

## **Chapter 12 SUBSTANCE ABUSE AND DRUG FREE WORKPLACE**

### **12-1 Policy Statement**

The City believes that a healthy and productive work force, safe working conditions free from the effects of drugs and alcohol, and maintenance of the quality of services rendered by the City are important. The abuse of drugs and alcohol creates a variety of workplace problems, including increased injuries on the job, increased absenteeism, increased financial burden on health and benefit programs, increased workplace theft, decreased employee morale, decreased productivity, and a decline in the quality of services.

Therefore, the City hereby adopts this Policy for testing employees and prospective employees as related to drugs and alcohol in the workplace.

- A. In order to achieve a drug-free workplace, employees in, and applicants for, safety sensitive positions shall be required to participate in alcohol and drug testing:
  - 1. When an applicant has been extended a conditional offer of employment but before beginning work;
  - 2. When there is a reasonable suspicion to believe that the employee is in an impaired state;
  - 3. When the employee has been involved in an “on duty accident” or unsafe work practice and based on the facts and circumstances of each case, there is an objectively reasonable basis for conducting such test;
  - 4. On a random basis;
  - 5. As a condition for return to duty after testing positive for controlled substances or alcohol; and,
  - 6. As part of follow-up procedures to employment related drug or alcohol violations.
  
- B. Applicants for all other positions shall, as a condition of employment, be required to participate in alcohol and drug testing after the applicant has been extended a conditional offer of employment but before beginning work.

### **12-2 Drug & Alcohol Testing Policy Definitions**

For the purposes of this policy:

- \* "Alcohol" Alcohol is defined as the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols in methyl and isopropyl alcohol no matter how packaged or in what form the alcohol is stored, utilized or found.
  
- \* "Drugs" used in this policy refer to and include all drugs, paraphernalia, controlled substances, or mood or mind altering inhalants, any of which were not prescribed by a licensed physician/dentist in the United States for the person taking or in possession of the drug or substance, or which have not been used as prescribed or directed.

- \* "Drug Paraphernalia" means objects used to manufacture, compound, covert, produce, process, prepare, test, analyze, pack, store, contain, conceal, and/or to inject, ingest, inhale, or otherwise introduce a drug into the human body.
- \* "Employee" means any person in the service of the City whether for compensation or as a volunteer.
- \* "Prospective employee" means any person who has made application for employment with the City and to whom the City has offered employment, conditioned upon the results of a drug and alcohol test.
- \* "Conviction" means a finding of guilt (including a plea of no contest) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal statutes.
- \* "Criminal Drug Statute" means a Federal or State criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance. Except as provided in Title 26, Chapter 61a, Utah Medical Cannabis Act.
- \* "MRO" means Medical Review Officer, charged with reviewing and interpreting test results and determining any alternate medical explanations.
- \* "Drug Policy Coordinator" is the City employee specifically designated to administer the Drug and Alcohol Testing Policy and through whom any procedures, or disciplinary or rehabilitative action regarding this policy, must be reviewed and approved. The Drug Policy Coordinator is the City Administrator or other person designated by the City Administrator.
- \* "CDL-Commercial Driver's License" is the license required to operate a commercial vehicle.
- \* "Positive Test" any test result showing a blood alcohol content of 0.04 or greater or the presence of any controlled substance in the test subject. Except as provided in Title 26, Chapter 61a, Utah Medical Cannabis Act.
- \* "Refusal to Submit to Testing" failure to provide a testing sample without a valid and verified medical explanation, after the employee has received notice that he/she is being tested and a sample is required, or engages in conduct that clearly obstructs the testing process.
- \* "Reasonable Suspicion" knowledge sufficient to induce an ordinarily prudent and cautious person under the circumstances to believe that a prohibited activity is occurring.
- \* "Safety Sensitive Duties" any duties requiring a Commercial Drivers License, or-which directly affects the safety of employees, the general public, or positions where there is

access to controlled substances, as defined in Utah Code Title 58, Chapter 37, Utah Controlled Substances Act, during the course of performing job duties.

\* “Sample” means urine, blood, breath, saliva or hair.

