

SECTION 4: Employee Relations

IV. Drug and Alcohol Use and Testing Policy

A. General Information

1. The city wants to provide a safe and productive work environment for all employees and to ensure the safe and efficient delivery of services to the citizens of the City.
2. The city is a Drug Free Workplace and expects employees to be free from the use, sale, distribution or possession of controlled substances or alcohol in the workplace.
3. All covered employees are required to submit to drug and alcohol tests as a condition of employment at a physician or site designated by the city.
4. This policy applies to all applicants for employment in all city departments and all current employees. These policies and procedures are intended to assist with the compliance with the Omnibus Transportation Employee Testing Act of 1991, 49 CFR Part 382 and 49 CFR Part 40. However, the city reserves the right to go above and beyond the Department of Transportation's drug and alcohol testing regulations.
5. The City Manager or designee is authorized to develop, administer and modify this policy or the procedures herein in order to remain compliant with federal, state or other regulations pertaining to drug and alcohol use and testing impacting the city and our employees.

B. Definitions

1. "Alcohol" means alcohol, or any beverage, containing more than one-half of one percent of alcohol by volume which is capable of use for beverage purposes,, either alone or when diluted.
2. "Alcohol abuse" means use of alcohol in any quantity during 4 hours prior to or during working hours or reporting for work under the influence of alcohol.
3. "Alcohol testing" means testing for the presence of alcohol by a breathalyzer instrument, device, urinalysis, or a blood sample analysis.
4. "City property" means all city buildings and adjacent land, parking lots, sidewalks or city-owned property, including city vehicles.
5. "Department head" is the director over a department and shall also include any person designated by the department head to take any action necessary under this policy in the absence of the department head.
6. "Controlled substance" or "drugs" includes, but is not limited to, marijuana, hashish, cocaine, heroin, morphine, codeine opiates, phencyclidine, amphetamines, inhalants, barbiturates and hallucinates.
7. "Drug testing" means the testing for the presence of controlled substances or drugs by a urine or blood sample by qualified medical personnel and laboratory analysis of that sample.
8. "Employee" means an individual employed by the city in a full time or part time position, including seasonal employees, interns or others on city payroll.
9. "Medical Review Officer" is the city's designated physician to review and interpret drug and/or alcohol tests.
10. "Motorized Equipment" means equipment powered by a motor, including tools, such as weed-eaters, blowers, etc.

11. "Proper medical authorization" means a prescription or their written approval from a physician, for the use of a drug in the course of medical treatment.
 12. "Reasonable suspicion" means a conclusion based on personal observation of a specific instance, or instances, of employee conduct on or off duty, which shall be confirmed in a sworn (notarized) statement. On duty observation must be corroborated and documented in writing that an employee is unable to satisfactorily perform his or her job duties due to the use of controlled substances or alcohol. Such inability to perform may include, but is not limited to, a drop in the employee's performance level or an indication of impaired judgment, reasoning, level of attention or behavioral change or decreased ability of the senses.
 13. "Safety sensitive position" means a job where an employee's use of drugs or alcohol could render the employee unfit to perform assigned duties and could create a safety hazard to the employee, other employees, citizens or damage to property. For these purposes, any employee who drives or operates a city vehicle or other motorized equipment shall be considered to be employed in a safety sensitive position.
 14. "Substance abuse" is exemplified by, but not limited to, the following:
 - a) Ingestion, inhalation or injection of a controlled substance during work hours or when in a city vehicle or on a city property.
 - b) Ingestion of alcohol during work hours or when in a city vehicle or on city property.
 - c) Ingestion, inhalation or injection of a controlled substance or alcohol during non-working hours which causes an employee to be unable to work in a safe manner during working hours.
 - d) Use of prescription or over-the-counter medication in a manner in which it was not intended.
 15. "Tampering" with a urine specimen includes, but is not limited to, diluting the specimen with water or with any other substance, adding any substance to the specimen, or substituting urine. Possession of a urine sample when an employee or applicant reports to the laboratory shall constitute tampering.
 16. "Testing" includes testing by urinalysis, hair testing, intoxilyzer or blood testing, or any other recognized testing method.
 17. "Under the influence" or "impaired" is defined as abnormal behavior during working hours which results from indulging, in any degree, in alcohol or in any controlled substance or other drug including prescription or over-the-counter medication which, to any degree, may limit an employee's ability to safely and efficiently perform his or her duties or poses a threat to the safety of the employee, other employees, citizens or property.
- C. Education and Training
1. In order to meet the objectives of this policy, the city has established a drug and alcohol free awareness program for the purpose of informing employees about the dangers of alcohol and substance abuse, the city's controlled substance and alcohol abuse and testing policy, the availability of substance abuse counseling and rehabilitation programs, and disciplinary actions that may be imposed on an employee for violations of the city's controlled substance and alcohol abuse policy.

