

Sec. 46-29. Drug free testing policy.

- A. **Statement of purpose.** It is the policy of the City that the abuse of alcohol and drugs by public employees is detrimental to the health, safety and welfare of the public. The purpose of this section is to establish reasonable standards and procedures for drug and alcohol testing of city employees and applicants for employment for certain public health, safety and security positions within the City. The City also recognizes that individuals employed as municipal employees have certain rights to privacy. However, under applicable state and federal laws, the City's interest in protecting the health and safety of the public outweigh the individual employee's legitimate expectations of privacy. Accordingly, certain procedural safeguards, limitations, and due process guarantees are set forth in connection with the testing required by this section.
- B. **Scope of policy.** Drug and alcohol abuse by City employees is prohibited. This shall include the illegal manufacture, distribution, possession or use of a controlled substance, the abuse of prescription medications, and the use of alcohol during or immediately preceding work hours or on City premises. This prohibition also includes the unauthorized use of prescription drugs or the abuse of prescribed drugs. **The use or possession of prescription drugs while on work premises, or while working, which could affect or impair the ability to function in one's job shall be prohibited, unless the prescribing physician has been notified of the duties involved with the employee's position and has approved, in writing, the use of the drug while that employee is performing those duties. Use of "over the counter medication" which has a narcotic labeled as "can cause drowsiness," shall not be used by employees prior to operating a City vehicle or heavy equipment or performing other safety sensitive functions.** If an employee is directly observed using alcohol, or a controlled or illegal substance while on duty, the City expressly reserves the right to immediately terminate the employee without testing as provided in this policy. The employee may appeal such actions as per section 46-35.
- C. **Testing for certain drugs.** When drug and/or alcohol testing is required under the provisions of this section, a urinalysis test, or other appropriate test, will be given to detect the presence of the following drugs:
1. Alcohol (ethyl);
 2. Amphetamines (e.g., speed);
 3. Barbiturates (e.g., Amobarbital, Butobarbital, Phenobarbital, Secobarbital);
 4. Cocaine;
 5. Methaqualene (e.g., Quaalude);
 6. Opiates (e.g., Codeine, Heroin, Morphine, Hydromorphone and Hydrocodone);
 7. Phencyclidine (PCP);
 8. THC (marijuana);
 9. A metabolite of any such substances;
 10. All drugs specified by the state as controlled substances;
 11. All drugs required to be tested under applicable federal laws.
- D. **Reasons for Testing.**
1. Pre-employment. As a condition of employment so as to guard against hiring people with current drug use problems.
 2. Testing of current employees.
 - (a) Reasonable Suspicion. The City may require a current employee to undergo drug and/or alcohol testing if there is reasonable suspicion to believe that the employee is under the influence of drugs and/or alcohol during working hours. The term "reasonable suspicion" means a belief that can be articulated based upon specific facts and reasonable inferences drawn from those facts.

Circumstances, which constitute a basis for determining reasonable suspicion, include, but are not limited to:

- (i) A pattern of abnormal or erratic behavior;
- (ii) Observed use, possession or sale of illegal or prescription drugs or alcohol, or a report of same from a reliable source;
- (iii) Employee involvement in or contribution to a work-related accident;
- (iv) Presence of physical symptoms of drug or alcohol abuse (i.e., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or motor reflexes);
- (b) On-the-job accident. When any employee has an accident in a City vehicle for which they are cited or listed on the police report as being "at fault" or when any employee has an accident or injury on the job that results in the employee seeking medical help under Workers' Compensation.
- (c) Violations of criminal drug law statutes involving the use of illegal drugs, alcohol, or prescription drugs and/or violations of other drug/alcohol statutes.
- (d) Follow-up program for treatment of drug or alcohol abuse.
- (e) Fitness for duty medical examination. When a substance abuse test is conducted as part of a regularly scheduled employee fitness for duty medical examination that is scheduled routinely for members of an employment classification or group.
- (f) Random screening. Employees may be randomly tested without reasonable suspicion when they are in a position involving public health, safety or security. Federal law under the department of transportation and the state department of transportation regulations require random and post-accident testing of all employees who possess a commercial driver's license which they utilize in the course of their job-related duties. The City Manager will determine and provide a list of those employees who are subject to random drug/alcohol testing.

E. Pre-employment Drug Testing

1. All applicants for employment who have been tentatively selected for a position must submit to a urine drug test before final selection.
2. A positive drug screen invalidates the offer made by the City to the individual seeking the position. Applicants will be notified in writing if they are rejected on the basis of a confirmed positive result. The individual will not be able to re-apply for employment with the City for one year.
3. Refusal by an applicant to be tested will result in the job offer being rescinded.

F. Employee Drug Testing. As described above, there are several types of situations that call for testing of employees or prospective employees, including pre-employment, reasonable suspicion testing, random testing with employees in safety sensitive positions, and follow-up under discipline or employee assistance protocols.

