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OFFICE OF THE
CITY MANAGER

CITY OF SACRAMENTO
CALIFORNIA

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May 11, 1990

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Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

**SUBJECT: RESOLUTION REQUIRING CITY CONSTRUCTION CONTRACTORS TO
ADOPT DRUG-FREE WORKPLACE POLICIES**

SUMMARY:

The attached Resolution would require all construction contractors who bid for City construction projects, to certify that they have implemented policies aimed at making their workplaces drug-free. Failure by a contractor to implement drug-free policies or failure to make good-faith efforts to enforce such policies, could result in a suspension of payments, termination of contract or disbarment from future contracts for up to five years.

There are no known state or federal laws requiring construction contractors who do not receive federal contracts, to implement drug-free workplace policies.

BACKGROUND

The Laborers International Union of North America, Local 185 has requested that the City of Sacramento adopt a policy aimed at preventing drug use at City construction sites. Representatives from the Laborers' Union stated that illicit drug use on the job creates significant safety problems which endanger the health and safety of employees and citizens.

Several meetings have been held on this issue. In attendance were representatives from City departments which oversee City construction projects; labor unions; the Building Trades Council; the Department of Employee Relations, the City Attorney and City Manager's Offices. As a result of those meetings, it was decided that the City Manager's Office would draft a resolution for Council consideration which would create a drug-free policy requirement for city construction contractors.

This policy is patterned after the Federal, Drug-free Workplace Requirement; Notice and Interim Final Rules - January 31, 1989.

Establishment of this policy would require construction contractors to notify their employees of the prohibition against using, distributing, manufacturing, possessing or dispensing controlled substances at the workplace. In addition, it would require contractors to inform their employees about the dangers of drug abuse in the workplace, the contractor's policy of maintaining a drug-free workplace, the availability of any drug counseling rehabilitation and employee assistance programs and the penalties which may be imposed for drug abuse violations at the workplace.

The requirements for a Drug-free Workplace Policy would be imposed on subcontractors as well as contractors.

The City of Sacramento adopted a Drug-free Workplace Policy in June 1989 in compliance with the federal law. The City's policy is comparable to the policies which this resolution would require City construction contractors to adopt. Under the City's current Drug-free Workplace Policy, each City employee has received notification of the policy through articles in the City newsletter. The newsletters were distributed to employees with their paychecks. Employees hired after July 4, 1989 are given a copy of the policy when they are processed through the Personnel Department upon hire.

FINANCIAL DATA

There are no significant City expenditures anticipated through the adoption of this resolution. Administration of this program will occur through the utilization of existing staff.

POLICY CONSIDERATIONS

Through the adoption of this policy, the City Council will be placing requirements on potential City construction contractors which are not currently covered by state and federal law. As a result, it is anticipated that there may be some opposition to this item.

In addition, the adoption of this resolution will require contractors to possibly expend funds to notify their employees of the contractor's drug-free policies. Although the amount is considered to be minimal, it is possible the notification requirement may result in slightly higher bids for construction projects as contractors seek to cover increased costs.

MBE/WBE EFFORTS

None.

RECOMMENDATION

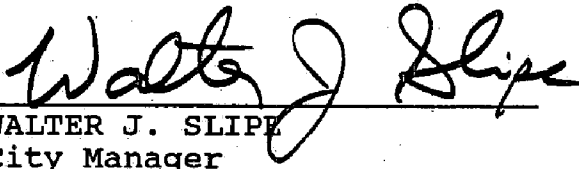
It is recommended that the Law & Legislation Committee refer the attached Resolution requiring drug-free workplace policies from City construction contractors to the full Council with a positive recommendation for adoption.

Respectfully submitted,



GARY L. LITTLE
Citizens Assistance Officer

RECOMMENDATION APPROVED:



WALTER J. SLIPE
City Manager

June 21, 1990
All Districts



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CITY MANAGER

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CALIFORNIA

CITY HALL
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95814-2684

916-449-5704
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June 7, 1990

City Council
Sacramento, California

Honorable Members In Session:

**SUBJECT: RESOLUTION REQUIRING CITY CONSTRUCTION CONTRACTORS TO
ADOPT DRUG-FREE WORKPLACE POLICIES**

SUMMARY

The attached Resolution would require all construction contractors who bid for City contracts to certify that they have implemented policies aimed at making their workplaces drug-free. Failure by a contractor to implement drug-free policies or to make good-faith efforts to enforce such policies could result in the suspension of payments, termination of contracts or disbarment from future contracts for up to five years.

