

ARTICLE 6 Performance

Sec. 6.1 Outside Employment. Any employment activity in addition to employment with the District must not be in conflict with the interest of the District as determined by the General Manager. Such outside employment shall not interfere with performance of the employee's duties with the District, nor be performed during hours the employee is scheduled to work for the District, nor utilize District equipment or facilities.

Sec. 6.2 Termination of Employment.

(a) Layoff and Re-Employment. Notwithstanding any other provisions of these rules, nothing provided herein shall prohibit the District from establishing and changing hours of employment or assigning and reassigning personnel if the District determines it is appropriate to do so, or from discharging, suspending or transferring an employee upon a determination by the District that the needs of the District do not require continuance of the employee's position.

Twenty (20) working days before the effective day of any layoff, the General Manager shall notify the employee and the recognized employee organization of the intended action and the reasons therefore and a statement certifying whether or not the services of the employee have been satisfactory. If certified as having given satisfactory service, the name of the employee laid off shall be placed on a re-employment list, which shall be maintained for two (2) years, and he/she, if qualified, shall be given priority recognition for return to employment should an opening become available during that period.

If adequate notice cannot be given, or it is in the best interest of the District to do so, twenty (20) days of severance pay can be substituted for twenty (20) days notice. The District will pay any accrued leave payable plus severance pay, if applicable, within seventy-two (72) hours of layoff.

(b) Termination (Voluntary). An employee wishing to resign in good standing shall file with the department head a written resignation stating the effective date for resignation at least two (2) weeks prior to the effective date of resignation.

An employee who has resigned with a good record will be given preferential consideration for rehire if a position is available. Decision to rehire is at the discretion of the District, and the employee will not reestablish rights and/or benefits lost at the time of resignation.

Per Ordinance No. 197 Adopted 3/19/90 (Article 6)
Per Ordinance No. 94-3 Adopted 4/4/94 [Sec. 6.2(a)]
Per Ordinance No. 2008-05 Adopted 6/16/08 [Sec. 6.1]

Article 6 Performance (Cont'd.)

Sec 6.2 Termination of Employment (Cont'd.)

(c) Termination (Involuntary)

1. Probationary Employees. An employee serving his/her six (6) month probationary period may be terminated with or without cause. The probationary employee shall be advised by his/her supervisor if termination is desired. Notice shall be given the employee five (5) working days prior to dismissal or the employee will be paid five (5) days severance pay if adequate notice cannot be given. The terminated probationary employee shall receive his final paycheck within seventy-two (72) hours after termination.
2. Regular Employee. The District may find it necessary to terminate a regular employee for cause. Should dismissal become necessary, the District will follow the procedures set forth in Section 6.6(b) of this Code. The terminated employee shall receive his/her final check and payment for accrued vacation or compensatory leave within seventy-two (72) hours after termination.

Sec. 6.3 Violations Subject to Disciplinary Action. Violations of rules subject to disciplinary action include but are not limited to the following examples:

1. Failure to report to work on time.
2. Absenteeism (without proper notice or excessive amount).
3. Failure to report an injury promptly.
4. Failure to immediately report breakdown or improper operation of machinery or equipment to the supervisor.
5. Failure to perform the job in an efficient and professional manner.
6. Sleeping on the job.
7. Mishandling of personal financial affairs to the extent collection must be made through garnishment of wages for the payment of more than one (1) judgment.
8. Violating safety rules as set forth in this Code or Federal or State law or Administrative Regulations.

Per Ordinance No. 2003-11 Adopted 7/7/03 [Sec. 6.3(5)]

Article 6 Performance (Cont'd.)

Sec. 6.3 Violations Subject to Disciplinary Action (Cont'd.)

9. Use of prescription drugs that might affect job performance or safety of employees or public without notification to District management.
10. Possession, use, purchase, sale, manufacture, distribution, transportation, or dispensation of intoxicating beverages, illegal drugs or other controlled substances (including marijuana whether or not the employee maintains a prescription for the same), narcotics, or any artificial stimulant or being under the influence thereof while on duty.

An employee suspected of being under the influence of any of the above shall submit to such tests as may be required by the District.

11. Refusal to take direction from supervisors, including refusal to work on an assigned job or refusal to perform work as required.
12. Taking any property belonging to the District or its employees without permission.
13. Careless or intentional mishandling or damaging of District property, vehicles, material or equipment.
14. Falsifying work records or time cards, including giving false information to anyone who prepares said records.
15. Leaving the job during duty hours without notice to or permission from supervisor.
16. Loss of driver's license or accumulation of sufficient points under the California Vehicle Code to be considered a high risk by the District's insurance carrier.
17. Noncompliance with the response time for standby and emergency calls as set forth in this Code.
18. Personal conduct during working hours that reflects discredit upon the District.
19. Outside employment not in compliance with Section 6.1.

Per Ordinance No. 2014-05 Adopted 8/4/14 [Sec. 6.3(10)]

Article 6 Performance (Cont'd.)

Sec. 6.3 Violations Subject to Disciplinary Action (Cont'd.)

20. Harassment or discrimination practiced against another employee because of race, national origin, ancestry, creed, citizenship, marital status, religion, sex, sexual orientation, gender, gender identity, gender expression, mental or physical disability, medical condition, genetic characteristics, pregnancy or related medical condition, military or veteran status, age, or any other unlawful criteria.
21. Retaliation against an employee for reporting harassment or discrimination or for participating in the investigation of a harassment or discrimination complaint.
22. Fighting either physically or orally with District employees or the public in the work place.

Sec. 6.4 Procedure for Disciplinary Action. Violations shall be subject to one (1) or more of the following steps depending upon the seriousness of the offense.

- (a) Counseling and Re-Instruction. The employee shall be provided verbally and in writing a specific description of the violation and the necessary steps that must be taken to correct the problem.

It shall be the policy of Management to consider removal from personnel files of letters placed there under provisions of this subsection. Such consideration shall be subject to no repetition of the noted problem and satisfactory evaluations for a period of two (2) years, plus a recommendation by the employee's immediate supervisor and department head. Such determination shall be at the discretion of the General Manager.

