

# **City of Rocky River, Ohio Alcohol and Drug Testing Policy**

**Human Resources Department  
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# **CITY OF ROCKY RIVER DRUG AND ALCOHOL FREE WORKPLACE POLICY**

## **I. PURPOSE**

While misuse of alcohol and drugs among employees is the exception rather than the rule, the City is concerned over the growing issue of substance abuse in society and acknowledges the devastating impact of such abuse on the safety, health and efficiency of its workforce and those it serves. Alcohol and drug use can impair thinking and reasoning and may lead to behaviors that bring the user into severe conflict with their work environment. While the City has no intention of unreasonably intruding into the off-duty lives of its employees, it is necessary to establish policies and procedures for dealing with use and/or misuse of alcohol and/or drugs/controlled substances that may affect the workplace, thereby preventing potentially serious consequences to the public and employees.

## **II. POLICY STATEMENT**

The City of Rocky River is committed to preserving a safe work environment for all employees of the City by maintaining a workplace free from the presence or influence of drugs and alcohol. It is recognized that drugs and alcohol impair an employee's ability to perform work in a safe and productive manner.

This policy applies to full-time and part-time employees, elected officials, management, contractors, subcontractors, and volunteers. This policy will provide one rehabilitative effort for each employee during their career with the City of Rocky River, Ohio. If a second positive test occurs within in this time frame, employment will be terminated. The intent of this policy is rehabilitative and to deter any subsequent usage that would violate this Policy and result in termination of employment.

## **III. WHO IS COVERED BY THIS POLICY**

All City of Rocky River employees are covered by this policy and are referred to as "covered employees". Those employees who operate city vehicles, any electrical/gas powered equipment, and in safety sensitive positions are included as well. However, not all requirements of this policy apply to all covered employees. Employees who are required to maintain a CDL for the performance of their job duties have stricter requirements than most other covered employees. Therefore, not all provisions of this policy apply equally to all covered employees. CDL holders are always considered covered employees under this policy, but where their terms differ from other covered employees, they will be referred to as CDL holders.

All employees will be provided a copy of this policy at orientation and this policy will be available on the City's website.

## **IV. PROTECTION FOR ALL COVERED EMPLOYEES**

- Employee records, for example, results and referrals for help, will be kept confidential and on a need-to-know basis.
- The City strongly encourages employees to seek treatment for substance use. Employees who come forward voluntarily to identify that they have a substance problem will receive support and assistance through the City's Employee Assistance Program.
- Supervisors will be trained to recognize substance problems that may

violate this Policy, and how to make referrals for help.

- Collection of urine specimens and breath testing will be done securely on site or at a local clinic, and urine drug test specimens will be analyzed by a laboratory certified by the Federal government. The City will also utilize the services of a Medical Review Officer, a physician trained to determine whether there is a valid reason for the presence of the substance in the employee's system.
- Testing will consist of an initial screening test, and if the test is positive, a confirmatory test evaluated against cut-off levels established by federal guidelines.
- This policy will provide one rehabilitative effort for each employee during his/her career with The City of Rocky River, Ohio. If a second positive test occurs within this time frame, employment will be terminated.
- Any testing shall be conducted solely for administrative purposes and the results obtained shall not be used in criminal proceedings. Under no circumstances may the results of drug screening or testing be released to a third party for the use in a criminal prosecution against the affected employee.

## **V. PROHIBITIONS**

The City prohibits behaviors on the part of covered employees that relate to substance use, such as:

- Use of illegal drugs
- Misuse of alcohol
- Sale, purchase, transfer, trafficking, use or possession of any illegal drugs or drug paraphernalia
- Behavior at work which creates a reasonable suspicion of alcohol or illegal substance abuse.
- Illegal or misuse use of prescription or over-the-counter drugs

### **A. Alcohol- All Covered Employees**

- Covered employees are prohibited from reporting for duty or remaining on duty when their ability to perform assigned functions is adversely affected by alcohol or when their blood alcohol concentration is 0.04 or greater.<sup>1</sup>
- Covered employees are prohibited from possessing or using alcohol while on duty.
- Covered employees are prohibited from using alcohol during the hours that they are receiving stand-by pay.
- Covered employees are prohibited from operating a City vehicle while the employee possesses alcohol. Covered employees are prohibited from returning to duty until they have successfully passed a return to duty test.

