

CITY OF TEXAS CITY



Drug & Alcohol Abuse Policy

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CITY OF TEXAS CITY
ALCOHOL AND DRUG FREE WORKPLACE

I. POLICY STATEMENT

In order to promote an alcohol and drug free workplace, the following general policy statements are hereby adopted:

A. Employees are specifically prohibited from reporting to the workplace or in any other facility, location or transport in which the employees are required to be in order to perform their jobs under the following influences:

1. Alcohol;
2. Drugs;
3. Manufacturing, possessing, purchasing, or using illegal drugs;
4. Alcoholic beverages; and
5. Inhalants or controlled substances.

B. Employees convicted either by state or federal law of manufacturing, distributing, possession, or use of illegal drugs or controlled substances **must report** such conviction in writing to their supervisor within **three** working days of the conviction.

C. The City will conduct pre-employment, safety-sensitive, and reasonable suspicion drug and alcohol screening pursuant to departmental or City policy.

D. Employees who violate Section A or B of this policy, or who are determined to have tested positive for alcohol or an illegal or controlled substance, are subject to disciplinary action up to and including termination of employment. Provided however, this policy statement shall not be construed to apply to the actions of members of the City Police Department or Emergency Medical Technicians when such action constitutes the lawful possession or transfer of alcohol or drugs.

II. APPLICABILITY

A. This policy applies to every department, every employee, designated contract employee, and applicant for employment with the City except that sworn employees of the police and fire departments may be governed by more restrictive policies which may be required by departmental rules and regulations. Employees who must hold a Commercial Drivers License (CDL) to fulfill the essential functions of their jobs and applicants for those positions are covered by specific Department of Transportation provisions regarding drugs and alcohol.

B. **All applicants.** Upon receiving a conditional job offer, every applicant, including an applicant for a part-time or seasonal position, is tested for the presence of the drug groups set forth in this policy. Applicants are not accepted for employment until the negative test results are provided to the City.

C. **Safety-sensitive.** Employees who work in safety-sensitive positions are subject to random testing for drugs and alcohol. Additionally, before assuming a safety-sensitive position, current employees must pass a drug test as required for all applicants.

D. **Reasonable-suspicion.** Every employee is subject to testing if there is reasonable suspicion to believe that the employee has violated the prohibitions of this policy while in the course and scope of employment.

E. **ALL APPLICANTS AND EMPLOYEES MUST RECEIVE A COPY OF THIS POLICY AND MUST ACKNOWLEDGE IN WRITING THAT THEY HAVE RECEIVED, READ AND AGREED TO THE POLICY.**

III. **DEFINITIONS**

For the purposes of these policies the following words, terms, and phrases shall have the meanings defined below:

- A. **"Alcohol"** – The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.
- B. **"Alcohol Concentration"** - The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an EBT.
- C. **"Applicant"** - Includes both an applicant for employment and an employee desiring to transfer from a nonsafety-sensitive position to a safety-sensitive position.
- D. **"Certified Laboratory" or "Laboratory"** – Any U.S. laboratory certified by the Department of Health and Human Services under the National Laboratory Certification Program to perform DOT drug and alcohol screening.
- E. **"City premises" or "City facilities"** means all property of the City including, but not limited to, buildings and surrounding areas, City-owned or leased vehicles, and equipment wherever located. It also includes premises where the city performs contract services.
- F. **"Confirmatory test"** means a second analytical procedure to identify the presence in a urine specimen of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principal from that of the initial test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmatory test method.
- G. **"Conviction for a criminal drug statute violation"** - A finding of guilt or imposition of sentence, including deferred adjudication or probation, by any judicial body charged with the responsibility to determine violations of federal or state criminal drug statutes.
- H. **"DOT"** - The United States Department of Transportation.
- I. **"EBT"** – A device approved by the National Highway Traffic Safety Administration for the evidential testing of breath at the .02 and .04 alcohol concentrations. This testing device is selected from among those listed on the Conforming Products List of Evidential Breath

Measurement Devices published in the Federal Register from time to time by the National Highway Traffic Safety Administration.