BACKGROUND INFORMATION

The Laborers International Union of North America, Local 185 has requested that the City of Sacramento adopt a policy aimed at preventing drug use at City construction sites. Representatives from the Laborers Union have stated that illicit drug use on the job creates significant safety problems which endanger the health and safety of employees and citizens.

The attached Resolution would require construction contractors who bid on City construction projects to notify their employees of the prohibition against using, distributing, manufacturing, possessing or dispensing controlled substances at the workplace. In addition, the Resolution would require contractors to inform their employees about the dangers of drug abuse in the workplace, the contractor's policy of maintaining a drug-free workplace, the availability of drug counseling, rehabilitation and employee assistance programs and the penalties which may be imposed for drug abuse violations at the workplace.

The requirements would also be imposed on subcontractors.

FINANCIAL DATA

None.

POLICY CONSIDERATIONS

The City of Sacramento adopted a Drug-free Workplace Policy in June, 1989 in compliance with federal law. This resolution would place requirements on potential City construction contractors which are not currently covered by state or federal law.

MBE/WBE EFFORTS

None.

RECOMMENDATION

It is recommended that the City Council adopt the attached Resolution requiring drug-free workplace policies from City construction contractors.

Respectfully submitted,

GARY L. LITTLE
Citizens Assistance Officer

RECOMMENDATION APPROVED:

WALTER J. SLIPE
City Manager

Contact Person:

Gary L. Little
Citizens Assistance Officer
449-5704

June 26, 1990
All Districts

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

RESOLUTION REQUIRING CONSTRUCTION CONTRACTORS TO ADOPT DRUG-FREE WORKPLACE POLICIES PRIOR TO BEING AWARDED A CITY CONTRACT

WHEREAS, on June 1, 1989, the City of Sacramento adopted a Drug-free Workplace Policy in accordance with the Federal Drug-free Workplace Requirements: Notice and Interim Final Rules - January 31, 1989, which certifies that the City will provide a drug-free workplace for its employees; and

WHEREAS, the City of Sacramento regularly contracts with various businesses and construction firms to build structures and/or facilities at the City's direction, and whose employees often engage in hazardous work; and

WHEREAS, the Sacramento City Council believes that drug use in the workplace endangers the health and safety of employees and citizens alike; and

WHEREAS, it is the Sacramento City Council's desire to mandate that businesses and other firms who construct facilities or other structures for the City of Sacramento, adopt drug-free workplace policies, which among other things, prohibit the manufacturing, distribution, dispensing, possession or use of a controlled substance in their workplace.

NOW, THEREFORE BE IT RESOLVED, that the Sacramento City Council does hereby adopt the Drug-free Workplace Policy appended hereto as Attachment 1.

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

POLICY REQUIRING DRUG-FREE WORKPLACE
POLICIES FROM CITY CONSTRUCTION CONTRACTORS

As a condition to receiving a City construction contract, a contractor shall certify to the City of Sacramento that it and any subcontractors used in the performance of the contract, will provide a drug-free workplace.

I. DEFINITIONS

For the purpose of this policy:

- A. "Controlled substance" is as defined in the California Health and Safety Code.
- B. "Conviction" means conviction of a felony or conviction of a misdemeanor which is of such a nature as to adversely affect the employee's ability to perform the duties and responsibilities of his/her position. A plea of guilty or conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. Notwithstanding any further proceedings in the case or any appeal of appellate decision, a conviction shall be deemed to be complete upon the date the court imposes judgement and sentence.
- C. "Criminal drug statute" means a criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance.
- D. "Drug-free workplace" means a site for the performance of work done in connection with a contract at which employees of the contractor or subcontractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance.
- E. "Employee" means the employee of a contractor or subcontractor directly engaged in the performance of work pursuant to the provisions of the contract or subcontract.
- F. "City construction contract" means a contract with the City of Sacramento regardless of amount to build, refurbish, construct facilities, structures or similar projects.
- G. "Contractor" means a person who applies for or receives a construction contract directly from the City of Sacramento.

- H. "Subcontractor" means a person who applies for or receives a contract to perform services for a contractor under a contract received directly from the City of Sacramento.
- I. "Workplace" means any job site where a contractor is performing work for or on behalf of the City of Sacramento.