### **B. Alcohol – CDL Holders**

In addition to the above:

- CDL holders are prohibited from having used alcohol within four (4) hours of reporting for duty. Employees are cautioned that refraining from alcohol for four (4) hours before reporting for duty may not result in a negative test.

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<sup>1</sup> Note: Alcohol levels are affected by the amount of alcohol consumed, physical characteristics of the employee, and the employee's rate of metabolizing alcohol which has been consumed.

- CDL holders are prohibited from performing safety-sensitive functions for 24 hours following an alcohol test result indicating an alcohol concentration of greater than 0.001 but less than 0.04.
- CDL holders are prohibited from possessing or using medication containing alcohol while on duty. CDL holders that test positive for alcohol will be removed from their position, and be subject to provisions of this Policy, even if the reason for the positive alcohol test is the fact that the employee's prescription medication contains alcohol.

**C. Drugs/Controlled Substances – All Covered Employees**

- Covered employees are prohibited from reporting for duty or remaining on duty when the covered employee uses or is under the influence of any drugs/controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely perform his/her duties.
- Covered employees are prohibited from reporting for duty or remaining on duty if the covered employee tests positive for drugs/controlled substances.
- Covered employees are prohibited from returning to duty until they have successfully passed a return to duty test.

**D. Drugs/Controlled Substances – CDL Holders**

In addition to the above:

- CDL holders are prohibited from reporting for duty, remaining on duty, and/or performing safety-sensitive functions following a positive test for drugs/ controlled substances.
- CDL holders are prohibited from refusing to submit to a pre-employment, post-accident, random, reasonable suspicion, return-to-duty, or follow-up tests.

**VI. OTHER PROHIBITIONS AND REQUIREMENTS**

**A. All Covered Employees**

- Covered employees are required, if reasonable suspicion exists, to provide access to City owned vehicles, tool boxes, lockers, desks, and/or other City equipment.
- Covered employees are prohibited from obstructing or interfering with the administration of any alcohol or drug/controlled substances test.
- Covered employees are prohibited from engaging in the unlawful manufacture, sale or attempted sale, distribution, dispensing, possession or use of alcohol, drugs/controlled substance, and/or drug paraphernalia in the workplace.
- Finally, covered employees are required to notify their supervisor if they are taking any legally prescribed or non-prescription drugs/controlled substances that may adversely impact their ability to perform their job duties in a safe and efficient manner.

**B. CDL Holders**

In addition to the above:

- CDL holders must immediately report to their Department Head or the H.R. Director any arrest and/or conviction for operating a vehicle under the influence of alcohol, drugs/controlled substances, or any combination thereof.

- CDL holders must immediately report to their Department Head or the H.R. Director any conviction for a violation of a criminal drug statute.
- CDL holders must immediately report to their Department Head or the H.R. Director if they are taking any legally prescribed or non-prescription drug/controlled substance which contains any amount of alcohol or which carries a warning label that indicates the employee's mental functioning, motor skills, or judgment may be adversely affected by the use of this medication.

Prescription and over-the-counter drugs do not violate this policy when taken in standard dosage and/or according to a physician's prescription. Any covered employee taking prescribed or over-the-counter medications will be responsible for consulting the prescribing physician and/or pharmacist to ascertain whether the medication may interfere with safe performance of his/her job. If the use of a medication could compromise the safety of the employee, fellow employees, or the public, it is the employee's responsibility to use appropriate personnel procedures (e.g., call in sick, request change of duty, notify supervisor) to avoid unsafe workplace practices.

