



## **Administrative Regulations**

### **Office of the Mayor**

#### **Title: SUBSTANCE ABUSE POLICY**

**A.R.: 4053 Effective Date: December 1, 2021 Page 1 of 19**

**Supersedes: Substance Abuse Policy A.R: 4053 DATED: July 1, 2021**

## **SECTION A**

### **GENERAL PROVISIONS**

#### **I. PURPOSE**

The City of Richmond (City) is committed to establishing and maintaining a safe and healthy workplace that is free from alcohol abuse and illegal drug use for its employees and to protect the safety of its citizens by providing the highest quality of services.

#### **II. POLICY**

- The possession, consumption, or being under the influence of alcohol or illegal drugs, and the unauthorized use of drugs, is prohibited in the workplace. This prohibition is inclusive of all breaks and meals, without regard to whether the break/meal is taken in or outside of the workplace.
- Code of Virginia Section 40.1-27.4 effective July 1, 2021 prohibits employers from discharging, disciplining or discriminating against their employee for their lawful use of cannabis oil pursuant to a valid written certification issued by a practitioner for the treatment or to eliminate symptoms of the employee's diagnosed condition or disease. The law does not restrict the City's ability to take any adverse action for any impairment caused by the use of cannabis oil or to prohibit possession during the work hours, or require the City to commit any act that would cause the City to be in violation of federal law or that would result in the loss of a federal contract or federal funding.

**Note:** This law does not impact those employees and applicants who are subject to the U.S. Department of Transportation (DOT) regulations. It remains unacceptable for employees and applicants subject to the U.S. DOT regulations to use alcohol or drugs, including marijuana and cannabis oil.

- This Policy applies to applicants and all classified and unclassified employees regardless of service, position, or appointment status.
- All Department and Agency Heads shall take such steps as may be necessary to ensure employee awareness of and compliance with this Policy. In addition, the Department of Human Resources (DHR) shall create and maintain an alcohol and drug awareness program for all City employees.
- The City retains the right to search, without employee consent, all areas and property in which it maintains either joint control with the employee or full control, including City vehicles, property and equipment.



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**Note:** Supervisors shall not physically search employees under any circumstances. If containers or items with beverages containing alcohol or illegal drugs are found in City vehicles or equipment, the items shall be obtained by a supervisor and security or police personnel may be contacted to conduct further investigation or physical searches.

- **Violations of this Policy shall result in disciplinary action, up to and including dismissal from City service.**

#### **A. PRE-DUTY ALCOHOL PROHIBITED CONDUCT**

Employees are prohibited from using alcohol within 4 hours prior to reporting for duty, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report to duty. If the City or its agents has actual knowledge that an employee has used alcohol within 4 hours prior to performing duties or within the time period after the employee has been notified to report for duty, the employee will not be permitted to perform or continue to perform any duties.

Employees who are on a “normal” time period off and who are called to duty to respond to an emergency or call-back situation who have been using alcohol, are required to inform their supervisor or the management person responsible for the call-back, that they have consumed alcohol or medication containing alcohol. In such instances, the employee shall not be required to report to duty.

#### **B. EMPLOYEE RULES OF CONDUCT**

All City employees shall abide by the rules of conduct outlined in this Policy. Failure to meet these responsibilities shall be the basis for imposing discipline. An exception to this Policy is with prior approval by the Chief of Police for a police officer to have possession of or consume, as required, alcoholic beverages or narcotic substances for the purpose of conducting an investigation while performing official position duties.

An employee shall:

- not have their ability to perform job duties impaired by alcohol or any drugs, whether legal or illegal, while on duty or on call, while on City premises in an official capacity, while acting in any official capacity representing the City, or at any time while operating City vehicles and/or equipment.
- not be under the influence of alcohol or illegal drugs under any of the circumstances described in the preceding paragraph.
- not use alcohol at all while on duty or report to work under the influence of alcohol.



