that specific employees will be "targeted" for selection, they will not and the process will be random.

Employees will be notified by a member of their chain of command or other designee and may be notified in-person, by phone, by text, by email, or by other established normal means of communication.


7. Whether testing for those involved in accidents should be for "at fault" accidents only.

As you are aware, it is not always readily apparent who is at fault in a vehicle collision, or who is primarily at fault in the event that multiple parties share culpability. As such, the intent is to test following any vehicle collision.

RE: Response to May 26, 2022 Letter Regarding Drug and Alcohol Testing
Page 3 of 3

As discussed with the POA on May 26, 2022, the City looks forward to receiving the POA's counter proposal soon.

Sincerely,



Jennifer Schembri
Director of Employee Relations
Director of Human Resources