The Director of Public Safety/Service and the Director of Human Resources are the Designated Employer Representatives of this policy and are to give employees a confidential contact to answer questions and to provide explanations about the policy.

## **VII. SUBSTANCES TO BE TESTED**

- Alcohol
- Amphetamines, methamphetamines, methylenedioxymethamphetamine (MDMA)
- Cocaine metabolites (including crack cocaine)
- Marijuana metabolites
- Opioids (codeine, heroin, morphine, oxycodone, oxymorphone, hydrocodone, hydromorphone)
- Phencyclidine (PCP, "angel dust")

The following are the limits of each drug tested by the medical facility:

- |                        |            |
|------------------------|------------|
| ➤ Amphetamines         | 250 NG/ML  |
| ➤ Cocaine              | 150 NG/ML  |
| ➤ Marijuana Metabolite | 50 NG/ML   |
| ➤ Opioids/Opiates      | 2000 NG/ML |
| ➤ Phencyclidine        | 25 NG/ML   |

Please note masking agents, pH Levels, Creatinine, and Nitrates are testing in the drug sample to see if the drug screen has been diluted in any way by the employee being tested.

The City of Rocky River, Ohio reserves right to add or delete substances to be tested only if mandated by Federal or State regulations. All other changes must be negotiated in good faith. Moreover, when the city has determined the need for a new drug testing agency, the safety divisions will be presented with biographies of the companies. Their input will be considered in the final selection of the new testing agency.

## **VIII. TYPES OF TESTING**

Employees will be tested for the presence of drugs in the urine and/or alcohol on the breath under any and/or all of the conditions outlined below. Moreover, all union employees shall be entitled to the presence of a union representative before testing is administered.

### **A. Pre-Employment and Post-Offer Testing – All Covered Employees<sup>2</sup>**

Any candidate or employee may be subject to testing prior to appointment into any City position.

The City of Rocky River shall notify an applicant/covered employee of the results of a pre-employment drugs/controlled substances test conducted under this part, if the applicant/covered employee requests such results within 60 calendar days of being notified of the disposition of the employment application.

### **B. Pre-Employment and Post-Offer Testing—CDL Holders**

Prior to appointment to a CDL holder position, any candidate selected for a position that requires a CDL shall undergo testing for drugs/controlled substances, as outlined in this policy. No alcohol testing is done for pre-employment tests. The results of test shall be negative (meaning a verified negative result for drugs/controlled substances). If the test does not meet this standard, the candidate shall be disqualified from further consideration for the position(s). In addition, if the result was positive, the candidate will not be considered for any CDL holder position for a period of 12 months from the date of the positive test. If a confirmed result is not possible due to a diluted sample, the candidate will not be considered for the immediate position but may apply for future CDL holder positions without restriction.

Candidates for a position requiring possession of a CDL shall, at the request of the City, provide written authorization for previous employers to release to the City any and all test results three years prior to employment and have been administered in accordance with the FHWA's (Federal Highway Administration) Rules and Regulations concerning alcohol and/or drugs/controlled substances, including records of the individual's refusal to test.

The Human Resources Director, or designee, shall verify the information, obtain proof that the candidate has completed a rehabilitation program and the return-to-duty test requirements, and shall furnish the information to the manager or supervisor involved. No manager or supervisor shall allow a CDL holder to drive if s/he knows the individual has tested positive and has not been recertified and tested negative in return-to-duty testing.

### **C. Random Testing – All Covered Employees**

Employees will report to a designated site for the random drug test. The city's designated collection facility will utilize objective computer software that ensures a truly random selection process in which all employees in the testing pool have an equal statistical likelihood of being selected for testing. At any given draw, all employees are again included in the pool with an

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<sup>2</sup> POST-OFFER, PRE-EMPLOYMENT MEDICAL EXAMINATION AND DRUG TESTING are conducted on **all** candidates for full-time positions in the Fire and Police Divisions

equal chance of selection, regardless of any previous selection. The city reserves the right to randomly test employees not to exceed 50% of the employee count in a particular department per calendar year.