### 12-3 Testing Policy

It is the policy of the City to test employees and prospective employees for the presence of drugs or alcohol, according to the provisions set forth below, as a condition of hire or continued employment. Any employee or prospective employee failing (except as provided in Title 26, Chapter 61a, Utah Medical Cannabis Act) or refusing to take the test will not be eligible for employment, or if employed, may be subject to termination, If an employee’s breath alcohol concentration is .004 or more, a second breath specimen shall be tested approximately 10 minutes later. The results of the second test shall be determinative, however the employee may ask for a blood test after the second positive breath specimen. The City shall consider as negative all confirmed positive drug and alcohol test results with a medically sufficient explanation.

\*Safety sensitive positions include any duties requiring a Commercial Drivers License, or the duties performed directly affects the safety of employees, the general public, or positions where there is access to controlled substances, as defined in Utah Code Title 58, Chapter 37, Utah Controlled Substances Act, during the course of performing job duties.

- A. The City shall require the testing of employees and prospective employees, including management, on a periodic basis, under the following circumstances and purposes:
  - 1. **Pre-Employment Testing.** All prospective employees shall be tested for drug and alcohol usage prior to being placed for employment. All job applicants shall be informed of the policy at the pre-employment interviews. A copy of this policy shall be available for review by all job applicants. All prospective employees shall be required, prior to being hired by the City, to sign the acknowledgment form, agreeing to abide by the terms of this policy. The City will exclude from employment any job applicant or prospective employee who refuses to abide by the terms of this policy. Any prospective employee whose pre-employment drug and alcohol test results in a confirmed positive and who does not have a medically sufficient explanation (as determined in the sole, but reasonable, discretion of the MRO), may reapply for employment with the City after six months from the date of such test. If the City hires a prospective employee, he or she must have first successfully passed the above-referenced pre-employment drug and alcohol test, and thereafter he or she will be subject to all the procedures and requirements for drug and alcohol testing as set forth in this policy.

In addition, any employee who has taken an extended leave of absence of six months or longer must be retested under this section before returning to work.

**2. Reasonable Suspicion (For Cause) Testing.**

A. When a designated supervisor makes a determination that there is a reasonable suspicion to believe that an employee performing or assigned to safety sensitive positions is using, is under the influence of, or is in possession of alcohol or controlled substances, the employee shall be subject to drug/alcohol testing.

1. The Supervisor making the determination that reasonable suspicion exists shall submit written documentation setting forth the specific, contemporaneous articulable observations concerning the appearance, behavior, speech or body odors of the employee which resulted in the reasonable suspicion determination. Reasonable suspicion of use of a controlled substance may also be based on observation of indications of the chronic and withdrawal effects of controlled substances.
  - a. The required observations underlying reasonable suspicion testing must be made by a supervisor or city official who has received at least two (2) hours of training on the physical, behavioral, speech and performance indicators of alcohol and drug use.
  - b. Observations underlying the reasonable suspicion testing must be documented in writing and signed by the supervisor or city official within twenty four (24) hours or before the results of the test are announced, whichever is later.

2. Reasonable suspicion testing may not be conducted by the same supervisor who makes the reasonable suspicion determination.

B. Special requirements associated with reasonable suspicion alcohol testing.

1. Alcohol testing is authorized only if the observations set forth above are made during, just preceding or just after the performance of safety sensitive functions.
2. If an alcohol test is not administered within two (2) hours following the identification of reasonable suspicion, the supervisor prepare and maintain documentation stating why the test was not administered within two (2) hours.
3. If an alcohol test is not administered within eight (8) hours following the identification of reasonable suspicion, the supervisor shall cease attempts to administer an alcohol test and shall prepare and maintain documentation stating why the test was not administered within eight (8) hours.

- C. Special requirements associated with reasonable suspicion drug testing.
    - 1. If a drug test is not administered within thirty two (32) hours following the identification of reasonable suspicion, the supervisor shall cease attempts to administer a drug test, and shall prepare and maintain documentation stating why the test was not administered within thirty two (32) hours.
  - D. Upon required testing due to reasonable suspicion, the employee tested shall not engage in the operation of any City equipment or engage in any employment related duties, which his/her supervisor deems dangerous to himself/herself or others until the results of the tests are received and the employee is released back to work by the Drug Policy Coordinator.
3. **Return to Duty Testing.** If the City returns to duty an employee who is assigned to a safety sensitive position after he or she has voluntarily sought rehabilitation for drug or alcohol abuse and has successfully completed rehabilitation, such employee shall be entered into a program of unannounced drug and alcohol testing for a predetermined period of time at the sole discretion of the City.
4. **Post-Accident Testing.** The City may require employees in safety sensitive positions\* to submit to a post-accident drug test if, based on the facts and circumstances of each case, there is an objectively reasonable basis for conducting such a test.