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- not use, possess, sell, distribute, or manufacture illegal drugs at any time, or assist another in such acts, regardless of whether on duty or off duty.
- submit to alcohol and drug substance detection testing when requested to do so by management pursuant to this Policy.
- provide to the Medical Review Officer (MRO) a legally valid prescription or valid written certification issued by a practitioner for the treatment or to eliminate symptoms of the employee's diagnosed condition or disease issued by a practitioner for the treatment or to eliminate symptoms of the employee's diagnosed condition or disease consistent with the Controlled Substances Act (CSA) for a positive test result.
- provide notification to management of any criminal drug-related conviction within 48 hours of the conviction.
- provide notification to management of any suspension, revocation, or other loss of commercial driver's license privileges within 1 work day (24 hours) of the event.

#### **C. EMPLOYEE ASSISTANCE PROGRAM**

An Employee Assistance Program (EAP) is available to all employees under this Policy to provide appropriate education regarding the use of alcohol and illegal drugs. In addition, the EAP will coordinate training with DHR to provide supervisors with the necessary training on performance indicators of possible drug and alcohol use for reasonable suspicion drug awareness and testing. The EAP is also available for employees to confidentially seek voluntarily assistance to obtain counseling, rehabilitation, and other assistance for drug and alcohol abuse problems.

#### **D. EMPLOYEES IN MANAGEMENT POSITIONS**

Employees serving in any management position with supervisory or lead responsibilities shall be under a duty to ensure compliance with this Policy and to set an example for other employees. Any management who knowingly violates or fails to enforce any provision of this Policy shall be subject to immediate disciplinary action, up to and including dismissal.

#### **E. CONTRACTOR PERSONNEL**

All contractors utilized by the City shall be notified of the testing and reporting regulations of this Policy.



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### **III. SUBSTANCE DETECTION TESTING**

Substance detection testing procedures will test for the following prohibited substances which could impair an employee's ability to effectively and safely perform required position duties:

- Alcohol
- Marijuana Metabolites
- Cocaine Metabolites
- Opioids
- Phencyclidine (PCP)
- Amphetamines

All employees are subject to Reasonable Suspicion testing. Employees operating a City vehicle or certain equipment are subject to Post-Accident testing. Employees changing positions may be subject to Movement testing. After a positive substance detection test is received, eligible employees are subject to Return-to-Duty testing with placement in the follow-up testing pool.

The following positions within the City have been identified as a “covered position” for the purpose of this Policy and shall be subject to Pre-employment and Random testing:

- Federal Motor Carrier Safety Administration (FMCSA) for commercial driving license (CDL)
- Pipeline & Hazardous Materials Safety Administration (PHMSA) for gas pipeline operations
- “City-sensitive” positions defined as:
  - the duties authorize or require the carrying of a weapon;
  - work is predominately with or around children, adults, or individuals with disabilities providing services, transportation, or access to facilities within the Departments of Justice Services, Social Services, and Parks, Recreation & Community Facilities;
  - positions within the Department of Emergency Communications performing dispatch and those who supervise employees with dispatching duties;
  - positions within the Departments of Fire, Police, and Animal Care & Control performing duties that if neglected would have a significant impact on public safety;
  - positions providing fleet management responsibilities within the Department of Social Services; and
  - positions with access to confidential and susceptible system information within the Department of Information Technology.

#### **A. TYPES OF TESTING**

##### **1. PRE-EMPLOYMENT TESTING**

When an offer for employment is accepted, the City shall require applicants who will be assigned to a “covered position” to undergo alcohol and drug substance detection testing. Any applicant who refuses to provide written authorization for release of information, refuses to



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take any substance detection test, who tests positive, or who engages in conduct that clearly obstructs the testing procedure shall be ineligible for employment or a personal services contract with the City for a period of 1 year.

#### **2. MOVEMENT TESTING**

When a current employee transfers, is reassigned, demoted, promoted, or moved to a “covered position” substance detection testing shall be conducted. However, movement within the same testing pool without interruption of service shall not require substance detection testing.