Names will be chosen by the medical provider. The Human Resource Director will be notified the day before the test date and will notify the department director 15 minutes prior to the test to provide the chosen names. The total number of employees per department per random test are as follows:

- Service and Wastewater – Up to three (3) names will be chosen with up to three (3) backup names
- Fire – Up to two (2) names will be chosen with up to two (2) backup names

An employee who is not available (i.e. vacation, absent, etc.) shall be tested on the next work day. He/She shall be sent to the nearest testing facility on company time accompanied by a supervisor. The Service, Fire and Wastewater Departments will be randomly tested in house. Finally, if the those employees of the fire department (who were picked for random drug testing, including the back-up names, that particular drug testing day) are on a call, the random test will be cancelled and the employer will ask for a new test date with new names before the end of the month.

A refusal to submit to a random test or conduct which does not lead to a collection as soon as possible shall subject the employee to disqualification and discipline up to and including termination of employment.

#### **D. Random Testing – CDL Holders only**

In accordance with Drug Free Workplace Act of 1988 and the Transportation Employee Testing Act of 1991, the City conducts regular random testing of all CDL holders. The City will randomly test no less than 10% of the average number of occupied City CDL positions for alcohol each year. The City will randomly test no less than 50% of the average number of occupied City CDL positions for drugs/controlled substances each year. This rate may be adjusted in order to maintain the minimum annual percentage determined by the Federal Highway Administration Administrator. These percentages for testing will be reviewed annually and adjusted as per the direction of the Federal Department of Transportation and the Federal Motor Carrier Safety Administration (FMCSA).

Random alcohol and drugs/controlled substances tests shall be unannounced and shall be spread reasonably throughout the year. The selection of CDL holders for random testing, the timing and frequency of random tests, and the number of CDL holders to be tested on any given day shall be determined by the City. The selection of CDL holders for random testing shall be made by a scientifically valid method. Each CDL holder shall have an equal chance of being selected for testing each time selections are made. When randomly selected, a CDL holder may be required to submit to either an alcohol or drugs/controlled substance test, or both. A CDL holder will only be required to undergo alcohol testing just prior to, during, or just after the performance of safety sensitive functions.



A refusal to submit to a random test or conduct which does not lead to a collection as soon as possible shall subject the employee to disqualification and discipline up to and including termination of employment.

An employee who is not available (i.e. vacation, absent, etc.) shall be tested on the next work day. He/She shall be sent to the nearest testing facility on company time accompanied by a supervisor.

#### **E. Reasonable Suspicion – All Covered Employees**

Testing may be for drugs or alcohol or both, based upon the following -

- 1) Observed behavior
- 2) Pattern of abnormal conduct or erratic behavior
- 3) Arrest or conviction for a drug or alcohol-related offense, or identification of an employee as the focus of a drug-related investigation. The employee is responsible for notification of the City, within five working days, of any drug-related convictions.
- 4) Information provided either by reliable and credible sources or independently corroborated regarding an employee's substance use;
- 5) Newly discovered evidence that the employee has tampered with a previous drug or alcohol test.

The City has the right to order any employee to undergo an alcohol and/or a drug/controlled substances test whenever there is reasonable suspicion that the employee may be under the influence of alcohol or drugs/controlled substances while at work. Reasonable suspicion testing does not require certainty, but mere "hunches" are not sufficient to justify testing. Therefore, Department Heads will be trained by the city's employee assistance programmers to recognize drug and alcohol-related signs and symptoms. This will occur on an annual basis.