- (b) Warning. Continued or repeated violation following counseling and re-instruction shall result in a written warning including restatement of the problem and necessary corrective actions within a specified time as determined by the supervisor.
- (c) Reprimand. Continued or repeated violation following a warning shall result in a written reprimand.
- (d) Further disciplinary action in accordance with Section 6.5 and 6.6.

Per Ordinance No. 2014-05 Adopted 8/4/14 [Sec. 6.3(20 & 21)]

Article 6 Performance (Cont'd.)

Sec. 6.5 Disciplinary Actions Not Subject to Notice and Hearing Procedures. The following disciplinary actions may be taken against any employee by the General Manager or such management personnel as he may designate without compliance with the procedures set forth in Section 6.6(b) hereof.

1. Counseling and re-instruction, warning and reprimand as provided in Section 6.4 of this Code.
2. Suspension for no more than three (3) days without pay.
3. Suspension for any period with pay.

Sec. 6.6 Disciplinary Actions Subject to Notice and Hearing Procedures

(a) Disciplinary Action Allowed. Upon compliance with the procedures set forth in Section 6.6(b) hereof, the following disciplinary actions may be taken against a regular or regular part-time employee either by the General Manager or such management personnel as he may designate. Actions taken under this Section are not subject to the grievance procedures as provided in Section 6.7 of this Code.

1. Suspension from Duty: An ordered interruption of duties for more than three (3) days without pay.
2. Salary Reduction: A reduction in pay from the employee's current pay within a pay range to any lower pay within that same range, as such range is recorded in the District's current salary schedule.
3. Demotion: A reduction from a position in one class to a position in another class having a lower salary range effected for disciplinary purposes. (Demotions resulting from organizational changes or layoffs are not disciplinary.)
4. Termination: Discharge from District employment.

(b) Notice and Hearing Procedures for Disciplinary Action.

1. Purpose. To set forth the procedure for taking disciplinary action described in Section 6.6(a).

(b) Notice and Hearing Procedures for Disciplinary Action (Cont'd).

2. Notice of Proposed Action. Before terminating or otherwise disciplining a regular employee, the District shall deliver to the employee a written notice of its intention to terminate or otherwise discipline the employee. Such notice shall be personally served on the employee or sent by certified mail to the employee's place of residence as shown on the records of the District. The notice shall be served or mailed not less than seven working days prior to the proposed disciplinary action taking effect and shall contain the following:
 - a. The kind and effective date of the proposed disciplinary action.
 - b. The specific charges upon which such action is based and the reasons why such action is being taken. Such charges shall contain any information essential to give the employee a fair opportunity to answer the charges made. Such information shall include, but is not limited to, names, times, dates, places or numbers that may be pertinent to the charges made.
 - c. If such charges are based upon documents or materials, the notice shall inform the employee of this fact, and shall inform the employee as to the location of such documents or materials. If available and capable of duplication, copies of such documents and materials shall be furnished to the employee with the notice.
 - d. A time and date for the filing by the employee of a written response and for presentment of any oral response, which date shall not be less than seven (7) working days nor more than thirty (30) working days after the notice is personally served on or mailed to the employee, whichever occurs first.
3. Response of Employee. The employee shall have the right to respond, either orally or in writing, or both, no later than the time and date provided in the notice to the employee. The time for response may be extended by the General Manager or his designee for a reasonable period if he determines it to be necessary to provide the employee with a fair opportunity to answer the charges made. Written responses shall be delivered to the General Manager. If the employee desires to make an oral response, the employee shall give written notice to the General Manager of this fact at least two (2) working days before the time and date stated in the notice for presentment of the oral response. Failure of the employee to give such notice shall constitute a waiver by the employee of any right to present an oral response.

(b) Notice and Hearing Procedures for Disciplinary Action (Cont'd.).

4. Oral Response. If the employee gives the notice provided for in Paragraph (3) hereof, the oral response of the employee shall be presented to the General Manager or his designee. At the time of the employee's oral response, the employee shall have the right to be represented by counsel or by a representative of an exclusively recognized employee organization, or both. The employee shall have the right to present evidence and to examine witnesses. If the employee desires to have any other available employee present at the time of the oral response in order to present evidence or to examine witnesses, the employee shall, at least two (2) days before the time scheduled for the oral response, file a written request with the General Manager requesting the presence of such persons at the time scheduled for the oral response. If such persons can be made available without unduly interfering with the operations of the District, the General Manager or his designee shall cause such persons to be present at the time of the oral response. The General Manager or his designee will continue the matter for a reasonable period until such persons can be present. The proceedings at which the oral response is presented shall be preserved in summary form, but may be recorded and transcribed in full.
5. Determination by Reviewing Officer. Upon expiration of the period of time set forth in the District's notice to the employee, or if an oral or written response is presented upon completion of the response, whichever is later, the General Manager or his designee shall review the matter, including any response of the employee and the employee's representatives and any evidence presented, and shall make a determination as to whether to discharge or otherwise discipline the employee. The General Manager or his designee shall notify the employee in writing within fifteen (15) calendar days of the hearing or written response of his determination. Such notice shall be personally served on the employee or shall be sent by certified mail to the employee's place of residence as shown on the records of the District.
6. Disqualification of Reviewing Officer. If prior to the time set for consideration of the response the General Manager or his designee has become so involved in the matter as to create an actual bias against the employee which prevents the General Manager or his designee from fairly considering the response of the employee, and if the General Manager is unable to designate another person to act in his place, the General Manager shall so advise the President of the Board of Directors who shall thereupon appoint another person to act on behalf of and in the place of the General Manager or his designee. However, mere prior knowledge of the factual background of the matter shall not, in and of itself, disqualify the General Manager or his designee.

Article 6 Performance (Cont'd.)

Sec. 6.6 Disciplinary Actions Subject to Notice and Hearing Procedures (Cont'd.)

(b) Notice and Hearing Procedures for Disciplinary Action (Cont'd.)