2. The city will provide a copy of this policy (as part of this manual) to each employee currently employed and subsequently hired, transferred, promoted or demoted into a position involving the driving of a city vehicle or motorized equipment. Each employee will be required to sign a statement certifying receipt of this policy.
3. Supervisory personnel will be provided with training necessary to identify work-related performance problems, to identify potential symptoms of substance abuse, to understand the methods of drug and alcohol testing, to document reasonable suspicion instances, and to understand and implement guidelines for disciplinary action. The supervisors will receive at least sixty (60) minutes of training on alcohol misuse and receive at least an additional sixty (60) minutes of training on drug use. The training will cover the physical, behavior, speech, and performance indicators of probable alcohol misuse and the use of drugs and controlled substances.
4. All department heads and supervisors are responsible for recognizing and documenting the reasonable suspicion of controlled substance or alcohol use by employees, which may be indicated by poor performance, and for carrying out the provisions of this policy. Failure of a department head to carry out the requirements of this policy may lead to disciplinary action, up to and including termination.

D. Disciplinary Reasons

1. A refusal to be tested is considered a positive test and will result in termination.
2. Employees may receive disciplinary action up to and including termination for the following types of prohibited conduct:
 - a) The manufacture, use, possession, sale, distribution, consumption or transportation of any of the following substances while on city property, using a city vehicle or motorized equipment, or while conducting city business or performing work duties:
 - (1) Illegal drugs, controlled substances, marijuana, mood or mind altering substances, simulated controlled substances, designer and synthetic drugs, and inhalants producing mood or mind altering vapors.
 - (2) Alcoholic beverages or other intoxicating substances ingested 4 hours prior to or during work hours or when on call during those on-call hours which would prevent you from responding to work.
 - (3) Drug paraphernalia.
 - (4) Any controlled substance, except by physician's prescription, and then only if the physician has advised the employee that the drug will not adversely affect the employee's ability to safely perform their job.
 - b) Reporting to work under the influence.
 - c) Use of any controlled substances or alcohol in a manner that:
 - (1) Has an adverse effect on the employee's performance,
 - (2) Could jeopardize the safety of others or use of city equipment, or
 - (3) Could negatively impact the city's relations with the public.
 - d) Tampering with the sample or submitting a false sample.
 - e) Failure to inform supervisors when taking medication that could affect the employee's job performance.

- f) Engaging in or involvement with any of the prohibited substances noted in this policy which results in off-duty conduct that is damaging to the City's reputation or business.
- g) Misusing over the counter medications.
 - (1) The City reserves the right to have a city designated physician determine if a prescription drug or medication may impair an employee's ability to safely perform his/her job duties and may restrict the job duties performed while using any drug or medication accordingly.
 - (2) The City Manager shall be the final authority in reviewing information provided by a medical doctor as to any circumstances warranting such review related to drug/alcohol or prescription issues and if the employee may become or remain employed.

