

## ***Chapter 10: DRUG-FREE WORKPLACE***

The City is committed to protecting the safety, health, and well-being of all employees and other individuals in our workplace. It is recognized that alcohol abuse and drug use pose a significant threat to our goals. The City has established a drug-free workplace program that balances our respect for individuals with the need to maintain an alcohol and drug-free environment.

To assist employees in understanding the perils of drug and alcohol abuse, the City has established a Drug and Alcohol Policy. This Drug and Alcohol Policy constitutes the City's drug free awareness program and fulfills the notification requirements of the federal Drug-Free Workplace Act of 1988. The City will use this program as an ongoing educational effort to prevent and eliminate drug and alcohol abuse that may affect the workplace. The program will inform employees of the dangers of drug and alcohol abuse, explain the City's Drug and Alcohol Policy and the sanctions imposed for its violation, and highlight any treatment, counseling, and rehabilitation referral services that may be available to employees in the City. Employees and supervisors will receive mandatory annual training on this program/policy. Nothing set forth in this policy is intended to conflict with state law.

The Drug and Alcohol Policy does not apply to Police Department employees when the prohibited act or possession is performed in accordance with Police Department Policy, and such use or possession is necessary in connection with the investigation of illegal activities. The Liquor Store Manager and liquor store employees are exempted from the applicability of alcohol use in this Policy only while attending work related seminars or events where product sampling is customary and performed within the scope of the essential job functions. These employees must use extreme discretion and consume a minimal amount of product while in attendance at these events. While on work time, employees may not consume/sample alcoholic beverages during in-store product sampling events. Further, an exclusion from this policy applies at the Fire Department for appreciation events and social gatherings as authorized by the Fire Chief related to the volunteer fire department.

### **10.1 DRUG AND ALCOHOL PROGRAM**

#### **Purpose**

The purpose of this policy is to ensure a drug and alcohol free work environment and to reduce and eliminate drug and alcohol related accidents, injuries, fatalities and damage to City property resulting from the misuse of alcohol or use of controlled substances. It is the City's intention to comply fully with drug and alcohol testing as authorized under Minnesota statutes. In the event the applicable Minnesota statute is amended, this policy and the requirements shall be deemed to have been amended automatically. Redrafting will not be necessary in order to reflect and be in compliance. The City reserves the right to apply the amended requirements immediately, without giving prior notice to employees and/or applicants who may be covered by this policy, unless such notice is required by Minnesota statute or other applicable law.

The use, possession, distribution, manufacture or sale of alcohol or illegal drugs anywhere at work on City time, on City property while on City time, or in City vehicles is prohibited and considered a willful violation of City policy which can result in suspension or discharge.

The unlawful manufacture, distribution, possession, or use of a controlled substance on City property or while conducting City business is absolutely prohibited. Violations of this policy will result in disciplinary action, up to and including termination, and may have legal consequences.

Employees must, as a condition of employment, abide by terms of the above policy and must report any conviction under a criminal drug statute for violations occurring on or off work premises while conducting City business. A report of the conviction must be made within five (5) days after the conviction as required by the Drug-Free Workplace Act of 1988.