7. Appeal of Decision of Reviewing Officer. An employee or former employee dissatisfied with the determination made by the General Manager or his designee may appeal the determination to a special review subcommittee of two members appointed by the President of the Board of Directors, hereinafter referred to as the Review Committee, provided that a written notice of appeal is filed with the Secretary of the District no later than fifteen (15) calendar days after the date of personal service or mailing of the notice of the District's determination, whichever is earlier. If a timely appeal is filed with the Secretary of the District, the Review Committee shall schedule a hearing within twenty (20) days of the date of filing of the notice of appeal, unless extended by mutual agreement, not to exceed thirty (30) days, and the Secretary of the District shall notify the employee or former employee of the time and date fixed for the hearing.

At the hearing, the employee shall have the right to be represented by counsel or by a representative of an exclusively recognized employee organization, or both. The employee shall have the right to present evidence and to examine witnesses. If the employee desires to have any other available employee present at the time of the hearing in order to present evidence or to examine witnesses, the employee shall, at least two (2) working days before the scheduled hearing, file a written request with the General Manager, requesting the presence of such persons at the hearing. The General Manager or his designee shall cause such persons to be present at the time of the hearing. The Review Committee shall continue the hearing for a reasonable period until such persons can be present. The hearing shall be recorded and may be transcribed in full.

8. Determination of Appeal. Upon conclusion of the hearing, the Review Committee shall review the matter, including any evidence presented at the hearing, and, within thirty (30) calendar days, shall make a final determination as to whether to confirm the determination of the General Manager or his designee. The Review Committee shall have the power to reinstate a discharged employee and/or to impose different discipline on the employee. If the Review Committee is unable to agree, the matter shall be referred to the Board of Directors which shall make a final determination. The Board may make its determination based upon the record of the Review Committee or may conduct such proceedings as it deems appropriate.

Article 6 Performance (Cont'd.)

Sec. 6.6 Disciplinary Actions Subject to Notice and Hearing Procedures (Cont'd.)

(b) Notice and Hearing Procedures for Disciplinary Action (Cont'd.)

9. Status of Employee. During the period prior to the determination of the matter by the General Manager or his designee, the employee may be suspended from performance of his/her duties with pay or may be reassigned to other duties. If the final determination of the General Manager or his designee is to discharge the employee, the effective date of the discharge shall be the date that the notice of determination is personally served or mailed pursuant to Paragraph (5) hereof. All funds due the Employee will be paid by the District within seventy-two (72) hours of the effective date of discharge as determined herein.

10. Judicial Review. Judicial review of any decision of the District, or of any committee, board, officer or agent thereof, dismissing or otherwise disciplining an employee, which decision is subject to review under Code of Civil Procedure Section 1094.5, may be had pursuant to Code of Civil Procedure Section 1094.5 only if the petition for writ of mandate is filed within the time limit specified in Code of Civil Procedure Section 1094.6.

Sec. 6.7 Grievance Procedure.

(a) Definitions

1. An "administrative grievance" is a formal written objection or allegation by an employee who has been adversely affected by an alleged violation, misinterpretation or misapplication of District rules and regulations. Administrative grievances are subject only to levels I, II and IV of the grievance procedures.

2. A "disciplinary grievance" is a formal written objection or challenge by an employee to any disciplinary action taken by the District under Sections 6.4 and 6.5 of this Code. Disciplinary grievances are subject only to levels I, II, III, and IV of the grievance procedure.

3. A "grievant" is any employee of the District presenting a formal administrative or disciplinary grievance in accordance with this section.

4. A "day" is any day in which the administrative offices of the District are open for regularly scheduled business.

Article 6 Performance (Cont'd.)

Sec. 6.7 Grievance Procedure (Cont'd.)

(b) General Provisions

1. Until final disposition of a grievance, the grievant shall comply with the directions of the grievant's immediate supervisor, except that a grievant may refuse to carry out a particular work assignment which is the subject of a grievance if, at the time he/she is given the work assignment, (1) he/she reasonably believes that he/she will endanger his/her health or safety by carrying out the work assignment, or (2) he/she reasonably believes that he/she will violate the law by carrying out the work assignment. In such a situation, the employee has a duty (1) to tell his/her immediate supervisor that he/she believes there is a risk to his/her health and safety and the reasons for his/her belief or (2) to tell his/her immediate supervisor that he/she believes the work assignment is unlawful and the reasons for his/her belief. Pending the resolution of a grievance regarding allegedly unsafe or illegal work assignments, the District may reassign the grievant without loss of pay or benefits.
2. All documents dealing with the processing of a grievance shall be filed separately from the personnel files of the participants, except that all documents relating to discipline shall be kept in the personnel file.
3. Time limits for appeal provided at any level of this procedure shall begin the first day following receipt of the written decision by the grievant and/or the District.
4. Every effort will be made to schedule meetings for the processing of grievances at a time which will not interfere with the regular work schedule of the participants. If a grievance meeting or hearing is scheduled during duty hours, any employee required by either party to participate as a witness or grievant in such meeting or hearing shall be released from regular duties without loss of pay for a reasonable amount of time.
5. At levels II and III of the grievance procedure, the grievant may be represented by any other District employee of his/her choice to act as spokesperson for the grievant.

At or above Level IV of the procedure, the grievant may be represented by anyone of his/her choice. Grievant must advise District of the name, occupation and professional standing of the representative at the time the appeal is filed.

Article 6 Performance (Cont'd.)

Sec. 6.7 Grievance Procedure (Cont'd.)

(c) Procedure. Grievances will be processed in accordance with the following procedures:

1. Level I - Immediate Supervisor. Any employee who believes he/she has a grievance shall present the grievance in writing to the immediate supervisor within ten days (10) after the grievant knew, or reasonably should have known, of the circumstances which form the basis for the grievance. Failure to do so will render the grievance null and void. The written information shall include: (1) a description of the specific grounds of the grievance, including names, dates, and places necessary for a complete understanding of the grievance; (2) a listing of the reasons why the immediate supervisor's proposed resolution of the problem, if any, is unacceptable; and (3) a listing of specific actions requested of the District which will remedy the grievance.

The immediate supervisor shall hold discussions and attempt to resolve the matter within ten (10) days after the presentation of the grievance. It is the intent at this level that at least one (1) personal conference be held between the grievant and the immediate supervisor.

The immediate supervisor shall communicate the decision to the grievant in writing within ten (10) days after receiving the grievance. If the immediate supervisor does not respond within the time limits or if the grievant is not satisfied with the response, the grievant may appeal to the next level.