#### **3. RANDOM TESTING**

“Covered positions” are subject to the following random substance detection testing:

- a. Random Alcohol Testing
  - “City-sensitive”
  - FMCSA
- b. Random Drug Testing
  - “City-sensitive”
  - FMCSA
  - PHMSA

The random selection procedure will be a computer-based number generator process. The percentage of persons to be tested from each of these pools will be determined as mandated by federal, state or City regulations.

Once notified for random testing, the employee will be tested at the City's Occupational Health Services (OHS) provider's testing site. With no exceptions, the employee will have a total of 45 minutes to report to the OHS testing site from the time of notification of a random alcohol detection test.

#### **4. REASONABLE SUSPICION TESTING**

Reasonable suspicion testing is designed to provide the City with a tool to identify “covered positions” and all other employees affected by the use of alcohol or prohibited drugs who may pose a danger to themselves and others in their job performance. Supervisors shall follow the below-mentioned guidelines when there is reasonable suspicion that an employee is under the influence of alcohol and/or drugs.

Reasonable suspicion is a belief based on objective and clearly stated facts sufficient to lead a supervisor, exercising sound judgement, to suspect that an employee is under the influence of alcohol or drugs. By way of example, and without limitation, any of the following conditions alone, or in combination, may comprise reasonable suspicion:



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- Unexplained inability to perform normal job functions;
- Slurred speech;
- Smell of alcohol on breath or body;
- Any unusual lack of physical coordination or loss of equilibrium;
- Unexplained hyperactivity or depression and withdrawal;
- Unexplained inability to think or reason at the employee's normal levels;
- Bizarre behavior;
- Possession of alcohol, or the presence of alcohol or alcohol containers in an area subject to the employee's control;
- On-duty use of alcohol, either during work time or on City premises;
- Information obtained from a reliable person with personal knowledge.

Two supervisors, one of whom has received at least 120 minutes of EAP training on the specific indicators and symptoms of alcohol and drug misuse or abuse, must make the determination as to whether there are grounds for reasonable suspicion testing. If it is determined by both parties that reasonable suspicion exists, the following shall be promptly followed for the employee to receive both alcohol and substance detection testing:

- Both supervisors shall document in writing the facts constituting reasonable suspicion that would lead to believe the employee is under the influence of alcohol and/or drugs.
- The supervisor shall either transport or arrange to have the employee transported to the City's designated OHS provider to conduct the necessary tests. In no case, shall the employee be allowed to drive or report to the OHS provider alone.

## **5. POST-ACCIDENT TESTING**

“Covered positions” and all other employees shall be tested for drugs and alcohol immediately after a motor vehicle accident that occurred while operating a City vehicle or certain equipment.

An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the supervisor or Department representative of their location if they leave the scene of the accident prior to submission to such test, shall be deemed by the City to have refused to submit to testing.

If an employee is injured, unconscious, or otherwise unable to grant consent to the drug test, all reasonable steps must be taken to obtain a urine sample. The City or its agents may decide not to test; however, such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.

Each employee shall be required to submit to an alcohol test within 2 hours of the accident. If a test is not administered within 8 hours following the accident, the City shall cease all attempts



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to conduct an alcohol test and shall prepare and maintain on file written documentation indicating why the alcohol test was not conducted. A copy of all such determinations shall be forwarded to the designated DHR staff and, upon request, made available to FMCSA or PHMSA officials.

#### **6. RETURN-TO-DUTY TESTING**

After certain positive test results have been received, applicable employees shall undergo alcohol or drug testing and assessment before returning-to-duty. The return-to-duty testing and assessment processes may be observed or face-to-face as deemed by an EAP professional or U.S. DOT-Certified Substance Abuse Professional (SAP).