The City Manager, or his/her designee, shall identify all positions considered safety sensitive. Positions so designated shall be positions that, if an employee in such position were in any manner impaired by controlled substances, the employee's ability to safely and/or substantially perform the duties of the position could be compromised with potential great risk of harm to the employee, other employees, or the general public.

Any employee who refuses to consent to drug and/or alcohol testing when reasonable suspicion has been identified, or any employee in a safety sensitive position who refuses such testing upon request, will be subject to immediate discipline up to and including termination.

1. Reasonable Suspicion Drug Testing

- a. A supervisor is required to detail, in writing, on the designated personnel form, the specific facts, symptoms, or observations, which formed the basis for their determination that reasonable suspicion existed to warrant the testing of an employee. This documentation shall be forwarded to the appropriate department head or designee as the City Manager finds appropriate. These forms shall be considered confidential.

2. On-the-Job Accident Drug Testing

- a. Any traffic accident involving a City driver in a City vehicle where the driver is "at fault" in the accident, will be required to be tested for alcohol and drugs. The determination of "at fault" should be made by the police. If an accident involves an injury or another vehicle, a police report must be obtained. Supervisors may decide to get a police report on any accident when there is a question of "at fault" status.
- b. If the employee tests positive on his/her screen, he/she will be terminated from employment and not offered a "second chance" for treatment under EAP.

3. Random Drug Testing

- a. Employees in positions defined by the City Manager to be safety sensitive.
- b. Employees with Commercial Drivers Licenses under DOT regulations.
- c. Employees referred to EAP for positive drug test or job related problems.

G. **Employee arrest/conviction notification.** If an employee is arrested or convicted (including pleas of nolo contendere) of violating any criminal drug statute of any jurisdiction, regardless if the alleged violation occurred at the workplace or elsewhere, the employee must notify the City Manager, in writing, within five calendar days of each arrest or conviction.

H. **Prior notice of testing policy.** The City shall provide written notice of its drug-free testing policy to all employees. This shall be accomplished by providing each existing employee with a copy of the drug-free testing policy and obtaining each employee's signature attesting that they have received a copy of the drug-free testing policy. Job applicants may be informed verbally or in writing of the existence of the City's drug-free testing policy. Furthermore, any job posting which requires a drug/alcohol screening shall state such in the job posting.

I. **Procedures to be Followed for Reasonable Suspicion Testing.**

If, in the opinion of the department head or his/her designee, a reasonable suspicion (a reasonable suspicion must be based on objective indications of alcohol and/or controlled substance abuse; more obvious indications of alcohol and/or controlled substance abuse include repeated unauthorized absences, repeated illnesses, bloodshot eyes, slurred speech, lethargic behavior, rapid weight loss, behavior inappropriate or inconsistent with the workplace, or odor of alcohol arises, the following procedures shall be followed:

1. The supervisor shall determine if there is a reasonable suspicion an employee may be under the influence of alcohol or drugs, including controlled substances and prescriptions, or both.
2. When possible, a supervisor should have a second supervisor or member of the management team verify suspicion through observance of the employee's behavior in the workplace. This second verification is required for CDL drivers.
3. The employee shall be escorted by the supervisor to this/her office or to an area where confidentiality can be maintained. The other "observing" supervisor or management team member, if any, who can maintain confidentiality, should be witness to the conversation.

4. The supervisor must be clear with the employee about the viewed behavior. The employee should be questioned as to whether he/she may be ill or taking medications. The supervisor should advise the employee of any odor of alcohol. The supervisor should use caution in questioning the employee about alcohol or drug use. The supervisor must keep statements and questions geared to job performance and/or work-related behavior. The **Reasonable Suspicion Observation form** for supervisors included in this policy must be used when testing an employee "for cause." This form must be signed by the two supervisors, if two participated, and the supervisor if only one, and returned to the City's HR Administrator or designee within 24 hours of the drug test.
5. The department head should be contacted of the decision to test the employee. The HR Administrator or designee should also be notified so the lab can be informed of the employee to be tested.
6. The supervisor should escort the employee to the City's designated lab. The employee will be asked to sign a consent form prior to testing.
7. After the drug test is completed, the supervisor should make the necessary arrangements to have the employee taken home. If the employee refuses assistance, or at any time during the process of this test decides to leave the worksite on their own, the police should be called to warn them of the employee's condition.
8. The employee shall be placed on leave with pay until results from the drug/alcohol test are verified. If the test is negative, the employee is to immediately return to work. If positive, the employee is referred to the HR Administrator or designee to be evaluated. The employee is immediately suspended without pay for 5 working days and will not be allowed to return to work until he/she has a negative drug/alcohol screen.
9. Every effort will be made to uphold the principle of allowing the employee to get treatment for an alcohol or drug problem. If the employee has had previous treatment, has extensive problems related to job performance, or shows a lack of interest or motivation in getting help for his/her problem, a decision may be made by his/her department head for termination. After testing positive, an employee must have a negative screen to return to work after the 5 day suspension. If the recommendation is to retain the employee, they will be required to follow through with a program of treatment, and a Continuing Care Contract. Once the employee returns to work, he/she is subject to immediate termination not only for further substance abuse, but also for failure to follow through with the terms of his/her contract.
10. Employees who are required to drive as a part of their work may be subject to suspension or loss of driving privilege as a result of a drug test or incident. This disqualification from driving may result in demotion to a non-driving position or termination from employment.