2. Level II - Department Head. If the grievant is not satisfied with the decision at Level I, the grievant may within ten (10) days of the receipt of the decision at Level I appeal the decision on the appropriate form to the department head. This statement shall include a copy of the original grievance, and a clear, concise statement of the reasons for the appeal.

The department head shall hear the grievant or his/her representative and communicate the decision to the grievant within ten (10) days. If the department head does not respond within the time limits provided, the grievant may appeal to the next level.

Article 6 Performance (Cont'd.)

Sec. 6.7 Grievance Procedure (Cont'd.)

(c) Procedure (Cont'd.)

3. Level III - Department Head Review Committee. If the grievant is not satisfied with the decision at Level II, the grievant may, within ten (10) days of the receipt of the decision at Level II, appeal the decision to the Department Head Review Committee.

Within ten (10) days of receipt of the grievant's appeal, the Department Head Review Committee, composed of all the department heads of the District, shall meet and hear the presentation of the grievant and his/her representative.

Within ten (10) days of the hearing, the Department Head Review Committee shall make a determination as to whether to confirm or modify the determination of the department head. The Department Head Committee shall have the power to unanimously impose a different discipline on the grievant. If unanimous agreement cannot be reached, the grievance is automatically transferred to Level IV.

The Department Head Review Committee level of this grievance procedure is available only for disciplinary grievances. All other grievances proceed to Level IV.

4. Level IV - General Manager or his Designee. If the grievant is not satisfied with the decision at Level II or Level III as applicable, the grievant may, within ten (10) days of the receipt of the decision at Level II or III as applicable, appeal the decision to the General Manager or his designee. This statement shall include a copy of the original grievance, and a clear, concise statement of the reasons for the appeal.

The General Manager or his designee shall, within ten (10) days of the receipt of the appeal, meet and hear the presentation of the grievance and response by both parties to the disagreement. The presentation may include written or oral comments from other employees, witnesses and the Department Head Review Committee, if deemed necessary, for a complete review of the grievance as determined by the General Manager or his designee. The decision of the General Manager or his designee must be made within ten (10) days of the hearing. The decision of the General Manager is final for administrative grievances.

Article 6 Performance (Cont'd.)

Sec. 6.7 Grievance Procedure (Cont'd.)

(c) Procedure (Cont'd.)

5. Level V - Board of Directors. If the grievant of a disciplinary grievance is not satisfied with the decision at Level IV, the grievant may, within ten (10) days of the decision at Level IV, appeal the decision to the Board of Directors. This statement shall include a copy of the original grievance and a clear, concise statement of the reasons for the appeal.

The Board of Directors shall, within thirty (30) days of receipt of the appeal, make its determination based upon the record or may conduct such proceedings as it deems appropriate. The decision of the Board of Directors is final.

Sec. 6.8 After Hour Call Back Requirements

- (a) Emergency Call Out. All regular District field employees hired after April 20, 1987, will be required (after twelve (12) months of employment) to be able to arrive at the District's Control Center within forty-five (45) minutes of receiving a call to respond to an emergency.
- (b) Twenty-four (24) Hour Standby Duty Requirements. Employees assigned twenty-four (24) hour standby duty must be within immediate reach by a pager or telephone and be able to arrive at the District control center within forty-five (45) minutes of receiving a call to respond. Employees are not allowed to drink alcoholic beverages or use nonprescribed controlled substances while assigned to twenty-four (24) hour standby duty.

Sec. 6.9 Drug and Alcohol Free Workplace Policy

- (a) Purpose. The District maintains a workplace free of drugs and alcohol and discourages drug and alcohol abuse by its employees. The District has a vital interest in maintaining safe and efficient working conditions for its employees. Substance abuse is incompatible with health, safety, efficiency, and success at the District. Employees who are under the influence of a drug or alcohol on the job compromise the District's interests, endanger their own health and safety and the health and safety of others, and can cause a number of other work-related problems, including excessive absenteeism and tardiness, substandard job performance, increased workloads for co-workers, behavior that disrupts other employees, delays in the completion of jobs, inferior quality in products or service, and disruption of customer relations.

Per Ordinance No. 95-11 Adopted 12/18/95 [Sec. 6.9]
Per Ordinance No. 2003-11 Adopted 7/7/03 [Sec. 6.8(b)]
Per Ordinance No. 2014-05 Adopted 8/4/14 [Sec. 6.9(a)]

Article 6 Performance (Cont'd.)

Sec. 6.9 Drug and Alcohol Free Workplace Policy Cont'd)

(a) Purpose Cont'd)

To further its interest in avoiding accidents, to promote and maintain safe and efficient working conditions for its employees, and to protect its business, property, equipment, and operations, the District has established a policy concerning the use of alcohol and drugs and, in some circumstances, will conduct drug testing of current employees who occupy safety-sensitive positions. As a condition of continued employment with the District, each employee must abide by the drug-free workplace aspects of this policy.

The following policy establishes rules and regulations in compliance with the Federal Drug Free Workplace Act of 1988, the Federal Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act), the Department of Transportation Federal Motor Carrier Safety Administration (FHCSA) Regulations of 2006 (49 C.F.R. parts 40 and 382 et al.), and Section 34520(a) of the California Vehicle Code to implement a drug and alcohol testing policy for covered employees of the District.

(b) Definitions.

For purposes of this policy:

1. "Illegal drugs or other controlled substances" means any drug or substance that (a) is not legally obtainable; or (b) is legally obtainable but has not been legally obtained; or (c) has been legally obtained but is being sold or distributed unlawfully.
2. "Legal drug" means any drug, including any prescription drug or over-the-counter drug, that has been legally obtained and that is not unlawfully sold or distributed.
3. "Abuse of any legal drug" means the use of any legal drug (a) for any purpose other than the purpose for which it was prescribed or manufactured; or (b) in a quantity, frequency, or manner that is contrary to the instructions or recommendations of the prescribing physician or manufacturer.
4. "Reasonable suspicion" includes a suspicion that is based on specific personal observations such as an employee's manner, disposition, muscular movement, appearance, behavior, speech or breath odor; information provided to management by an employee, by law enforcement officials, by a security service, or by other persons believed to be reliable; or a suspicion that is based on other surrounding circumstances.