If the EAP professional or U.S. DOT-Certified SAP makes a determination that some form of evaluation, rehabilitation program, training, or treatment is required, the employee must comply in order to be considered eligible to return-to-duty. The employee may be eligible for Family Medical Leave if they are in an alcohol and/or drug abuse rehabilitation program. When the employee exhausts all available leave time, the period of time in rehabilitation will be recorded as Leave without Pay (LWOP). If there is unsuccessful completion of the prescribed plan, the employee shall be placed on LWOP to proceed with the disciplinary process. Covered employees subject to the U.S. DOT-Certified SAP return-to-duty process pursuant to the DOT regulations are responsible for the cost and completion of the process.

After returning-to-duty, the employee shall be subject to at least 6 unannounced alcohol or drug follow-up tests during the first 12 months. Employees placed in the follow-up testing pool will be randomly tested by the City in addition to any and all other test pools in which they may be included.

#### **B. MULTIPLE MODALS**

In several cases, employees may be responsible for performing different modal functions. For example, an employee may have duties covered under both the U.S. DOT FMCSA and PHMSA guidelines. When these cases arise, the substance detection testing pool will be determined based on the duties that are performed more than 50% of the time.

#### **C. PAY STATUS DURING SUBSTANCE DETECTION PROCEDURES**

Employees shall remain in pay status and no leave time charged, when sent for substance detection testing, awaiting tests to be conducted by the medical provider, or are being searched. Applicants shall not be compensated during the pre-employment testing processes.





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#### **D. CHALLENGES OF TEST RESULTS**

For alcohol testing, the second test serves as the confirmation test to determine the alcohol concentration. Accordingly, an applicant or employee shall not have the ability to challenge the alcohol test results.

All positive tests for a prohibited drug may be challenged by notifying the designated DHR staff in writing within 72 hours of receiving the test results. The original sample will then be retested by a laboratory other than that of the City's medical service provider. The laboratory selected must be one of those certified laboratories maintained on the list of the OHS provider. If a retest is requested, the individual shall pay the costs of the retest.

Any person who is taking a drug legitimately or under supervision as part of a court-approved or court-supervised drug rehabilitation program shall not be deemed to have violated this Policy because of a positive test result, provided they can show a current valid prescription, valid written certification issued by a practitioner for the treatment or to eliminate symptoms of the employee's diagnosed condition or disease, or court order for that drug(s).

#### **E. RECORDKEEPING**

The City will make every effort to keep the results of drug and alcohol tests confidential. Employees should be advised, however, that test results may be used in arbitration, administrative hearings, grievances, and/or otherwise required by law or court order. Also, results will be sent to federal agencies as required by federal law. If the employee is referred to a treatment facility for evaluation, the test results will be made available to the employee's counselor.

### **IV. CONSEQUENCES AND DISCIPLINARY ACTIONS**

#### **A. REFUSAL TO SUBMIT TO ALCOHOL & DRUG TESTS**

An applicant or employee refusing to submit to an alcohol or drug substance detection test shall be deemed "not qualified" for employment or duty. Employees refusing testing shall not be forced to have a test administered, but be reminded that a refusal constitutes insubordination and is a violation of this Policy and shall result in dismissal.

The following shall be deemed to have "refused" to take a substance detection test:

- a. Failure to appear for any test within the prescribed 45 minutes time after being requested and notified to do so.
- b. Failure to remain at the testing site until the testing process is complete.
- c. Failure to provide a sufficient urine specimen or blood alcohol sample and the MRO has determined through a required medical evaluation, that there is no medical explanation for the failure.





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- d. Failure to cooperate with any part of the testing process; or, engages in conduct that clearly obstructs the testing procedure.
- e. Failure to complete required return-to-duty testing or prescribe plans provided by the EAP professional or U.S. DOT-Certified SAP.
- f. Providing a urine specimen that is someone else's.
- g. Failure or decline to take a second test as directed by the employer or MRO in accordance with the collection procedures.
- h. Is reported by the MRO as having a verified adulterated or substituted test result for drugs.
- i. Failure to provide a legally valid prescription or valid written certification to the MRO shall give rise to a presumption that the applicant or employee did not legally possess or use the drug.