If a DOT recordable accident occurs – the driver must be drug tested within 32 hours and alcohol tested within 2 hours. An accident is considered to be a DOT recordable accident if the vehicle being driven has a gross vehicle weight rating of more than 10,000 pounds or a gross combination weight rating over 10,000 pounds used on public highways; or any motor vehicle designed to transport more than eight people, including the driver; or any vehicle displaying a Hazardous Materials placard (regardless of weight). A vehicle discovered to be transporting Hazardous Materials without a required placard should also be included; and any of the following conditions exist:

- 1. Fatality, or bodily injury requiring medical treatment away from the scene.
  - 2. One or more vehicles is towed from the scene of the accident.
5. **Random Testing.** Employees assigned to, or performing, safety sensitive duties are subject to random drug/alcohol tests.
- A. Random tests shall be:
    - 1. unannounced; and
    - 2. reasonably spread throughout the year.
  - B. Each employee within a testing pool must have an equal chance of being tested each time a random test is conducted.

- B. Employee's required to hold a Commercial Driver's License (CDL) and drive commercial vehicles as a condition of employment may be tested as required by federal and/or state law.
- C. Any drug or alcohol testing shall occur during or immediately after the regular work period of current employees, and shall be deemed work time for purposes of compensation and benefits for current employees.
- D. Individuals will be tested on City premises or sent to an outside clinic or testing facility licensed to perform such tests. If an employee is sent to an outside clinic for a "Reasonable Suspicion" test, the employee must be driven to the facility by the supervisor or his/her designee. The employee must then be put on administrative leave until the results of the test are available. The supervisor must make arrangements or help the employee make arrangements to get home without driving him/herself.
- E. The City shall pay all costs of testing and transportation associated with a test required by the City.
- F. All sample collection and testing shall be performed under the following conditions:
  - 1. The collection of samples shall be performed under reasonable and sanitary conditions.
  - 2. Samples shall be collected and tested with due regard to the privacy of the individual being tested, and in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples.
  - 3. The collection of samples shall be documented, and the documentation procedures shall include labeling of samples, to reasonably preclude the probability of erroneous identification of test results. An opportunity shall be provided for the employee or prospective employee to provide notification of any information that he or she considers to be relevant to the test, including identification of currently or recently used prescriptions or non-prescription drugs, or other relevant medical information.
  - 4. Sample collection, storage, and transportation to the place of testing shall be performed in a manner that reasonably precludes the probability of sample misidentification, contamination or adulteration.
  - 5. Sample testing shall conform to scientifically accepted analytical methods and procedures.
  - 6. Testing shall include verification or confirmation of any positive initial screening test by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable method.

- G. In the case of urine testing, an employee or prospective employee will submit a split urine sample. A split urine sample shall consist of at least 45 ml of urine. The urine shall be divided into two specimen bottles, with at least 30 ml of urine in one bottle and at least 15 ml of urine in the other. If the test results of the 30 ml urine sample indicate the presence of drugs, the donor of the test shall have 72 hours from the time he is so notified to request, at his option that the 15 ml urine sample be tested for the indicated drugs, the expense of which shall be divided equally between the donor and the City. The test results of both samples may be considered at any subsequent disciplinary hearing.
- H. Drug and alcohol testing will be conducted in compliance with federal, state and local laws, including but not limited to Utah Code Ann. s 34-41-101 *et seq.*

#### **12-4 City Action**

Upon receipt of a verified or confirmed positive drug or alcohol test result, which indicates a violation of this policy (and in the case of urine testing after providing the employee or prospective employee notice of the result of the initial test and the option to have the 15ml urine sample tested), or upon the refusal of any employee or prospective employee to provide a sample, the City may use that test result except as provided in Title 26, Chapter 61a, Utah Cannabis Act, or refusal as the basis for disciplinary or rehabilitative actions, which may include, but not be limited to, the following:

- A. Termination of employment.
- B. Refusal to hire a prospective employee.
- C. Any other disciplinary measures in conformance with the City's practices, policies, or procedures.

#### **12-5 Confidentiality**

The information received from the drug testing results shall be the property of the City. Test results information may be released to the person who has been tested upon written request.