Article 6 Performance (Cont'd.)

Sec. 6.9 Drug and Alcohol Free Workplace Policy Cont'd)

(b) Definitions (Cont'd)

5. "Possession" means that an employee has the substance on his or her person or otherwise under his or her control.

6. "Covered Employees" means District employees who operate any of the following commercial motor vehicles are "covered employees" and subject to the provisions of this Policy:
 - A. a vehicle with a gross combination weight of at least 26,001 pounds, inclusive of a towed unit with a gross vehicle weight rating (GVWR) of at least 10,000 pounds;
 - B. a vehicle with a GVWR of at least 26,001 pounds;
 - C. a vehicle designed to transport sixteen (16) or more passengers, including the driver; or
 - D. a vehicle used to transport those hazardous materials found in the Hazardous Materials Transportation Act.

All employees shall be subject to the prohibitions and reasonable suspicion provisions of this Policy, but not those involving random or post-accident testing unless they are "covered employees" as set forth above.

7. "Safety-sensitive Functions" Employees may not be under the influence or in possession of controlled substances or alcohol during work hours. Further, certain conduct is prohibited (See Section 6.9 (c)3 below) while performing and prior to performing "safety sensitive functions." As used throughout this policy, safety-sensitive functions include all duties performed by covered employees while "on duty" at the District. "On duty" time for safety-sensitive functions commence at the time covered employees begin to work or are required to be in readiness for work until they are relieved of work responsibilities. "On duty" time includes but is not limited to the following functions:
 - A. All time at a carrier or shipper, plant, terminal, facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the employer.
 - B. All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.

Article 6 Performance (Cont'd.)

Sec. 6.9 Drug and Alcohol Free Workplace Policy Cont'd)

(b) Definitions (Cont'd)

7. "Safety-sensitive Functions" (Cont'd).

- C. All time spent at the driving controls of a commercial motor vehicle.
- D. All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth).
- E. All time loading or unloading a commercial motor vehicle, supervising or assisting the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.
- F. All time repairing, obtaining assistance for, or remaining in attendance upon a disabled.

(c) Prohibited Acts. Covered employees shall not engage in any of the following behaviors:

1. Report for work, go or remain on duty or on on-call status, while under the influence of or impaired by alcohol, illegal drugs, or other mind altering chemicals (including marijuana, whether or not the employee maintains a prescription for the same). Employees who are under the influence of alcohol or illicit drugs when they report to work or during working hours, are in violation of this policy, regardless of when or where the substance entered the employee's system.
2. Use, possess, transfer, distribute, manufacture, or sell any illegal drug(s) or controlled substance(s) while on duty or on District property.
3. Unauthorized possession of an unsealed alcoholic beverage container or possession of illegal drugs while on District premises or while in District vehicles is prohibited.
4. Employees who test positive for alcohol, Illegal drug or other controlled substance are in violation of this policy and subject to discipline.
5. Reporting for duty or remaining on duty if the employee tests as having a blood alcohol concentration of 0.04 or greater (or a blood alcohol concentration of 0.02 if the employee's duties require him or her to possess a valid Class A driver's license or otherwise be subject to the 0.02 limitation).

Article 6 Performance (Cont'd.)

Sec. 6.9 Drug and Alcohol Free Workplace Policy Cont'd)

(c) Prohibited Acts (Cont'd)

6. Being under the influence of alcohol or illicit drugs when they report to work or during working hours, regardless of when or where the substance entered the employee's system.
7. Using or possessing alcohol while performing safety-sensitive functions.
8. Performing safety-sensitive functions within four (4) hours after using alcohol.
9. Consuming alcohol for eight (8) hours after an accident or until tested, whichever occurs first.
10. Refusing to submit to any alcohol or controlled substances test required by this Policy. An employee who refuses to submit to a required drug/alcohol test will be treated in the same manner as an employee who failed a blood alcohol test or tested positively for a controlled substances test. A "refusal to submit" to an alcohol or controlled substances test required by this Policy includes, but is not limited to:
 - A. An explicit or implied refusal to provide a urine sample for a drug test;
 - B. An inability to provide a urine sample without a valid medical explanation;
 - C. A refusal to complete and sign the breath alcohol testing form, or otherwise to cooperate with the testing process in a way that prevents the completion of the test;
 - D. An inability to provide breath or to provide an adequate amount of breath without a valid medical explanation;
 - E. Tampering with or attempting to adulterate the urine specimen or collection procedure;
 - F. Not reporting to the collection site in the time allotted by the supervisor or manager who directs the employee to be tested; or
 - G. Leaving the scene of an accident without a valid authorization.

Article 6 Performance (Cont'd.)

Sec. 6.9 Drug and Alcohol Free Workplace Policy Cont'd)

(c) Prohibited Acts (Cont'd)

11. Reporting to duty, remaining on duty or performing a safety-sensitive function after refusing to submit to drug and/or alcohol testing required under this Policy, state or federal law.
12. Failure to notify the District, before beginning work, when taking medication or drug(s) (including legal and prescription medications) that could foreseeably interfere with the safe and effective performance of duties or operation of District equipment. It is the employee's responsibility to ascertain from the prescribing physician whether the medication would interfere with job performance and to notify his/her supervisor if job performance is impaired by medications. In the event there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from a qualified physician may be required.
13. Failure to advise the immediate supervisor when that employee has actual knowledge that another covered employee is in violation of these rules.
14. Failure to report facts and circumstances of a conviction for violating any criminal drug or drunken driving statute to his/her Department Head no later than five (5) days after the conviction. Revocation of a driver's license must be reported immediately.

(d) Drug and Alcohol Testing Policy for Employees Operating Commercial Vehicles

1. When screening is required under the provisions of this policy, a urinalysis test will be given to detect the presence of the following drugs:
 - a. Marijuana (THC Metabolites)
 - b. Cocaine
 - c. Amphetamines / Methamphetamines / Methylenedioxymethamphetamine (MDMA) (Examples: Speed and Crystal)
 - d. Opiates (Examples: Codeine, Heroin and Morphine)
 - e. Phencyclidine (PCP)

Sec. 6.9

Drug and Alcohol Free Workplace Policy (Cont'd.)