## **B. POSITIVE TEST RESULTS**

Upon request of the MRO, a valid prescription, or valid written certification issued by a practitioner for the treatment or to eliminate symptoms of the employee's diagnosed condition or disease must be presented within 5 days of said request. Once the MRO makes a determination that there is no legally valid prescription or a valid written certification issued by a practitioner for the treatment or to eliminate symptoms of the employee's diagnosed condition or disease for a confirmed positive test result consistent with the CSA and U.S. DOT, the test shall be reported as positive. If the MRO determines there is a legally valid prescription or valid written certification issued by a practitioner for the treatment or to eliminate symptoms of the employee's diagnosed condition or disease for a confirmed positive test result, the MRO shall report the test as negative.

Alcohol testing procedures will determine whether an employee may have a prohibited concentration of alcohol in a breath specimen. An employee shall be prohibited from reporting for duty or remaining on duty while having an alcohol concentration of 0.02 or greater. If a City representative has actual knowledge that an employee has an alcohol concentration of 0.02 or greater, the employee shall not be permitted to perform or continue to perform position duties.

After any positive substance detection test result is received from the MRO, all employees shall be immediately removed from duty and placed on LWOP. When applicable, the time served in the LWOP status shall be applied toward the suspension and the employee shall be placed in a follow-up random testing pool for 12 months. For FMCSA and PHMSA positions, the Department may determine non-safety sensitive functions the individual can perform if available after the suspension has been served and before released to return to work to resume performing those safety-sensitive functions.



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CHART A

<b>POSITIVE ALCOHOL &amp; DRUG TESTING RESULTS</b>		
<b>Status</b>	<b>Consequence or Disciplinary Action</b>	<b>Employment Eligibility</b>
Pre-employment	Ineligible for Employment or Dismissal	Barred from employment with the City, participation in a personal services agreement, or employment with a direct coverage contractor for a period of one (1) year from the date of the test results.
Probationary		
Refusal to Submit to any Substance Detection Testing		
Dismissal after the applicable below positive testing results		
<b>Police Alcohol Testing Results</b>		
<b>Offense</b>	<b>Level</b>	<b>Disciplinary Action(s)</b>
1st	0.02 and above	Dismissal
<b>Fire, FMCSA, PHMSA, "City-Sensitive", &amp; All Other Employees Alcohol Testing Results</b>		
<b>Offense</b>	<b>Level</b>	<b>Disciplinary Action(s)</b>
1st	0.02 and less than 0.04	1 week (40 hours) suspension; Mandatory U.S. DOT-Certified SAP Referral; Return-to-duty and follow-up testing
1st	0.04 and above	2 week (80 hours) suspension; Mandatory U.S. DOT-Certified SAP or EAP Referral; Return-to-duty and follow-up testing
2nd	0.02 and above	Dismissal
<b>Police &amp; Fire Drug Testing Results</b>		
<b>Offense</b>	<b>Level</b>	<b>Disciplinary Action(s)</b>
1st	N/A	Dismissal
<b>FMCSA, PHMSA, "City-Sensitive", &amp; All Other Employees Drug Testing Results</b>		
<b>Offense</b>	<b>Level</b>	<b>Disciplinary Action(s)</b>
1st	N/A	2 week (80 hours) suspension; Mandatory U.S. DOT-Certified SAP or EAP referral; Return-to-duty and follow-up testing
2nd	N/A	Dismissal



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CHART B

<b>SUBSTANCE DETECTION TYPES FOR THOSE NOT IN A “COVERED POSITION”</b>	
Pre-employment	Not subject to pre-employment testing
Movement	May be subject to movement testing when changing to a “covered position.” If applicable, see CHART A for disciplinary actions.
Random	Not subject to random testing
Reasonable Suspicion	See CHART A for disciplinary actions
Post-Accident	See CHART A for disciplinary actions
Return-to-Duty	See CHART A for disciplinary actions

**Note:** The mandatory U.S. DOT-Certified SAP referral based on the applicable offense is required for FMCSA and PHMSA positions. The mandatory EAP referral based on the applicable offense is required for “City-Sensitive” positions.