A covered employee shall promptly submit to an alcohol and/or drugs/controlled substances test when a trained supervisor/City official has a reasonable suspicion that the covered employee is in violation of or has violated the drug, alcohol or controlled substances prohibitions of this policy. This means that the trained supervisor/City official has observed behaviors at the workplace consistent with alcohol and/or drugs/controlled substances use. These observations must be made just preceding and/or during the work day that the covered employee is required to be in compliance with this policy. A trained city official from the police department will be called to conduct reasonable suspicion tests on site in a private setting.

Refusal to submit to a reasonable suspicion alcohol or drugs/controlled substance test shall be considered a positive test and deemed just cause for discipline up to and including discharge.

*Alcohol*—After reasonable suspicion is established, the alcohol test should be administered within two hours, but may be conducted up to 8 hours after the reasonable suspicion determination is made. An onsite sobriety test may be conducted by trained police personnel as deemed necessary for the safety of the employee and other employees in the work environment.

If the test is not administered within 2 hours, the supervisor/City official must prepare and maintain on file a statement outlining why the test was not administered within that time. If the test is not administered within eight hours, the test may not be conducted and the supervisor/City official shall record and maintain on file the reasons why the test was not conducted. A written record shall be made of the observations leading to an alcohol reasonable suspicion test and shall be signed by the trained supervisor/City official who made the observations within 24 hours of the observed behavior or before the results of the alcohol test are released, whichever is earlier.

*Drugs*— After reasonable suspicion is established, the drugs/controlled substances test should be administered within 24 hours after the reasonable suspicion determination is made.

If the test is not administered within 24 hours, the test may not be conducted and the supervisor/City official shall record and maintain on file the reasons why the test was not conducted. A written record shall be made of the observations leading to a drugs/controlled substances reasonable suspicion test and shall be signed by the trained supervisor/City official who made the observations within 32 hours of the observed behavior or before the results of the drugs/controlled substances test are released, whichever is earlier.

Nothing herein shall prohibit a supervisor or a City official from determining that a covered employee is unfit for duty. Nothing in this paragraph shall be used to circumvent the requirements stated in this section.

#### **F. Reasonable Suspicion – CDL Holders Only**

Please refer to the “Reasonable Suspicion – Covered Employee” section for your policy.

#### **G. Post-Accident Testing – All Covered Employees**

As a result of a violation of safety rules or carelessness, post-accident testing will be conducted whenever an accident occurs which meets the definition of an accident resulting in the conditions listed below.

An accident is an unplanned, unexpected, unintended event that occurs:

- On City property, or
- During the conduct of City business, or
- During working hours, or
- Involving a City vehicle, or
- Within the scope of employment

And:

Testing will be conducted for accidents which result in any of the following:

- A fatality of anyone involved in the accident
- Bodily injury to the employee and/or another person that requires off-site medical attention away from the City’s place of employment
- Damage to vehicles, property or equipment
- CDL HOLDERS ONLY – Vehicle is towed from the scene of the accident

For covered employees please refer to the “Post-Accident Testing – CDL Holders Only” section for the reporting and testing criteria.

#### **H. Post-Accident Testing – CDL Holders Only**

Including the criteria above for covered employees, Federal law requires that following an accident, as defined in the glossary under Post Accident Test, a CDL holder must undergo an alcohol and drug/controlled substance test. A surviving CDL holder shall be subject to post-accident testing as soon as practicable following the accident. However, nothing herein shall be construed to require the delay of necessary medical attention or to prohibit the CDL holder from leaving the scene of the accident for the period of time necessary to obtain assistance in responding to the accident, obtain necessary medical treatment for injured people, or to obtain materials necessary to secure the accident site.

A CDL holder subject to post-accident testing shall be subject to a breath alcohol test no later than 8 hours following the accident and to a drugs/controlled substances test no later than 32 hours following the accident. A CDL holder subject to post-accident testing shall remain available for such testing. Failure to be available for testing shall be considered a positive test and deemed just cause for discipline up to and including termination.