(d) Drug and Alcohol Testing Policy for Employees Operating Commercial Vehicles (Cont'd.)

2. Type of Testing Required

- A. Drug Testing. Pursuant to FHWA regulations, urine specimens shall be screened for the drugs defined in Section (b).3.A.5 hereof.

The testing is a two (2) stage process. If the initial screening is positive for one (1) or more of the above drugs, then a confirmation test is performed for each identified drug using state-of-the-art gas chromatography/mass spectrometry (GC/MS) analysis. GC/MS ensures that over-the-counter medications are not reported as positive tests.

- B. Alcohol Testing. Federal and State regulations for the testing of alcohol use require an evidential breath testing device (EBT) approved by the National Highway Traffic Safety Administration (NHTSA). An alcohol testing form is completed by the covered employee and a certified breath alcohol technician (BAT) to ensure the results are properly recorded. Two (2) breath tests are required to determine if the covered employee has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a negative test, and no further testing is required.

If the alcohol concentration is 0.02 or greater, a second or confirmation test shall be conducted. When a confirmation test is required, the EBT equipment shall print the screening and confirmation test numbers in sequential order. The device shall also print the result, date, and time of both tests, along with the name and serial number of the EBT equipment in order to ensure the reliability of the results. Any actions taken will be based on the confirmation test result.

Article 6 Performance (Cont'd.)

Sec. 6.9 Drug and Alcohol Free Workplace Policy (Cont'd.)

(d) Drug and Alcohol Testing Policy for Employees Operating Commercial Vehicles (Cont'd.)

3. When Tests Are Required. The following tests are required for all District employees who perform or may perform safety-sensitive functions:

A. Preemployment Testing. Prior to hire, promotion or assignment to a position covered by this policy, the applicant or employee shall undergo testing for drugs. Refusal to take the required test or failure to pass the test shall be deemed a basis upon which employment or assignment to a safety-sensitive position shall be denied.

B. Random Selection. Random testing shall be required of all employees covered by this policy. The ongoing testing will be conducted on an unannounced basis before, during, or immediately after the performance of safety-sensitive functions. Covered employees will have an equal chance of being selected. All covered employees' names will be placed in a pool, from which names are drawn on a "reasonably random" basis. Once a covered employee's name is pulled for testing, his/ her name will be returned to the pool. Therefore, it is feasible for the same covered employee to be tested repeatedly while participating in a true random testing process.

Random testing shall be performed as follows:

- (1) Drugs - Fifty percent (50%) of the total number of covered employees shall be tested annually or as determined annually by the Federal government.
- (2) Alcohol – Ten percent (10%) of the total number of covered employees shall be tested annually or as determined annually by the Federal government.

Article 6 Performance (Cont'd.)

Sec. 6.9 Drug and Alcohol Free Workplace Policy (Cont'd.)

(d) Drug and Alcohol Testing Policy for Employees Operating Commercial Vehicles (Cont'd.)

3. When Tests Are Required (Cont'd.)

- C. Reasonable Suspicion. The District shall require a covered employee to be tested upon reasonable suspicion for the use of drugs or alcohol. Reasonable suspicion means that a trained supervisor believes that the actions, appearance, speech, body odors, or conduct of an on-duty covered employee is indicative of the use of drugs or alcohol. Reasonable suspicion may be conducted before, during, or after a covered employee performs a safety-sensitive function.

The determination that a reasonable suspicion exists to require a covered employee to undergo a drug or alcohol test must be based on specific, objective, and contemporaneous facts concerning the behavior, appearance, speech, or body odors of the employee. The determination must also be based on the supervisor's direct observations of the behavior(s) and not on hearsay. The supervisor(s) witnessing the impairment must document the specific observations upon which the reasonable suspicion is based.

Where there is a reasonable suspicion that the covered employee is under the influence of drugs or alcohol, the supervisor shall arrange for the covered employee to be transported to the testing facility and then driven home. The covered employee shall not be permitted to transport himself/herself.

- D. Post-Accident. For purposes of this policy, an "accident" is defined as an incident involving a commercial or placarded vehicle driven by a covered employee in which one (1) or more of the following occurs: loss of human life; bodily injury to persons; one or more vehicles incur disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle, or issuance of a traffic citation to the covered employee following any type of vehicle collision.

Article 6

Performance (Cont'd.)

Sec. 6.9

Drug and Alcohol Free Workplace Policy (Cont'd.)

(d) Drug and Alcohol Testing Policy for Employees Operating Commercial Vehicles (Cont'd.)

3. When Tests Are Required (Cont'd.)

D. Post-Accident (Cont'd.)

The following criteria apply when conducting drug and alcohol tests due to an accident:

- (1) A breath alcohol test must be administered to the covered employee as soon as possible. If not within two (2) hours following the accident, the employer/supervisor must prepare and maintain records stating why testing was not completed. At that time, every effort should be made to ensure that a breath alcohol test is performed within eight (8) hours following the accident. If testing has not occurred within eight (8) hours, attempts to test should be discontinued, and the employer/supervisor must record why he/she was unable to administer the required test.
- (2) A drug screening test must be initiated to the covered employee prior to the 32nd hour following an accident. If the test is not administered as required, the employer/supervisor must document the reasons testing was not performed.
- (3) The covered employee must remain readily available for testing or he/she will be deemed to have refused the test (see Refusal to Consent). This rule does not require the delay of necessary medical attention for injured persons following the accident nor prohibit the covered employee from leaving the scene to obtain assistance or necessary emergency medical care.
- (4) A covered employee subject to post-accident testing may not use alcohol within eight (8) hours following the accident or before an alcohol test, whichever comes first.
- (5) Testing will not be conducted on any deceased employee.

Article 6 Performance (Cont'd.)

Sec. 6.9 Drug and Alcohol Free Workplace Policy (Cont'd.)

(d) Drug and Alcohol Testing Policy for Employees Operating Commercial Vehicles (Cont'd.)