**C. RESIGNATION**

If an employee attempts to resign or retire at any time during the testing process or disciplinary processes for a positive substance detection test, the Appointing Authority or designee, in consultation with the Director of Human Resources, may accept or reject the resignation or retirement submission.

If the request to resign or retire is rejected, the Appointing Authority or designee shall notify the employee in writing that a violation of this Policy is carried as a dismissal with appropriate re-employment bar.

If the request to resign or retire is accepted, the re-employment bar as mentioned above shall still be applicable and in effect.



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## **SECTION B**

### **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA) COVERED EMPLOYEES**

This section provides additional requirements and information for employees who are required to maintain a CDL to perform any portion of their duties under Regulations administered by the FMCSA, U.S. DOT.

#### **I. PRE-EMPLOYMENT DRIVER SAFETY PERFORMANCE HISTORY CHECKS**

##### **A. Required Pre-Employment Driver Safety Performance History Check:**

Designated DHR staff shall make the following investigations and inquiries with respect to each driver it employs, other than a person who has been a regularly employed driver of the motor carrier for a continuous period which began before January 1, 1971:

1. An inquiry, within 30 days of the date the driver's employment begins, to each State where the driver held or holds a motor vehicle operator's license or permit during the preceding 3 years to obtain that driver's motor vehicle record.
2. An investigation of the driver's safety performance history with the DOT-regulated employers during the preceding 3 years.

##### **B. Required Drug & Alcohol History Check from previous DOT-Regulated Employers**

As of January 6, 2023, employers subject to CFR 382.701(a) must use the FMCSA DOT Drug and Alcohol Clearinghouse to comply with the requirements related to this section with respect to FMCSA-regulated employers.

With written authorization, designated DHR staff must investigate the information listed below from all previous DOT-regulated employers for whom the individual performed a safety-sensitive function that required alcohol and controlled substance abuse testing within the previous 3 years from the date of the employment application:

Whether, within the previous 3 years, the driver has violated the alcohol and controlled substances prohibitions under 49 CFR, Part 40 or Subpart B of Part 382, including:

- i. An alcohol test with a result of 0.04 or higher alcohol concentration;
- ii. A controlled substance test result of positive, adulterated, or substituted;
- iii. A refusal to submit to a random, post-accident, reasonable suspicion, or follow-up alcohol or controlled substances test;
- iv. Alcohol use while performing or within 4 hours of performing safety-sensitive functions;
- v. Alcohol use after an accident in violation of CFR 382.213;



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- vi. Controlled substances while on duty, except as allowed under CFR 382.213.

This verification must also include:

- a. If this person violated a DOT drug and/or alcohol prohibition, did they fail to begin or complete a rehabilitation program prescribed by an U.S. DOT-Certified SAP. If rehabilitation was required and it is not known that the individual began or completed such a program.
- b. If this person successfully completes an U.S. DOT-Certified SAP's rehabilitation program and remained at the previous employer, but subsequently had an alcohol test result of 0.04 or greater, or a verified positive test, or a refusal to be tested.

## **II. POST-ACCIDENT TESTING**

It is the applicable employee's immediate supervisor's responsibility to ensure that the provisions of post-accident testing are followed. As soon as possible following an accident involving a commercial motor vehicle (CMV), the City shall test the employee driver for alcohol and drugs when either:

- The accident involved a human fatality and a citation is issued to the CMV driver; or
- Human Fatality and no citation issued to the CMV driver; or
- Bodily injury with immediate medical treatment away from the scene and a citation is issued to the CMV driver; or
- Disabling damage to any motor vehicle requiring tow away and a citation issued to the CMV driver



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## **SECTION C**

### **PIPELINE & HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA) COVERED EMPLOYEES**

This section of this Policy provides additional requirements and information for those employees who work in the gas utility and are covered by regulations under the PHMSA office of the U. S. DOT.