If the alcohol test is not administered within 2 hours, the supervisor/City official must prepare and maintain on file a statement outlining why the test was not administered within that time. If the test is not administered within 8 hours, the test may not be conducted and the supervisor/City official shall record and maintain on file the reasons why the test was not conducted. If the drug/controlled substances test is not administered within 32 hours following the accident, the test may not be conducted and the supervisor/City official shall record and maintain on file the reasons why the test was not conducted.

The employee responsible for the accident must grant the City the right to request that attending medical personnel obtain appropriate specimens for the purpose of alcohol and/or drug testing. Further, all employees grant the City access to any and all other medical information that may be relevant in conducting a complete and thorough investigation of the work-related accident including a full medical report from the examining physician(s) or other health care providers. Management reserves the right to determine who may have caused or contributed to a work-related accident and may choose not to test after minor accidents if there is no violation of a safety or work rule, minor damage and/or injuries and no reasonable suspicion.

#### **I. Return-To-Duty and Follow-Up Testing – All Covered Employees**

Following a positive test for alcohol or drugs/controlled substances, as defined in the testing procedures section, a covered employee shall be evaluated by a Substance Abuse Professional (SAP) who shall determine what assistance, if any, the covered employee needs in resolving problems associated with alcohol misuse and drugs/controlled substances use.

Prior to returning to work, the employee shall be subject to return to duty testing. The covered employee shall also comply with all requirements prescribed by the SAP and shall remain in compliance with any and all prescribed and recommended rehabilitation and/or treatment

programs. The covered employee may also be subject to follow-up testing as determined by the SAP. An employee who tests positive, and is assessed and treated for drug/alcohol use, is required to submit a negative return-to-duty test before being allowed to return to work. If the employee fails the test, employment will be terminated. All costs associated with this process will be paid for by the employee.

### ***Return-to-Duty Testing – All Covered Employees***

If a covered employee has violated the alcohol prohibitions of this policy, s/he shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of 0.00 before returning to duty. If the covered employee has violated the drugs/controlled substances prohibitions s/he shall undergo a return-to-duty drugs/controlled substances test with a result indicating a verified negative result for drugs/controlled substances use before returning to duty. The cost of this test will be paid for by the employee.

The covered employee shall be subject to return-to-duty testing for both alcohol misuse and use of drugs/controlled substances if the SAP recommends testing for both alcohol and drugs/controlled substances.

### ***Follow-up Testing: - All Covered Employees***

Upon returning to work, a covered employee shall be subject to unannounced follow-up testing as recommended by the SAP based on their assessment and recommendations of the SAP. The covered employee shall be subject to such follow-up testing for both alcohol misuse and use of drugs/controlled substances if the SAP recommends testing for both alcohol and drugs/controlled substances.

- **CDL HOLDERS** – Follow up testing will be for two (2) years from the date of incident with the first year at the discretion of the SAP, and a minimum of six (6) tests in that year.
- **COVERED EMPLOYEE** - Follow up testing will be for two (2) years from the date of incident with the first year at the discretion of the SAP, and a minimum of four (4) tests in that year.

If a second positive test occurs within in this time frame, employment will be terminated. The intent of this policy is rehabilitative and to deter any subsequent usage that would violate this Policy and result in termination of employment. All costs associated with follow-up testing, treatment plans, assessments and other unknown costs associated with a positive drug/alcohol test will be paid for by the covered employee.

Any employee in the above mentioned rehabilitation or detoxification programs will not lose any seniority or benefits should it be necessary that he/she be required to take a medical leave of absence without pay for a period not to exceed ninety (90) days.

Follow-up testing is in addition to any random, reasonable suspicion, or post-accident testing.

### ***Return from Extended Leave Testing—CDL Holders***

Any CDL holder on a leave of absence exceeding six (6) months shall undergo a controlled substance test prior to returning to work.