3. When Tests Are Required (Cont'd.)

E. Return-to-Duty. Testing shall be conducted on any covered employee who has violated the prohibited drug and alcohol standards and is accepted into a return-to-duty status. Prior to resuming his/her safety-sensitive functions, the covered employee must undergo a new drug and/or alcohol test. The test results must be negative for the covered employee to return to work. If applicable, the covered employee shall be referred to a Substance Abuse Professional for further assessment.

F. Follow-up. Any covered employee identified by the Substance Abuse Professional as needing assistance will be subject to follow-up testing upon returning to duty. A minimum of six (6) unannounced tests will be performed over the following twelve (12) month period. Follow-up testing may be extended for up to 60 months following return-to-duty. The same criteria used for the return-to-duty testing will be used for any follow-up testing. Such testing shall not be subject to the random testing selection procedures. Moreover, follow-up testing may include tests for other substances beyond the covered employee's initial positive test of drug and/or alcohol use when the Substance Abuse Professional has reason to believe that additional testing is warranted. If follow-up testing is required, the covered employee assumes full responsibility for paying the follow-up testing expenses.

4. Employee Consent. Before a drug or alcohol test is administered, the covered employee will be asked to sign a consent form authorizing the test and permitting release of the test results to the appropriate District representative. The consent form shall provide a space to acknowledge that the covered employee being tested has previously been advised of the drug and alcohol testing policy.

Article 6 Performance (Cont'd.)

Sec. 6.9 Drug and Alcohol Free Workplace Policy (Cont'd.)

(d) Drug and Alcohol Testing Policy for Employees Operating Commercial Vehicles (Cont'd.)

5. Refusal to Consent. A covered employee that refuses to submit to drug or alcohol testing required by the District shall be prohibited from performing or continuing to perform safety-sensitive functions. A covered employee's refusal to submit to drug or alcohol testing required by the District for any reason may also result in disciplinary action, up to and including termination. Refusal to consent shall include, but is not limited to:
 - A. failure to provide adequate breath for alcohol testing, without valid medical explanation, after being notified of the requirement for breath testing;
 - B. failure to provide an adequate urine sample for testing, without a genuine inability to provide a specimen (as determined by medical evaluation), after being notified of the requirement for urine testing; and
 - C. engaging in conduct that clearly obstructs the testing process.

6. Consequences of Positive Test Results. If drug and/or alcohol test results are positive, the covered employee may be disciplined, up to and including termination. If the covered employee is not terminated, the covered employee's supervisor or other authorized manager shall:
 - A. Immediately remove any covered employee who has engaged in prohibited drug or alcohol use from his/her safety-sensitive functions.
 - B. If the alcohol concentration level is 0.02 or greater, but less than 0.04, the covered employee may not return to his/her safety-sensitive function for a minimum of twenty-four (24) hours and until another breath alcohol test is administered, and the result is less than a 0.02 concentration.

Per Ordinance No. 2008-05 Adopted 6/16/08 [Sec.6.9(b)6(B)]

Article 6 Performance (Cont'd.)

Sec. 6.9 Drug and Alcohol Free Workplace Policy (Cont'd.)

(d) Drug and Alcohol Testing Policy for Employees Operating Commercial Vehicles (Cont'd.)

6. Consequences of Positive Test Results (Cont'd.)

- C. If the alcohol concentration level is greater than 0.04 or a drug screening test is positive for any of the prohibited controlled substances, the covered employee will be removed from his/her safety-sensitive function until:
 - (1) he/she undergoes evaluation and, where necessary, rehabilitation;
 - (2) a Substance Abuse Professional determines that the covered employee has successfully complied with any required rehabilitation; and
 - (3) the covered employee undergoes a return-to-duty test with a result of a blood alcohol concentration of less than 0.02 if the covered employee initially tested positive for alcohol, and/or with a negative test result for controlled substances if the covered employee initially tested positive for controlled substances.
- D. If the covered employee is permitted to return to work, he/she must have a negative test result on the return-to-duty test.
- E. Perform unannounced follow-up testing on any covered employee returned to his/her safety-sensitive functions.
- F. Make arrangements for alternative transportation when test results are positive for drugs or an alcohol concentration of 0.02 or greater.
- G. Any leave required to be taken by a covered employee as a result of a positive drug or alcohol test must come from the covered employee's accrued sick or vacation leave until such accrued leave is exhausted. If leave must be taken beyond the covered employee's accrued time available, leave without pay must be requested and approved by the General Manager.
- H. Any treatment or rehabilitation may be provided in accordance with District policy. The District is not required under these circumstances to provide rehabilitation, pay for treatment, or to reinstate the covered employee to safety-sensitive functions.

Article 6 Performance (Cont'd.)

Sec. 6.9 Drug and Alcohol Free Workplace Policy (Cont'd.)

(d) Drug and Alcohol Testing Policy for Employees Operating Commercial Vehicles (Cont'd.)

7. Substance Abuse Professional. The District will advise an employee engaged in prohibited conduct under this policy of the available resources for evaluation and treatment of drug/alcohol problems, including the names, addresses and telephone numbers of Substance Abuse Professionals (SAPs), counseling, treatment programs or other available services. Each employee who violates these rules must be evaluated by a SAP to determine whether the employee needs assistance resolving problems associated with alcohol misuse and/or drug use and, if necessary, a referral for further treatment. Employees identified by the SAP as needing assistance may be required to be evaluated again by the SAP to determine whether the employee has successfully complied with any treatment program prescribed by the initial evaluation. The District has no obligation to provide or pay for the SAP assessment or needed treatment, as this is the responsibility of the covered employee.

8. Records

A. Testing Records. Records shall be maintained on test results, prevention programs, policies, training, drug use and alcohol misuse, refusals to submit to testing, covered employee evaluations, and annual summary of the District's testing program. The retention period for the records is as follows:

(1) Five (5) Year Retention Period. This pertains to the results of alcohol tests of 0.02 or higher, confirmed positive drug tests, documentation of any covered employee who has refused to submit to a required drug or alcohol test, covered employee assessments and referrals by the Substance Abuse Professionals, and each calendar year summary.

(2) Two (2) Year Retention Period. This pertains to records documenting the collection process for the drug and alcohol tests and training of supervisors.