#### **12-6 Work Place Rules**

Employees who possess, dispense, manufacture, or distribute alcohol, drugs or drug paraphernalia on City premises, or on City time may be subject to disciplinary action, including termination.

Employees taking legally prescribed or over the counter medications that have the potential to negatively impact the employee's ability to perform his/her job functions in a safe and effective manner must report such use to their supervisor and may be required to present medical documentation describing the effects such medication may have on the employee's ability to perform his/her tasks. The City may take such action as it deems appropriate, including but not

limited to temporarily transferring the employee to a different position, permitting the employee to take leave or other steps, depending on the circumstances.

Medical cannabis is considered the equivalent of the authorized use of any other medication used at the discretion of a physician; and does not constitute the use of an illicit substance or otherwise disqualify an individual from needed medical care.

As provided in Title 26, Chapter 61a, Section 111, Utah Cannabis Act, partially referenced below:

**26-61a-111. Nondiscrimination for medical care or government employment -- Notice to prospective and current public employees -- No effect on private employers.**

- (1) For purposes of medical care, including an organ or tissue transplant, a patient's use, in accordance with this chapter, of cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form:
  - (a) is considered the equivalent of the authorized use of any other medication used at the discretion of a physician; and
  - (b) does not constitute the use of an illicit substance or otherwise disqualify an individual from needed medical care.
- (2) (a) Notwithstanding any other provision of law and except as provided in Subsection [\(2\)\(b\)](#), the state or any political subdivision shall treat:
  - (i) an employee's use of medical cannabis in accordance with this chapter or Section [58-37-3.7](#) in the same way the state or political subdivision treats employee use of any prescribed controlled substance; and
  - (ii) an employee's status as a medical cannabis cardholder or an employee's medical cannabis recommendation from a qualified medical provider or limited provider in the same way the state or political subdivision treats an employee's prescriptions for any prescribed controlled substance.
- (b) A state or political subdivision employee who has a valid medical cannabis card is not subject to retaliatory action, as that term is defined in Section [67-19a-101](#), for failing a drug test due to marijuana or tetrahydrocannabinol without evidence that the employee was impaired or otherwise adversely affected in the employee's job performance due to the use of medical cannabis.
- (c) Subsections [\(2\)\(a\)](#) and [\(b\)](#) do not apply:
  - (i) where the application of Subsection [\(2\)\(a\)](#) or [\(b\)](#) would jeopardize federal funding, a federal security clearance, or any other federal background determination required for the employee's position;
  - (ii) if the employee's position is dependent on a license or peace officer certification that is subject to federal regulations, including 18 U.S.C. Sec. 922(g)(3); or
  - (iii) if an employee described in Subsections [34A-2-102\(1\)\(h\)\(ii\)](#) through [\(vi\)](#) uses medical cannabis during the 12 hours immediately preceding the employee's shift or during the employee's shift.

Any employee convicted of violating a criminal drug statute must notify the City Administrator within five (5) days of conviction. The City may take appropriate disciplinary or rehabilitative actions as a consequence.

No employee may use or be under the influence of drugs or alcohol on the City's premises, in the City's vehicles, or any time the employee is representing the City on City business, except in cases involving a current, prescription prescribed in the United States, or over-the-counter drug, taken as prescribed or directed.

#### **12-7 Miscellaneous**

A copy of the City's Drug and Alcohol Testing Policy shall be distributed to and posted for all employees, and all employees shall be required to acknowledge receiving, reading, and acknowledging the policy. Copies shall be made available to prospective employees.

This policy applies to management as well as other employees.

Employees wishing assistance with overcoming drug or alcohol abuse may contact their supervisor or the Drug Policy Coordinator for information about counseling and rehabilitation programs.

#### **12-8 Acknowledgment of Policy**

The City shall require each employee to read this policy and sign a form, acknowledging that they have received and read a copy of this policy and agree to abide by its terms as a condition of continued employment. The signed acknowledgment shall be kept in each employee's personnel file.

#### **12-9 Drug and Alcohol Policy Not a Contract**

This Drug and Alcohol Testing Policy is the unilateral action of the City and does not constitute an express or implied contract with any person affected by or subject to the policy. Neither this policy nor any action taken pursuant to this policy assures or guarantees employment or any terms of employment to any person for any period of time. The City may alter, terminate or make exceptions to this policy at any time, at the City's sole discretion. This policy does not limit or alter the City's right to terminate any employee at any time for any reason.