The City will pay for any pre-employment, post-accident and/or random tests; the employee will pay for any return-to-duty and follow-up testing in addition to any additional treatment recommended by the Employee Assessment Program (EAP).

### **IX. DRUGS/CONTROLLED SUBSTANCES – ALL EMPLOYEES**

Drugs/controlled substances testing shall be conducted by a certified laboratory in accordance with the following procedures:

#### **A. Initial Testing**

- Covered employees directed to undergo drugs/controlled substances testing shall proceed to the designated test site as instructed, and shall be accompanied by a supervisor and/or union representative if desired.
- Upon entering the test site, covered employees shall be required to provide the collection technician with positive identification. Positive identification may take the form of a photo ID card or identification by a supervisor or City official. On request of the covered employee, the collection technician shall provide positive identification to the covered employee.
- Covered employees shall follow all procedures and instructions given by the collection technician including completing, signing, initialing, and/or dating any required forms.
- If a covered employee fails to follow all procedures and instructions given by the collection technician, it shall be considered a refusal to test.
- The collection technician shall collect a urine sample from the covered employee in accordance with Federal Highway Administration procedures.
- The sample(s) shall be shipped to the testing laboratory in a single shipping container, together with supporting documents and the split specimen copy of the chain of custody form.
- The laboratory shall log in the split specimen with the split specimen seal remaining intact.
- The laboratory shall store the split specimen securely in accordance with approved procedures.
- The primary specimen shall undergo a screening test for the presence of drugs/controlled substances per established cutoff levels. A Medical Review Officer (MRO) shall review all primary specimen results.
- If the initial test result is negative, the laboratory may discard the split specimen and no additional action will be taken by the MRO unless the MRO has reason to believe the primary specimen has been adulterated. All negative tests results will be forwarded to the City's DER.
- If the MRO has reason to believe the primary specimen has been adulterated the MRO shall have the authority to order an employee to undergo a retest for the presence of

drugs/controlled substances. If the MRO orders a retest, the specimen collected for the retest shall be considered the primary specimen.

- If the initial screening test or retest detects the presence of drugs/controlled substances, the primary specimen shall undergo a confirmation test.
- Confidentiality is required from our collection sites and labs. Insofar as possible, employees will be afforded individual privacy.

### **B. Reporting of Results**

The testing laboratory will send a detailed report to the Medical Review Officer (MRO), listing each substance tested and the result of the testing. The MRO will review the test results, and provide a summary report to the City, indicating that the employee passed or failed the test.

### **C. Review of Test Results**

To ensure that every employee tested is treated fairly, the MRO will review any positive test results and all DOT test results for verification. The MRO is a doctor with specialized knowledge of substance abuse disorders and will be able to determine whether there are any valid reasons for the presence of the controlled substance in the employee's system.

### **D. Storage of Test Results**

All records of drug/alcohol testing will be stored separately from the employee's general employment documents, and maintained under lock and key at all times. Access is limited to designated City officials charged with the responsibility of maintaining the confidentiality of these records. Any breach of confidentiality with regard to these records may result in termination of employment.

The information contained in these files shall be utilized only to properly administer this Policy and to provide to certifying agencies for review as required by law.

Any employees tested under this Policy have the right to review and/or receive a copy of their own test results. Requests must be made in writing to the Director of Human Resources. The City will promptly comply with this request and will issue a copy of the test results to the employee personally.

## **X. FAILURE TO COMPLETE THE TESTING**

- If the covered employee is unable to provide the required drug sample, the covered employee shall be instructed to drink not more than 24 ounces of fluids and, after a period of up to two hours, again attempt to provide a complete sample using a fresh collection container. The original insufficient specimen shall be discarded.
- If the covered employee is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued, and the laboratory shall notify the DER of the covered employee's inability to provide an adequate sample.
- The MRO will refer the covered employee for a medical evaluation to develop pertinent information concerning whether the covered employee's inability to provide an adequate specimen is genuine or constitutes a refusal to test. (In pre-employment testing situations, the City will determine whether or not to hire the employee, and the MRO is not required

to make such a referral). Upon completion of the examination, the MRO shall report his or her conclusions to the DER in writing.