- J. **“Employee”** means one hired for wages or salary, including but not limited to, contractor, subcontractor, agent, officer, representative of the City and/or volunteers.
- K. **“Illegal Drug”** - Any drug that cannot be obtained legally or any prescription drug that has not been legally obtained or that has been legally obtained and is not being used in accordance with the prescribed dosage. Examples of illegal drugs include, but are not limited to, cocaine, heroin, phencyclidine (PCP), inhalants, and cannabis substances such as marijuana and hashish.
- L. **“Initial lab test”** means in the context of drug detection an immunoassay screen to eliminate negative urea specimens from further consideration. In the context of alcohol detection, these terms mean an analysis of breath or saliva specimens for the purpose of eliminating negative specimens from further consideration.
- M. **“Legal Drug”** - Any prescribed drug or over-the-counter drug the individual has legally obtained and is using in accordance with the prescribed or recommended dosage.
- N. **“Medical Review Officer”** - A licensed physician retained by the City to receive laboratory results generated by this policy who is responsible for interpreting and evaluating a confirmed positive drug test result. The Medical Review Officer has no responsibility for, and is not supervised by or the supervisor of, anyone who has responsibility for the testing or quality control operations of the laboratory.
- O. **“Possession”** - To have on one's person, in one's personal effects, in one's vehicle, or under one's control.
- P. **“Preliminary test”** means in the context of drug detection an oral fluid screening test that can be performed on-site. The test may be utilized for both random and for cause testing to selectively detect elevated levels of specific drugs in human oral fluid. Employees who test positive for controlled substances in the “preliminary test” will be immediately subjected to the procedures followed for a reasonable cause drug test. It must be noted, however, that the preliminary test is not *a confirmed positive test and absent a positive result in the clinical testing provides no grounds for any belief, discipline, or stigma of improper behavior.*
- Q. **“Reasonable suspicion”** - An articulable belief, based upon specific facts or incidents and reasonable conclusions drawn from those facts or incidents. Facts or incidents which constitute reasonable suspicion may include, but are not limited to, the following:
 - (i) observation of alcohol or illegal drug use;
 - (ii) observations of alcohol, illegal drugs, or drug paraphernalia on the person, or within an area under the person's immediate control;

- (iii) a pattern of abnormal or erratic behavior, including the observation of physical symptoms of alcohol or illegal drug use; or
 - (iv) Employee involvement in a work-related accident **or** a vehicular collision while operating a vehicle as defined in this policy **and/or** where there is also reason to believe that the employee may have been at fault in causing the accident or vehicular collision (i.e., if the employee was issued a moving citation in connection with a collision).
- B. **"Safety-Sensitive Position"** - A position involving job duties which if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real or imminent threat to the personal health and safety of the employee, coworkers, or the public. Employees who operate a vehicle as part of their regularly assigned, routinely performed job duties are in safety-sensitive positions. Departments designate which of their positions are safety-sensitive and provide a list of such positions to the Director of Human Resources or her designee who maintains a master list of safety-sensitive positions subject to random testing. Employees are notified that they hold safety-sensitive positions and are subject to random drug and alcohol testing.
- C. **"Vehicle"** - Any motorized equipment, whether City owned or not, used on public or nonpublic roadways or rights-of-way in the course and scope of employment. This specifically includes, but is not limited to, tractors, lift trucks, and automobiles.

IV. PROHIBITIONS

- A. Employees are prohibited from reporting for work or remaining on duty with an alcohol concentration of .02 or higher or when using illegal drugs. Employees in safety-sensitive positions are prohibited from performing safety-sensitive functions within four hours after drinking alcoholic beverages regardless of the alcohol concentration in their breath.
- B. The use, possession, distribution, or sale of alcohol or illegal drugs by any employee during working hours, while on City property, or while operating or riding upon vehicles while in the course and scope of employment is prohibited. Employees must notify their supervisor or designated Department representative of a conviction for a criminal drug statute violation that occurred in the workplace **no later than three days** after such conviction. The supervisor or designated Department representative must then report the conviction to the Director of Human Resources.
- C. It is not a violation of this policy for any employee with a current, valid prescription for a drug to use, possess, or be under the influence of such drug in the manner and for the purposes prescribed, if such use does not affect the employee's performance or create a risk to the safety of the employee or to others. Employees are responsible for learning of the possible effects of prescription and non-prescription drugs they use while working and must notify their supervisor or designated Department representative of such use and of the possible side effects of such drugs or medications. Nothing in this policy requires an employee to reveal the name or type of medication the employee is taking or the reason for

taking it. The City may, at its discretion, require employees in safety-sensitive positions to refrain from working or performing certain duties while taking any drug or medication, or require such employees to obtain written authorization from their physician regarding their ability to perform their essential job duties safely while taking the medication.