(3) One (1) Year Retention Period. This pertains to any alcohol test results which are less than 0.02 and the documentation of any negative or canceled drug test.

Article 6 Performance (Cont'd.)

Sec. 6.9 Drug and Alcohol Free Workplace Policy (Cont'd.)

(d) Drug and Alcohol Testing Policy for Employees Operating Commercial Vehicles (Cont'd.)

8. Records (Cont'd.)

A. Testing Records (Cont'd.)

All records are confidential; however, the regulations require that they be made available for inspection at the Valley Center Municipal Water District within two (2) business days following a request by an authorized person. The records are kept in a separate file and will not be made a part of the covered employee's personnel file. An exception to this is when disciplinary action results from the incident. When there is disciplinary action, disciplinary notices and related documents will be placed in the covered employee's personnel file.

The results of any testing done pursuant to this policy shall be used for employment purposes only and shall not be released for use in the criminal justice system, unless compelled by court order.

B. Access To Records. The following agencies shall have access to all test results without the verbal or written consent of covered employees:

- (1) the Valley Center Municipal Water District decision-makers in proceedings initiated either by the District or the covered employee as a result of testing;
- (2) the Department of Transportation or any state or local official with regulatory authority over the District or any of its covered employees; and
- (3) the National Transportation Safety Board when conducting an investigation of an accident where drug and/or alcohol testing was performed.

9. Training. As part of the emphasis on education and safety, the FMCSA regulations require providing educational materials and two (2) hours of training of supervisors and one (1) hour of training for covered employees before testing can begin. The required topics include the following:

- A. General Requirements. Covers the general requirements of the Omnibus Act and the District's responsibilities to comply with those requirements.
- B. Key Person. Designates a key person at the District to answer employee questions regularly.

Article 6 Performance (Cont'd.)

Sec. 6.9 Drug and Alcohol Free Workplace Policy (Cont'd.)

(d) Drug and Alcohol Testing Policy for Employees Operating Commercial Vehicles (Cont'd.)

9. Training (Cont'd.)

- C. Drivers Covered. Identifies categories of covered employees who are subject to the regulations.
- D. On-duty Time. Describes the period of time covered employees are to be in compliance.
- E. Safety-Sensitive Functions. Identifies what job tasks are considered to be safety-sensitive.
- F. Prohibited Conduct. Specifies information about prohibited covered employee conduct.
- G. Occasions for Testing and Types of Testing. Lists circumstances under which covered employees will be tested for drugs and/or alcohol.
- H. Procedures for Testing. Covers procedures that will be used to test for the presence of alcohol or drugs and to protect the privacy of covered employees, the integrity of the testing process, and the validity of the test results. Testing shall be conducted only by laboratories that are Department of Health and Human Services certified, and comply with all laboratory analysis procedures and quality control measures set forth in 49 C.F.R. part 40.
- I. Refusal to Be Tested. Explains what constitutes a refusal to test, and the consequences as outlined in Section 6.9(b)(5).
- J. Blood Alcohol Concentration. The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04.
- K. Effects of Drugs and/or Alcohol Use. Describes the specific observations concerning the appearance, behavior, speech, or body odors of the covered employees.
- L. Penalties and Referral. Lists the various consequences for covered employees found to have tested positive for prohibited drugs or within the prohibited blood alcohol level.

Article 6 Performance (Cont'd.)

Sec. 6.9 Drug and Alcohol Free Workplace Policy (Cont'd.)

(d) Drug and Alcohol Testing Policy for Employees Operating Commercial Vehicles (Cont'd.)

10. Notice to Employees. All covered employees shall be given a copy of this policy prior to the start of alcohol and controlled substances testing and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle. A copy of this policy is available to representatives of the employee organization.
11. Compliance with Federal Law. At all times, the District will comply with the current applicable federal law concerning drug and alcohol testing. Issues or inconsistencies that are not addressed in this policy will be determined by referring to the law and official regulations outlining policies and procedures, etc. relative to the law. Due to the complexities involving the law and this type of policy, not all of the particulars may necessarily be covered in this policy. The District reserves the right to make changes to this policy at any time.
12. Employer Contact. The General Manager or his designee has been designated to answer employee questions about this policy.
13. Employee Accommodations. Nothing in this policy is intended to diminish the District's commitment to employ and reasonably accommodate qualified disabled individuals. The District will reasonably accommodate qualified disabled employees who must take legal drugs because of their disability and who, because of their appropriate use of such drugs, cannot perform the essential functions of their positions without reasonable accommodation. In addition, the District will provide an unpaid leave of absence to eligible employees who wish to seek treatment for drug and alcohol dependency. To this end, employees desiring such assistance should request a treatment or rehabilitation leave. The District is not obligated, however, to continue to employ any person whose performance of essential job duties is impaired because of current drug or alcohol use, nor is the District obligated to re-employ any person who has participated in treatment and/or rehabilitation if that person's job performance remains impaired as a result of dependency. Nor is the District obligated to accommodate current usage of illegal drugs or alcohol.

Per Ordinance No. 2014-05 Adopted 8/4/14 [Sec. 6.9(b)13]

Article 6 Performance (Cont'd.)

Sec. 6.9 Drug and Alcohol Free Workplace Policy (Cont'd.)

(d) Drug and Alcohol Testing Policy for Employees Operating Commercial Vehicles (Cont'd.)

13. Employee Accommodations (Cont'd.)

Additionally, employees who are given the opportunity to seek treatment and/or rehabilitation, but fail to successfully overcome their dependency or problem, will not automatically be given a second opportunity to seek treatment and/or rehabilitation. This policy on treatment and rehabilitation is not intended to affect the District's treatment of employees who violate the regulations described above. Rather, rehabilitation is an option for an employee who acknowledges a chemical dependency and voluntarily seeks treatment to end that dependency. The District abides by all applicable laws and regulations regarding providing leaves of absence to employees who are addicted to drugs.

Violation of the above rules and standards of conduct will not be tolerated. An employee who violates this policy is subject to discipline, up to and including immediate discharge, even for a first violation. Where appropriate, the District also may bring the matter to the attention of appropriate law enforcement authorities.

Per Ordinance No. 2014-05 Adopted 8/4/14 [Sec. 6.9(b)13]