II. DRUG-FREE WORKPLACE CERTIFICATION REQUIREMENTS

As a prior condition of being awarded a City Construction Contract, each contractor shall make the appropriate certification to the City of Sacramento, as follows:

- A. The contractor certifies that it and all subcontractors performing under the contract will provide a drug-free workplace by:
1. Publishing a "Drug-free Workplace" statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
 2. Establishing a Drug-free Awareness Program to inform employees about:
 - a. The dangers of drug abuse in the workplace.
 - b. The contractor's policy of maintaining a drug-free workplace.
 - c. Any available drug counseling, rehabilitation, and employee assistance programs.
 - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 3. Notifying employees that as a condition of employment under the contract, employees will be expected to:
 - a. Abide by the terms of the statement.
 - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace.

4. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the "Drug-free Workplace" statement.
5. Taking one of the following appropriate actions, within 30 days of receiving notice from an employee (or otherwise receiving such notice), that said employee has received a drug conviction for a violation occurring in the workplace:
 - a. Taking appropriate disciplinary action against such an employee, up to and including termination; or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement or other appropriate agency.

III. BIDDING AND CONTRACT REQUIREMENTS

A. Bidding

1. As part of the bid package, where competitive bidding is utilized, each contractor shall be required to complete and sign, under penalty of perjury, a form which sets forth the date of each conviction for violation of a criminal drug statute occurring within three years prior to the date the form is signed, and where:
 - a. The conviction relates to a violation which occurred on a job site where the contractor was performing work; and
 - b. The person convicted was an employee of the contractor.
2. The form specified above shall also contain a certification that the bidder-contractor will require each subcontractor selected for performance of the City construction contract to disclose the same information as is required in subparagraph 1 above.
3. The form shall contain the following warning immediately preceding the signature line: "IN THE EVENT THAT THE BIDDER IS AWARDED A CITY CONSTRUCTION CONTRACT AS A RESULT OF THIS BID, THE

CONTRACT WILL CONTAIN A STATEMENT THAT IN THE EVENT THE INFORMATION DISCLOSED IN THIS STATEMENT IS INCOMPLETE OR INACCURATE, THE CONTRACT IS SUBJECT TO IMMEDIATE TERMINATION BY THE CITY".

B. Contract

1. Where bidding procedures have been employed, the form specified in subparagraph A above shall become a part of the City construction contract between the City and the successful bidder-contractor, and the contract shall state that in the event that the information contained in the statement is inaccurate or incomplete, the contract is subject to immediate termination by the City, in addition to any lesser remedy determined appropriate by the City.
2. Where bidding procedures have not been employed, any City construction contract between the City and a contractor shall have as an incorporated exhibit a statement complying with the requirements of subparagraph A.1 above, and the contract shall state that in the event that the information contained in the statement is inaccurate or incomplete, the contract is subject to immediate termination by the City, in addition to any lesser remedy determined appropriate by the City.
3. This policy, in the form adopted by the City Council, shall be incorporated by reference into, and attached to any City construction contract.
4. The above requirements are in addition to the requirements to section II.

IV. COVERAGE

This policy statement covers any construction contract regardless of amount.

V. VIOLATION

A contractor shall be in violation of this policy if the City Manager determines that:

- A. The contractor has made a false "Drug-free Workplace" certification.

- B. The contractor, in either or both the bidding process or the contract documents, failed to disclose or misrepresented criminal history information of his/her employees as to convictions for violations of criminal drug statutes.
- C. The contractor has failed to carry out the requirements of the "Drug-free Workplace" certification.
- D. The number of employees of the contractor who have been convicted prior to or during the term of the contract of violations of criminal drug statutes occurring in the workplace, indicates that the contractor has failed to make a good faith effort to provide a drug-free workplace. For purposes of this provision, "the workplace" includes (in addition to the place where the City contract is to be performed) any job site where the contractor has performed work, whether within or outside the City of Sacramento, for the three years immediately preceding the date of the contract with the City.

VI. EFFECT OF VIOLATIONS

At the City Manager's discretion, any one or more of the following actions may be taken for a contractor who is found to have violated this policy under V above.

- A. Suspension of payments under the contract.
- B. Suspension or termination of the contract.
- C. Suspension or debarment of the contractor from receiving any contract from the City of Sacramento for a period not to exceed five years.

VII. EXCEPTION

The City Manager may waive with respect to a particular contract, in writing, a withholding of payments under a contract, suspension, or termination of a contract, or withholding or debarment of a contractor if the City Manager determines that such a waiver would be in the public interest.