- If the MRO determines that the covered employee's inability to provide an adequate sample is not genuine, the covered employee shall be deemed to have refused to test.
- An employee who adulterates, attempts to adulterate or substitutes a specimen or otherwise manipulates the testing process will be terminated.
- A refusal to test shall be deemed a positive test.

## **XI. EMPLOYEE RIGHTS WHEN A TEST IS POSITIVE**

An employee who tests positive under this Policy will be given an opportunity to explain the findings to the MRO before any results are issued to the City. The MRO will contact the employee, inform the employee of the positive finding, and give the employee an opportunity to explain or rebut the findings. The MRO can request recent (within 30 days) medical history and medication information on the employee. The employee may be asked to provide documentation supporting the use of the controlled substance. Inability to provide the appropriate documentation will be considered a positive test. If the employee fails to contact the MRO as instructed, a positive test will also be reported.

The MRO will also offer the employee who tests positive the opportunity to have the secondary sample – the Split – tested at another laboratory. The request for testing of a second specimen must be made within 72 hours of being notified by the MRO of a positive result. If the split test results come back positive, it will be paid for by the employee. However, if the split test comes back negative, the city will incur the cost of the split test.

### **A. All Covered Employees**

Employees who are found to have a confirmed positive drug test or breath concentration for alcohol of greater than .04, will: (1) be removed from any job duties and placed on administrative leave without compensation, (2) be referred to the City's contractual Employee Assistance Professional (EAP) for review, and (3) be directed by the EAP to a Substance Abuse Professional (SAP) for evaluation, and (4) be required to complete a program of treatment if recommended by the SAP. The Director of Human Resources will coordinate these arrangements.

Just cause for discipline up to and including discharge shall be established when a covered employee engages in any conduct in violation of the provisions of this policy or when a covered employee uses drug/controlled substance or abuse of alcohol in violation of the FHWA rules and regulations or in violation of this policy. Failure to comply with any required evaluation by a substance abuse professional or failure to comply and remain in compliance with any and all prescribed or recommended rehabilitation and/or treatment programs shall establish just cause for discipline up to and including discharge. Moreover, an incident will remain in the employee's drug testing file and the discipline write-up will remain in the employee's personnel file permanently. If he/she fails another drug/alcohol test during their continued employment with the City, after rehabilitation and compliance of the prior incident has been met, the employer reserves the right to issue immediate termination.

## **B. CDL Holders**

In addition to the above,

- The DOT cut-off level is a breath concentration of .02 or greater
- If the breath concentration of alcohol is .02 or greater, but less than .04, the employee will not be permitted to perform any safety sensitive functions for 24 hours, and will then follow the covered employees procedure for drug violation as stated above.

Return-to-duty and follow-up testing will be conducted as described above. An employee who participates in a rehabilitation program shall be allowed to use paid leave (accrued sick, vacation, or compensatory time) for the period of rehabilitation. If no such leave is available, the employee may be placed on an unpaid leave of absence. However, if the employee fails to respond to treatment and job performance continues to be affected, disciplinary action will be implemented up to and including termination of employment. It is the policy of the city to provide one rehabilitative effort and as a result, an employee who tests positive the second time while employed with the city reserves the right to issue immediate termination without any referral for rehabilitation.

## **C. Termination Notices**

If substance testing results in the termination of employment, all termination notices will list “misconduct” as the reason. Termination will be deemed “for cause.” Terminated employees will receive a listing of SAP’s in the area and are encouraged to seek treatment.

This policy was put into effect January 2020 and was last updated in February 2020 and will be updated from time to time as necessary by the Human Resources Director or their designee.



2/20/2020