V. CONSENT TO DRUG AND ALCOHOL SCREENING

Anyone tested pursuant to this policy must sign a consent form authorizing the drug and/or alcohol screening and permitting limited disclosure of the results. The results may be disclosed to the Director of the Office of Human Resources or to other persons she designates to receive such confidential information. The consent form contains the following information:

- (1) Acknowledgment that the applicant and/or employee has been notified of the drug and alcohol screening policy;
- (2) The consequences of a refusal to have the drug and/or alcohol screening;
- (3) The procedure for confirming a positive test result; and
- (4) The consequences of a confirmed positive test result from the drug and/or alcohol screening.

VI. TESTING PROCEDURES FOR THE DRUG SCREENING

A. Urine samples are tested at a certified laboratory to detect prohibited drug levels as set out in this policy. All drug tests are conducted at the City's expense with the exception of the split specimen tests. The laboratory conducting the test maintains written procedures in accordance with DOT requirements to ensure privacy, prevention of tampering, and chain of custody methods, including correct identification, labeling, and storage of all test samples. A copy of these procedures is available at the laboratory for each job applicant and employee upon request. The laboratory certifies that methods of analysis are state of the art, including the use of immunoassay techniques for initial test results and gas chromatography/mass spectrometry for confirmatory test results.

B. A Medical Review Officer receives, reviews, and interprets drug test results; confers directly with the applicant or employee to determine alternate medical explanations for positive test results; and notifies applicants, employees, and the appropriate Elected Official, Department Head, or designee of confirmed, positive drug test results.

C. The City may initiate a City-wide program of onsite preliminary drug screening tests. This screening test may be used only for those employees slated for a random test or properly subject to a post-accident drug test pursuant to this policy. All employees testing positive on the preliminary test will be sent through the testing procedures as described in "A" and "B" above. The preliminary test will be administered by a qualified technician who is responsible for proper implementation of the test, adhering to chain of custody, confidentiality, and records retention regulations regarding test results.

VII. TESTING PROCEDURES FOR THE ALCOHOL SCREENING

- A. Alcohol breath testing is conducted at a certified laboratory. All alcohol breath tests are conducted at City expense. A copy of these procedures is available at the laboratory for each employee upon request.
- B. An EBT is used to detect and measure the presence of alcohol. If the result of the initial screening EBT test is an alcohol-concentration of **0.02 or greater**, a confirmation EBT test is performed after the expiration of a period of not less than fifteen minutes to confirm that the test has properly measured the alcohol concentration. The confirmation test performed on an EBT meets the requirements set out in 49 C.F.R. Part 40.
- C. All alcohol tests are conducted by breath alcohol technicians trained in using EBTs and alcohol testing procedures as evidenced by successful completion of a course of instruction which, at a minimum, provides training in the principles of EBT methodology, operation, and calibration checks, the fundamentals of breath analysis for alcohol content, procedures for obtaining a breath sample, and interpreting and recording EBT results.

VIII. REASONABLE SUSPICION TESTING

- A. A drug and alcohol test must be conducted within **two hours** of any event defined in Section III. Q. (iv). If the tests are not administered within two hours, the supervisor or designated Department representative must document why the tests were not administered timely and place a copy of the explanation in the employee's separate medical file.
- B. Employees are responsible for notifying their supervisor or designated Department representative as soon as medically practical after every event defined in Section III. Q. (iv). Failure to notify the supervisor or designated Department representative may result in disciplinary action, up to and including termination.
- C. Employees are subject to testing if, while in the course and scope of employment, there is reasonable suspicion to believe that they are in violation of this policy. Supervisors who suspect that an employee is violating the policy must immediately provide the appropriate Department Head, or their designee with a written request for testing the employee. The written request must set out the specific facts, symptoms, or observations that form the basis of the determination that reasonable suspicion exists to test the employee. Upon receipt of the request, the Department Head, or their designee makes a final decision whether reasonable suspicion exists. If the test is authorized the supervisor or designated Department representative contacts the employee and schedules an immediate drug and/or alcohol test. The drug and/or alcohol test is conducted in accordance with the procedures established by this policy.