E. Employee Responsibilities

- 1. Employees in need of professional assistance in relation to controlled substances or alcohol use/misuse are encouraged to explore the use of leave time and medical benefits in obtaining assistance through public and private referral agencies specializing in chemical dependency before the problem affects their job.
- 2. Employees scheduled to be on call are expected to be fit for duty upon reporting to work. An employee scheduled to be on call who is called out is subject to the provisions of this policy.
 - a) An employee not scheduled to be on call who is called out and is under the influence of legally prescribed drugs or who is impaired by alcohol must so advise his or her supervisor and will not be required to report to work.
 - b) An employee who is called out and who reports to work, but fails to properly notify his/her supervisor that he or she is under the influence or impaired is subject to disciplinary action.
- 3. An employee shall not consume any alcohol for at least eight (8) hours following any accident or until he or she undergoes post-accident testing. An employee who consumes any alcohol prior to eight (8) hours following this accident or until a post-accident test has been administered may be subject to disciplinary action if such person tests above allowable limits.

F. Drug/Alcohol Testing

- 1. Human Resources will arrange for drug screenings with a certified laboratory.
- 2. A urine sample will normally be given to test for the presence of controlled substances or alcohol. However, breath testing for alcohol may also be used. Also, other acceptable testing methods determined by the City Manager or designee.
- 3. Any applicant or employee who tampers with, or attempts to tamper with, a urine/blood specimen or breath test in any manner shall be disqualified from employment with the city and shall be barred from any future consideration for employment with the city or, if currently employed by the city, shall be subject to disciplinary action as noted herein.
- 4. Prescription or over-the-counter drugs taken by the person to be tested will not be considered if the drug affects the testing, unless the use of such drugs, in the judgment of the Medical Review Officer, would be potentially harmful to the safety of the person being tested, or others.

5. All positive urine samples will be confirmed by the use of the gas chromatography/mass spectrometry (GC/MS) method. The additional testing (GC/MS) will be at the city's expense.
 6. Any questions relating to alcohol and drug testing will be referred to Human Resources.
- G. Pre-Employment Testing
1. All persons offered positions with the city shall be required to submit to a drug and/or alcohol test.
 2. Prior to the test, all applicants shall be required to sign a written consent form authorizing a urine or breath test for the presence of controlled substances and alcohol. A job applicant refusing to sign a requested consent form will not be considered for employment.
 3. Test results shall be sent to the City Manager/Human Resources designee in a confidential manner from the Medical Review Officer.
 4. An applicant shall not be placed on city payroll or be allowed to begin work until negative test results have been received by the City.
 5. If test results are positive, the hiring supervisor shall be contacted by Human Resources and told nothing more than the applicant did not successfully pass the test. If negative results are returned, and the applicant otherwise passes the test, Human Resources shall notify the hiring supervisor and authorize the start date for the applicant.
 6. In the case of positive test results, disclosure of the results shall be made to the applicant by Human Resources. The applicant shall be told by Human Resources of their disqualification from employment with the city for one year, and to be reconsidered, must successfully pass and show completion of a substance abuse rehabilitation program.
 7. Exceptions to Pre-Employment Testing:
 - a) An applicant will not be required to undergo pre-employment drug and/or alcohol test if the applicant provides the city with satisfactory evidence of drug and alcohol tests as indicated below:
 - (1) Drug Tests: The has passed a drug test within six (6) months from the date of the application with the city and has no records showing any violations of drug misuse during this same six (6) month period. However, such testing must meet the current federal criteria.
 - (2) Alcohol Tests: The employee has passed an alcohol test with a result of below 0.02% within six (6) months from the date of application with the city and has no records showing any violations of alcohol misuse during this same six (6) month period. However, such testing must meet the4 current federal criteria.
 - b) If the applicant wants an exception to the pre-employment drug or alcohol test requirement, he or she must sign a specific, written authorization for the release of information which will allow the city to obtain the following information from each previous employer within the six (6) months preceding the date of the application with the city:
 - (1) Names and addresses of the employer.
 - (2) Verification that the applicant participated in drug and alcohol testing program.

- (3) Verification that the program conformed to federal drug and alcohol testing regulations.
 - (4) Verification that the employee has not refused to be tested for alcohol or drugs.
 - (5) The date the applicant was last tested for alcohol and/or drugs.
 - (6) The results of any alcohol or drug tests taken within the previous six months and any other violations regarding the misuse of alcohol and drugs. If a drug or alcohol test is positive, information must also be provided regarding the applicant's previous evaluation by a substance abuse professional and compliance with a recommended treatment.
- c) If a previous employer or employers will not release the above information after a reasonable attempt has been made, the applicant will have to be tested.