#### **I. REQUIRED DRUG & ALCOHOL HISTORY CHECK FROM PREVIOUS DOT REGULATED EMPLOYERS:**

Designated DHR staff must investigate the information listed below from all previous DOT-regulated employers for whom the individual performed a safety-sensitive function that required alcohol and controlled substance abuse testing within the previous 2 years from the date of the employment application:

Whether, within the previous 2 years, the driver has violated the alcohol and controlled substances prohibitions including:

- i. An alcohol test with a result of 0.04 or higher alcohol concentration;
- ii. A controlled substance test result of positive, adulterated, or substituted;
- iii. Alcohol use while performing or within 4 hours of performing safety-sensitive functions;
- iv. Alcohol use after an accident;
- v. Controlled substances while on duty, except as allowed

This verification must also include:

- a. If this person violated a DOT drug and/or alcohol prohibition, did they fail to begin or complete a rehabilitation program prescribed by an U.S. DOT-Certified SAP. If rehabilitation was required and it is not known that the individual began or completed such a program.
- b. If this person successfully completes an U.S. DOT-Certified SAP's rehabilitation program and remained at the previous employer, but subsequently had an alcohol test result of 0.04 or greater, or a verified positive test, or a refusal to be tested.

#### **II. POST-ACCIDENT TESTING**

##### **A. Alcohol Testing**

- The City will promptly determine and test each covered employee for alcohol if that employee's performance contributed to an accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer an alcohol test shall be based on the respective supervisor's determination, using the best available information at



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the time of the determination that the employee's performance could not have contributed to the accident.

### **B. Drug Testing**

- Any employee who is involved in an accident while on duty or whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident shall be tested for drugs as soon as possible, but not later than 32 hours after the accident. In addition, all steps shall be taken by supervisors to follow the procedures established in the "Reasonable Suspicion Testing" paragraph of this Policy.
- The refusal of an employee to submit to a post-accident test as soon as possible, but not later than 32 hours of such a request, shall be a violation of this Policy.





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## **SECTION D**

### **COVERAGE FOR ALL REMAINING CITY GROUPS**

This section of this Policy provides additional requirements and information for employees who are in a “City-sensitive” position and for all other remaining employees not listed in sections B and C of this Policy.

#### **I. POST-ACCIDENT TESTING**

##### **a. Motor Vehicle Accident:**

As soon as possible following a motor vehicle accident, the City shall test the employee driver for alcohol when either:

- the accident involved a fatality; or
- the employee driver receives (or is expected to receive) a citation within 8 hours under state or local law for a moving violation arising from the accident; or
- bodily injury with immediate medical treatment away from the scene and a citation is issued to the driver; or
- one or more of the motor vehicles incurred disabling damage as a result of the accident requiring a motor vehicle to be transported away from the scene; or
- total property damage exceeds (or is expected to exceed) \$10,000; or
- at the time of the accident, it is determined by any supervisor in the employee's supervisory chain of command or safety officer to have been preventable and/or is a result of the employee driver's negligence, poor judgment, or failure to follow standard operating norms.

##### **b. Motorized Equipment Accident:**

If at the time of the accident, it is determined to have been preventable and/or the result of the employee driver's negligence, poor judgment or failure to follow standard operating norms, the City shall promptly test each employee who is involved in a motorized equipment accident while on duty if that employee's performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident.

##### **c. It is the responsibility of the applicable employee's supervisor or supervisory chain of command to ensure that the provisions of post-accident testing are followed.**

##### **d. The decision not to administer an alcohol test shall be based on the respective supervisor's determination, using the best available information at the time of the determination.**

##### **e. All reasonable steps will be taken to obtain an evidential urine drug sample and blood alcohol test from the employee after an accident. However, if the employee is unable to give an evidential breath sample, a urine or blood sample test may be performed for employees covered by Section D. If the employee is conscious and able to give one of the tests described in this section (in the**



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opinion of a medical professional) and refuses to be tested, that employee shall be immediately removed from duty. The refusal of an employee to submit to a post-accident test within 45 minutes of such a request shall constitute insubordination and shall be the basis for the imposition of discipline.