IX. RANDOM TESTING

- A. The random testing program is conducted and administered through personnel designated by the City. The Human Resources Department maintains a current list of the test group and all safety-sensitive positions subject to random testing under this policy.
- B. The testing provider randomly selects a number of employees from the test group for testing. Once the employees to be tested are selected, the Department Head or their designee immediately notifies the employees that they have been randomly selected. Testing is conducted immediately upon receipt of notice. After testing has been completed, the employees tested are returned to the selection pool so that all employees in a test group are always eligible to be chosen. An employee who is legitimately absent from work on either paid or unpaid leave when selected for testing is excused from the test.

X. COLLECTION AND ANALYSIS PROCEDURES

- A. Any collection site designated for use in the City’s drug testing program shall have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of specimens to the certified drug testing laboratory.
- B. An approved chain or custody form shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on an approved chain of custody form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.
- C. The laboratory shall test for the following major drug classes, including but not limited to:
 - Cocaine
 - Opiates
 - Marijuana
 - Methamphetamine
 - Amphetamine
 - Methadone
 - Benzodiazepines
 - Barbiturates
 - Propoxyphene
 - Oxycodone
- D. In examining specimens for the presence of the designated drug classes, the laboratory shall use cutoff levels that conform to recommendations of the testing system manufacturers and/or standards of the National Institute on Drug Abuse (NIDA). The laboratory will report drug test results to the contract vendor. The contract will refer

each positive test result to the contract vendor's Medical Review Officer (MRO) for the purpose of determining if an alternate medical reason exists for the positive finding.

XI. CONFIDENTIALITY

- A. The contract vendor will ensure that no person will obtain individual test results retained by the contract vendor and will not release individual test results without first obtaining written authorization from the tested individual. Statistical information relating to test results of City employees or job applicants may not be released without express written permission of City and the individual tested except when required by law. Nothing in this paragraph will prohibit the contract vendor from releasing individual test results and related information to the City.
- B. This section does not release an individual from the requirement to notify the City of therapeutic drug use.
- C. Information obtained by the City from the contract vendor relating to drug test results of an employee or applicant shall be deemed confidential and only those with a need to know are to be informed of the test results. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization has been obtained from the employee or applicant. All records relating to the taking of a drug test or the order to take a drug test shall be deemed confidential unless written authorization is obtained from the employee or applicant or the records become the subject of a personnel grievance proceeding or a judicial proceeding.

XII. MEDICAL REVIEW OF POSITIVE TEST RESULTS

- A. An essential part of the drug-testing program will be a medical review of positive test results. A positive test result will not automatically identify an individual/applicant as having used drugs or alcohol in violation of City policy. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of positive test results.
- B. The contract vendor shall retain a licensed physician to serve as a medical review officer (MRO) for the provision of MRO services as part of the City's drug-testing program.
- C. The MRO will have knowledge of substance abuse disorders and will evaluate and interpret each positive test result for determining the possible existence of an alternate medical explanation. In carrying out this function, the MRO may conduct a medical interview with the individual, review the individual's medical history, or review any other relevant biomedical factors. The MRO will review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication.

- D. *Before the MRO verifies a confirmed positive result for opiates, he shall determine that there is clinical evidence – in addition to the urine test – of illegal use of any opium, opiate or opium derivative (e.g., morphine/codeine). However, this requirement will not apply if the GC/MS confirmation testing for opiates confirms the presence of 6-monoacetylmorphine.*
- E. Should any question arise as to the accuracy or validity of a positive test result, the MRO will order a reanalysis of the original specimen.
- F. If the MRO determines there is a legitimate medical explanation for the positive test result, the contract vendor will report the test result to the City as negative.
- G. Prior to making a final decision to verify a positive test result, the MRO will offer the individual an opportunity to discuss the test result either telephonically or in person. Following verification of a positive test result by the MRO, the contract vendor will report the result to the City.
- H. If the individual is desirous of a second opinion, he or she may request a retest by an alternate laboratory, which alternative laboratory must be approved by the Mayor, and/or his designee, of the same specimen at the individual's expense.