H. Reasonable Suspicion

1. Employees may be required to submit to reasonable suspicion testing for drugs and/or alcohol if the appearance, behavior, speech, body odors, erratic behavior, smell or other symptoms of the employee lead a supervisor to believe he/she may be under the influence of a drug or alcohol.

I. Post-Accident

1. Drug/Alcohol testing may be required of employees following motor vehicle or motorized equipment accidents in any of the following circumstances:
 - a) When a fatality or bodily injury occurs (any person involved);
 - b) When a city vehicle or motorized equipment or other city property is involved;
 - c) When a third party (non-employee) is involved;
 - d) When any damage to city vehicle or motorized equipment occurs;
 - e) When a city driver while operating a city vehicle or motorized equipment receives a citation under state or local law for a moving traffic violation arising from an accident.
2. Employees who drive city vehicles or equipment on or off duty will be subjected to testing for motor vehicle accidents as described above.
3. Procedures for "Post Accident" or Motorized Equipment Accident Testing:
 - a) The employee(s) involved in the accident and the employee(s) from the department, whose employee and vehicle are involved in the accident, first arriving at the accident site are required to inform their direct supervisor, and the department head of the accident immediately, but not longer than two (2) hours following the accident.
 - b) If the department head is not available in that period of time, the employee shall notify the Human Resources designee of the accident.
 - c) The employee(s) involved in the accident shall be prohibited from working or continuing to work until reporting to the testing facility designated by the City.
 - d) Alcohol testing may be administered within two (2) hours of the accident and in no event more than eight (8) hours after the accident. Drug tests must be administered within eight (8) hours after the accident and in no event more than thirty-two (32) hours after the accident. If this deadline for alcohol or drug tests cannot be administered, such tests shall not then be conducted.

- e) The supervisor or a designated person not involved in the accident shall take the employee off the worksite and drive him/her to the Medical Review Officer's office or approved testing facility.
- f) Under no circumstances will the employee be allowed to drive themselves to the testing location.
- g) If the employee is seriously injured or unconscious, first seek medical treatment for the employee at the nearest hospital. The first consideration is for the health and well-being of the employee. Blood or urine specimen may be taken at the hospital following treatment and once the employee is deemed stabilized.
- h) After a finding of reasonable suspicion, the supervisor or a designated person shall stay with the employee being tested and will drive him/her home or make arrangements to have the employee transported if the employee is released by the Medical Review Officer or other treating physician.
- i) If the employee, in the judgment of the Medical Review Officer, exhibits physical and/or emotional impairments such that the employee's safety or the safety of others could be in jeopardy if the employee returned to work, or if a supervisor who has received a drug awareness training, the department head and/or City Manager/Human Resources has confirmed there is a reasonable suspicion that the employee may have been under the influence of a controlled substance or alcohol at the time of the accident, the employee shall not be allowed to return to work. In that situation, after being tested, the employee will be driven home by the supervisor or other designated person. The employee shall not be allowed to drive home.
- j) An employee tested for controlled substances or alcohol following a post-accident testing provision may be placed on leave with pay until the results of the test are received.
- k) An investigation surrounding the circumstances of the accident leading to a drug or alcohol test should be conducted by the department head and/or their designee.

J. Reasonable Suspicion

1. All employees suspected of controlled substance or alcohol use will be required to submit to an appropriate drug and/or alcohol test at the city's designated testing facility.
2. A written record of specific, observable facts creating such reasonable suspicion will be required before such drug and/or alcohol test is ordered.
 - a) Such written record should include the exact reasons why suspicion exists, including actions, odor, observations by another employee that were reported, or other such evidence which establishes reasonable suspicion.
 - b) The written record shall be forwarded to Human Resources for inclusion in the employee's confidential file.
3. Only department heads, supervisors, the City Manager and/or the Human Resources designee who have received the required supervisory drug and alcohol awareness training may refer an employee for reasonable suspicion testing based on observed and documented behavior and conduct of the employee under suspicion.