J. Random Testing for Employees in Positions Defined by the City Manager to be "Safety Sensitive."

The City Manager, or his/her designee, shall identify all positions considered safety sensitive. Positions so designated shall be positions that, if an employee in such position were in any manner impaired by controlled substances, the employee's ability to safely and/or substantially perform the duties of the position could be compromised with potential great risk of harm to the employee, other employee, or the general public.

1. Each year the City Manager or his/her designee will designate a percentage of "safety sensitive" employees to be randomly tested. This percentage may be as low as 10% or as high as 50%.

K. Confirmation of test results.

1. An employee or applicant whose test yields a positive result shall be given a second confirming test using a gas chromatography/mass spectrometry (G.C./M.S.) tests. The second test will be performed on the same sample as the first test; the employee/applicant will not be permitted to submit a second sample.
2. If the second test confirms the positive test result, the employee or applicant shall be notified of the results, in writing, by the appropriate department head or designee. The letter of notification shall identify the particular substance found and its concentration level. A copy of the test results shall be included with the notification letter.
3. An employee or applicant whose second test confirms the original positive test result may, at the employee's or applicant's own expense, have a third test conducted on the same sample at a laboratory selected by the City. The employee/applicant must respond to the notifying department head or designee, in writing, within five calendar days from receipt of notification of a positive test result, explaining and/or contesting the result, and/or requesting a third test conducted on the original sample.

L. Consequences of a confirmed positive result for applicants and employees.

1. Job applicants will be denied employment with the City if their initial positive results have been confirmed. Applicants will be notified in writing if they are rejected on the basis of a confirmed positive result.
2. If an employee's positive test result has been confirmed, the employee is subject to disciplinary action up to and including termination in accordance with section 46-33.

M. Mandatory termination. Termination will be mandatory in the following cases:

1. Selling drugs on or off the job;
2. A positive drug or alcohol test while either on probation or while participating in a drug or alcohol treatment program;
3. A nolo plea, guilty plea or conviction of a second DUI offense;
4. A DUI offense (nolo plea, guilty plea or conviction) while operating a City vehicle;
5. A felony violation (nolo plea, guilty plea or conviction) of any controlled substance law.

N. Right to a hearing. If an employee is tested, and the employee's positive test result has been confirmed, the employee is entitled to an informal disciplinary hearing as per section 46-33(c), before any disciplinary action may be taken by the City. Should any of the listed disciplinary actions be taken, the employee may appeal such actions as per section 46-35.

O. Confidentiality of test results. All information from an employee's or applicant's drug and/or alcohol test is confidential under all applicable state and federal laws, and only those with a need to know are informed of the test results. Disclosures of test results to any person, agency, or organization, unless otherwise required by law, are prohibited unless written authorization is obtained from the employee or applicant. The records of the results of a positive drug test shall not be released until the results are confirmed. The records of a confirmed positive test result and the testing laboratory shall unless otherwise required by applicable law, destroy negative test results.

P. ***Employee assistance program.***

1. The City offers an employee assistance program (EAP) benefit for employees and their dependents who have personal problems. These may include, but are not limited to, alcoholism and drug abuse. Voluntary participation prior to an employee being requested to submit to a test is strongly encouraged. In these situations, no disciplinary action shall be implemented because an employee volunteers to participate in such a program. Confidentiality is assured. No information regarding the nature of the problem will be made available without the participant's written permission, nor will it be included in the employee's personnel file.
2. However, participation in the EAP program will not protect an employee from disciplinary action or even termination after he has been requested or required to submit to a drug/alcohol test. In these cases, the EAP process may be used in conjunction with discipline, but not as a substitute for discipline. All employees who are referred to the EAP as a mandatory participant and who refuse to cooperate in counseling and rehabilitation for drug or alcohol use, or who are found to have used drugs or alcohol during the course of their treatment and rehabilitation, shall be subject to immediate termination. All participants in the EAP drug or alcohol programs are subject to random testing during the course of their treatment and rehabilitation.

Q. ***Convicted employees' participation in rehabilitation.*** The City will notify any granting agency as defined in the Drug Free Workplace Act, within ten days after receiving notice of a conviction from an employee or otherwise receiving actual notice of such conviction and will impose a sanction on or require the satisfactory participation in a drug abuse assistance rehabilitation program by any such convicted employee as required by 41 USC 703 within 30 days of notice of such conviction.

R. ***Maintaining a drug free workplace.*** The City will make good faith efforts to maintain a drug free workplace through implementation of the provisions hereof and the Drug Free Workplace Act, 41 USC 701 et seq. (Code 1983, §§ 2-4-6.1, 2-4-10.1)

Approved by Mayor and Council 10.28.2010