XIII. EMPLOYEE TREATMENT AND REHABILITATION

A. Referral and Treatment

- 1. Employees who have demonstrated unacceptable job performance/conduct which may relate to alcohol or drug use may, in lieu of discharge, be referred to an external EAP contractor for diagnosis, counseling, or treatment. Depending on the diagnosis, an employee may be further referred by the EAP contractor or to a City-approved rehabilitation program.
- 2. Employees who have been identified through drug testing as users of drugs or alcohol may, in lieu of discharge, be provided a one-time opportunity for rehabilitation.

B. Rehabilitation

An approved rehabilitation program will be one that:

- Requires total abstinence from illegal drugs or alcohol for a period of not less than twelve (12) months;
- Includes frequent, unannounced biological testing to determine adherence to the total abstinence requirement; and
- Provides services on an outpatient basis in a manner that will allow the employee to maintain a normal work schedule.

C. Medical Insurance Benefits

An employee referred to diagnosis, counseling, treatment, or rehabilitation may utilize the City's medical insurance benefits to the extent that such benefits provide coverage for the services obtained.

XIV. STATUS OF EMPLOYEES PENDING TEST RESULTS

Upon completion of a drug and/or alcohol test based upon reasonable suspicion, an employee cannot return to work until the results of the test are given to the designated Department representative. The employee is placed on unpaid leave pending receipt of the test results unless the employee desires to take vacation leave or compensatory leave as authorized under the Personnel Regulations. Employees tested based upon reasonable suspicion must not drive any vehicle while in the course and scope of employment until the results from the drug and/or alcohol tests are received. Employees are responsible for verifying with the designated Department representative when they may return to regular working duties.

XV. CONSEQUENCES OF A POSITIVE DRUG TEST FOR APPLICANTS

- A. An applicant who refuses to take a drug test under this policy is ineligible for hire.
- B. An applicant who has a confirmed positive test result for illegal drugs is not qualified for employment. *Six months must elapse from the date of a confirmed positive test result before an applicant may reapply for employment.*

XVI. CONSEQUENCES OF A POSITIVE TEST FOR EMPLOYEES

- A. Employees who refuse to take a drug and/or alcohol test under this policy are terminated.
- B. Employees who have a confirmed positive test result for illegal drugs or a confirmed alcohol concentration of .02 or greater are subject to disciplinary action, up to and including termination.
- C. An employee who is terminated for refusing to take a drug and/or alcohol test or who is terminated for having a positive drug and/or alcohol test may be eligible for rehire provided the employee is willing to take another drug and/or alcohol test. However, six months must elapse before such individuals may reapply for employment. Any decisions to rehire will include, but will not be limited to, consideration of the former employee's past work record and current qualifications, results of the drug test at the time of application for reemployment, as well as the City's current needs and requirements.

XVII. SPLIT SPECIMEN TESTING OF URINE SPECIMENS

An individual who tests positive for illegal drugs or who provides an adulterated or substituted specimen may have an independent test performed, at his or her expense, of a portion of the specimen that yielded the positive, adulterated, or substituted result. The individual must request an independent test within 72 hours of receiving notification of a confirmed positive test result or of an adulterated or substituted specimen. The independent test must be conducted by a Certified Laboratory. Upon written authorization from the individual, a portion of the specimen is delivered by the testing Laboratory to the Laboratory selected by the individual. If this second test result is negative for illegal drugs and neither adulterated nor substituted, records of the original test are treated as records of a negative test result. An individual who is reinstated based on the results of an independent test may be reimbursed for the actual cost of the second test, but in no event will reimbursement exceed the amount the City paid for the initial test

XVIII. EMPLOYMENT STATUS

These policies shall not be construed to change or affect the “at-will” employment status of City employees, which means that the employment relationship can be ended by either the City or the employee at any time, with or without cause, and with or without notice. Further, these policies shall not be construed as granting to any employee of the City a property right in such employment with the City. The provisions of these policies and the attendant procedures are not intended to be, nor shall they be construed as, contractual in nature. That is, these provisions do not form the basis of any contract between the City and any employee.