4. The City Manager must approve any reasonable suspicion test and that reasonable suspicion exists based on the written facts and observed behaviors. In the absence of the City Manager, the Human Resources designee or acting City Manager at the time may approve such test.
 5. The employee referred for testing must sign a form consenting to such testing and be driven to the test site immediately by a supervisor or designee. Under no circumstance may the employee drive themselves to the test site, nor may they be allowed to delay such testing. Should they refuse to test, that is considered a positive test and will result in disciplinary action up to and including termination of employment.
 6. The supervisor or designee shall stay with the employee being tested and shall drive the employee back to work following completion of testing. If the Medical Review Officer or testing facility, after observation and examination of the employee, determines the department head's suspicion is founded, the department head or designee shall arrange for the employee to be driven home.
 7. The employee will be placed on leave with pay until such time the results of the test are received.
- K. Return to Duty
1. The city will ensure that before an employee returns to duty after engaging in prohibited conduct concerning alcohol the employee must take another alcohol test with a result indicating an alcohol concentration of less than 0.02%.
 2. The city will ensure that before an employee returns to duty after engaging in prohibited conduct concerning drugs, the employee must take another drug test with a result indicating a verified negative result for controlled substances or drugs.
 3. A consent form shall be signed by the employee for any test performed. Refusal to test is grounds for disciplinary action as stated herein.
- L. Follow-Up Testing
1. Following a determination that an employee is in need of assistance in resolving problems associated with alcohol, drug or controlled substance use/misuse, the employee is subject to unannounced follow-up/random alcohol and/or drug testing at a frequency and duration of time as directed or recommended by a substance abuse professional. Such testing includes return-to-duty and drug or alcohol test as determined necessary for that particular employee.
- M. City Approved Testing Facility
1. The City will select and designate a laboratory certified by the United States Department of Health and Human Services which follows chain of custody procedures in conducting and preserving the tests required under this policy.
 2. The laboratory will report each test result to the medical Review Officer who will notify the City Manager/designee of the results.
 3. An employee who does not pass the drug or alcohol test may request that the original urine/blood sample be analyzed again. Such retest may, but is not required to, be performed at another certified, qualified laboratory.
 - a) Such request must be made via written request within two days of the employee's notification of the test result.
 - b) The employee shall pay for the retest and all other associated costs that may be required to complete the retest.

- c) If the employee subsequently passes the retested specimen, the city shall reimburse such costs of the retest.
- N. Breath Alcohol Technician Requirements
 1. Any individual qualified as a breath alcohol technician may be used to conduct alcohol tests.
 2. Law enforcement officers certified by state or local governments to conduct breath alcohol testing are deemed qualified as a breath alcohol technician.
 3. For a test conducted by a law enforcement officer to be accepted under Department of Transportation (DOT) regulations, the officer must have been certified by a state or local government to operate an evidential breath testing device or non-evidential alcohol screening device that is used for the DOT-mandated testing.
- O. Drug/Alcohol Related Arrest
 1. Employees who have been arrested and/or convicted of DWI/DUI, Public Intoxication, possession, distribution or other such drug/alcohol related charge shall notify their supervisor within 24 hours after the arrest. Failure to do so may result in disciplinary action up to and including termination.
 2. It is up to the City Manager and City Attorney as to whether the employee may be retained or not, depending on the employee's position, driving privileges, and duties which may result in unsafe liability for the citizens, employee and crew/team members or perception of such.
- P. Employee Responsibilities
 1. Employees shall immediately and confidentially notify their supervisor if they believe that another employee may be under the influence or possession of drugs, alcohol or inhalants.
 2. Employees are required to cooperate with all phases of the drug and alcohol testing process.
 3. Employees subject to emergency call back are required to declare to their supervisors the use of alcohol or controlled substances including prescribed medication that might affect their ability to perform under the emergency. The supervisor shall determine if the employee is fit to work and in what capacity.
 4. Employees attending training and conferences may participate in social functions associated with the conference. This may include the responsible consumption of alcohol, so long as the employee's conduct does not reflect adversely upon the City. Employees who consume alcohol at these functions shall follow the law and shall not operate City owned vehicles, and are discouraged from driving personal vehicles after the consumption of any level of alcohol. The moderate use of alcoholic beverages may be authorized by the City Manager or designee at city sponsored gatherings, which may occur within the workplace after normal working hours.
 5. Persons authorized by the city manager to have access to drug and/or alcohol test results will maintain confidentiality of such results.
- Q. Confidentiality of Information
 1. The following procedures will be used to assure that records pertaining to the drug and alcohol testing process are kept confidential.
 - a) Test results and other written materials concerning a particular drug test will not be kept in the employee's official personnel file or the individual's departmental file.