- f. Under no circumstances shall a supervisor cause a breath, blood, or urine sample to be taken from an unconscious employee.
- g. The City may require a covered employee to submit to drug follow-up testing when the City's EAP substance abuse professional has reason to suspect drug involvement.

## **II. DEFINITIONS**

The following words and terms, when used in conjunction with the City's Substance Abuse Policy, shall have the following meaning:

**Accident (PHMSA)** - an unplanned occurrence that results in a release of oil or natural gas from the pipeline that can sometimes result in extensive property loss, environmental insult, injury, and death. Accidents are failures occurring in liquid pipeline systems for which the pipeline operator must make a report to the Office of Pipeline Safety. Specific criteria defining events that are considered accidents are contained in Code of Federal Regulations (CFR). Events or failures of similar magnitude related to gas pipelines are considered incidents and are also defined in the CFR.

**Commercial Driver's License (CDL)** - a license issued by a government agency that allows an individual to operate a commercial motor vehicle.

**Commercial Motor Vehicle (CMV)** - defined as:

- A single vehicle with a gross vehicle weight rating (GVWR) of 26,001 pounds or more
- A combination of vehicles with a gross combination weight rating (GCWR) of 26,001 pounds or more if the vehicle(s) being towed has a GVWR of more than 10,000 pounds
- A vehicle that carries 16 or more passengers, including the driver
- Any size vehicle that transports hazardous materials and that requires federal placarding

**Covered Employee (PHMSA)** - any person who performs on a pipeline or LNG facility in an operating, maintenance, or emergency response function regulated by Parts 192, 193, or 195. As applied in the regulations, "employee" and "applicant for employment" have the same meaning for the purpose of these requirements. Covered employee and "individual" or "individual to be tested" have the same meaning for the purposes of the alcohol regulations. Clerical, truck driving, accounting, or other job functions not covered by Parts 192, 193, and 195 are not subject to the regulations. Such persons may be employed directly by the City, or by a contractor engaged by the City.

**CFR** - Code of Federal Regulations.



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**Covered Function (safety-sensitive FMCSA function)** - any of the following on-duty functions:

- All time at a carrier or shipper plant, terminal, facility, or other property waiting to be dispatched, unless the driver has been relieved from duty by the City; or
- All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations, or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time; or
- All time spent at the driving controls of a commercial motor vehicle; or
- All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in a sleeper berth); or
- All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining ready operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; or
- All time spent performing the driver requirements associated with an accident; or
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle.

**Covered Function (safety-sensitive PHMSA function)** - an operation, maintenance, or emergency response function that is performed on a pipeline or LNG facility and the function is regulated by parts 192, 193, or 195.

**Driver (FMCSA)** - any person who operates a commercial motor vehicle. For the purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle.

**Medical Review Officer (MRO)** - the licensed physician, either a Doctor of Medicine, or a Doctor of Osteopathy, responsible for receiving laboratory results generated by the City's drug-testing program who has knowledge of substance abuse disorders, including the medical effects of prescription drugs and the pharmacology and toxicology of illicit drugs, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with their medical history and other relevant biomedical information.

**Performing a Covered Function** - an employee is considered to be performing a covered function (safety-sensitive function) during any period in which they are actually performing, ready to perform, or immediately available to perform such covered functions.

**U.S. Department of Transportation-Certified Substance Abuse Professional (SAP)** – For FMCSA and PHMSA-covered employees, trained knowledgeable individual designated by the U.S. DOT who is charged with the evaluation, assessment, referral for training or rehabilitation, return-to-duty release, and follow-up testing schedule of those employees who have had a positive drug and/or alcohol test.



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**III. REGULATION UPDATE**

The Department of Human Resources shall be responsible for modification to this Policy.

**RECOMMEND APPROVAL:**

**CHIEF ADMINISTRATIVE OFFICER/DESIGNEE**

**APPROVED:**

  
**MAYOR**