- b) Results of tests should only be released to the City Manager/designee, Human Resources, and the applicable chain of command. Additional parties may be provided results as required by an appeal or disciplinary process (for those involved), and any state, federal and law enforcement agencies as necessary or required. Openly sharing an employee's test results for those without a need to know is strictly prohibited.
 - c) Personnel who are authorized to have access to drug test results will maintain complete confidentiality. Breach of confidentiality relating to drug test results or other portions of this policy may result in disciplinary action, up to and including termination.
- R. Rehabilitation and Employee Assistance
- 1. Employees who test positive for controlled substances, drugs, or alcohol may be permitted an opportunity to enter a rehabilitation program as a condition of continued employment at the sole discretion of the city.
 - 2. Treatment for chemical dependency, both in-patient and out-patient, may or may not be covered under the city's medical plan. Employees may contact Human Resources about substance abuse treatment and the city's benefits related to such.
 - 3. Any employee who has completed a rehabilitation program must remain alcohol and drug free. Any relapse by an employee may result in immediate termination.
 - 4. An employee's decision to seek assistance by entering a rehabilitation program before work performance or behavior difficulties occur will be kept confidential.
 - a) Once work performance or behavior difficulties affecting the job occurs resultant from substance use/abuse however, the subsequent voluntary entrance into a rehabilitation program will not necessarily prevent disciplinary action, up to and including termination.
 - b) Any employee who tests positive and then refuses to enter a rehabilitation program, who fails to complete the rehabilitation program, or who refuses to cease using or abusing controlled substances, drugs or alcohol will be immediately terminated.
 - 5. Employees who seek controlled substance, drug or alcohol abuse assistance and rehabilitation and cannot report for work while undergoing such rehabilitation may use sick leave, then vacation, then no-pay for the duration of the absence. If the employee is eligible under FMLA due to the absence, it shall be properly designated in accordance with that policy.
 - 6. Employees who are involved in rehabilitation and are able to report for work may do so under the following conditions:
 - a) An employee may resume regular duties only after the employee tests negative for a drug or alcohol test and can provide a release to return to work from an appropriate substance abuse treatment facility or confirmation of continued and on-going participation in a recognized substance abuse assistance program.
 - b) Prior to being allowed to return to work, the employee shall be required to meet with the City Manager (or designee), the department head of the employee and Human Resources to receive an explanation of the terms of continued employment.
 - c) An employee may, at the city's request, be required to at any time to submit to interviews and physical examinations by the Medical Review Officer

and/or evaluations by the qualified personnel at the chemical dependency treatment facility.

- d) An employee will be required to submit to unannounced drug and alcohol testing up to sixty (60) months after resuming duties.

S. Special Exemptions

1. Any police officer who is required to be in possession of alcohol, controlled substances or drugs in the course and scope of their employment will be exempt from the provisions of this policy pertaining to possession only. The Police Department may establish protocols regulating procedures regarding this.

T. Employee Search Policy

1. The city reserves the right to search for illegal drugs and alcohol on any employee, city vehicles and equipment, the employee's personal effects, on city property, and the employee's other property located on city premises or worksites, including but not limited to, private vehicles, city or personal lockers, desks, file cabinets, lunch boxes, backpack, purses, or other containers brought on to city premises/worksites.

U. Forms and Record Keeping

1. All forms and retention requirements for records as promulgated by the Federal Highway Administration and the Department of Transportation pursuant to the Omnibus Transportation Testing Act of 1991, 49 CFR Part 382, and 49 CFR Part 40 are hereby adopted and made a part hereof as if they had been fully set out at length herein.