## Testing Policy

**Types of Testing.** Employees are subject to drug and alcohol testing in the following circumstances:

- a. **Job Applicant/Pre-employment Testing.** All full-time, ¾-time, part-time and paid-on-call job applicants who receive a contingent job offer from the City will be required to submit to and pass an alcohol and illegal drug, or their metabolites, urinalysis test with a negative test result, prior to commencing employment. The offer of employment is conditional upon a passing result. If the offer of conditional employment is subsequently withdrawn, the City will notify the applicant of the reason for the withdrawal. Pre-employment testing for temporary/seasonal employees who receive a contingent offer from the City will be required at the discretion of the City Administrator.
- b. **Routine Physical Examination Testing.** An employee may be required to undergo drug and alcohol testing as part of a routine physical examination. The drug or alcohol test will be requested no more than once annually and the employee will be given at least two weeks' written notice that the test shall be required as part of the examination.
- c. **Random Testing.** An employee in a safety sensitive position in which impairment caused by drug or alcohol usage would threaten the health or safety of any person may be required to undergo random drug and alcohol testing. In addition, employees who are required to have commercial driver's licenses are subject to random testing as required by federal law. (Reference Policy Section 10.2 *Drug and Alcohol Program—Commercial Motor Vehicle Operator*.)
- d. **Reasonable Suspicion Testing.** An employee may be required to undergo drug and alcohol testing if there is a reasonable suspicion that the employee: (a) is under the influence of drugs or alcohol; or (b) has engaged in the use, possession, sale, or transfer of drugs or alcohol while the employee is working or while the employee is on City property or operating a City vehicle, machinery, or equipment; or (c) has sustained a personal injury arising out of and in the course of employment, or caused another person to sustain a personal injury; or (d) has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident (reference definition of "accident" in policy Section 10.2, Definitions, B). Reasonable suspicion testing for accidents outside of this definition may occur at the Division Director's discretion. A supervisor will transport or coordinate the same-sex transport of the employee to the clinic/hospital where the testing will occur.
- e. **Treatment Program Testing.** An employee may be required to undergo drug and alcohol testing if the employee has been referred by the City for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under the City insurance, in which case, the employee may be requested or required to undergo drug or alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two years following completion of any prescribed chemical dependency treatment program.

**Testing Procedure.** Any Division Director or the City Administrator may order the drug and alcohol testing. Before undergoing drug or alcohol testing, the employee shall complete a form (1) acknowledging that the employee has seen a copy of the City's drug and alcohol policy, and (2) indicating consent to undergo the drug and alcohol testing.

**Testing Laboratory.** A laboratory meeting all requirements of state law, including those set forth in Minn. Stat. Sec. 181.953, shall handle all drug and alcohol testing.

**Test Results.** Within three days of obtaining the final test results, the testing laboratory shall provide the City with a written report indicating the drug(s), alcohol, or their metabolites tested for, the types of test conducted, and whether the test produced negative or positive test results. Within three working days after receipt of the test result report, the City shall inform the employee in writing of a negative test result on an initial screening test, or of a negative or positive test result on a confirmatory test.

**Rights of Employees and Job Applicants.** Employees and applicants have a right to request and receive a copy of the test result report. If an employee or applicant tests positive for drug use, the City will give written notice of the right to explain the positive test. Within three working days after notice of a positive test result on a confirmatory test, the employee or applicant may submit information to the City to explain that result or may, within five working days after notice of the positive test result, request a confirmatory retest at the employee's or the applicant's own expense. If the confirmatory retest does not confirm the original positive test result, the City will not take any adverse personnel action against the employee or applicant based on the original confirmatory test and will reimburse the employee for the expense of the retest.

**Consequences for Refusal to Test.** Employees and job applicants have the right to refuse to undergo drug and alcohol testing. However, failure to comply with the City's drug and alcohol policy, and refusal to take a drug and alcohol test upon request shall subject an employee to discipline, including discharge. If an applicant refuses to test, the job offer will immediately be withdrawn.

**Discipline.** An employee who has a positive test result on a confirmatory test, when this is the first such result for the employee, will be subject to discipline but shall not be discharged unless (1) the employee has been given an opportunity to participate in either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the City after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency, and (2) the employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program as evidenced by withdrawal from the program before its completion or a positive test result on a confirmatory test after completion of the program. Participation in the specified program will be at the employee's own expense or pursuant to coverage under the City's insurance. The City may temporarily suspend the employee or transfer the employee (for whom this is the first such result for the employee) to another position at the same rate of pay pending the outcome of a confirmatory test and, if requested, the confirmatory retest, provided the City believes that it is reasonably necessary to protect the health or safety of the employee, co-employees, or the public. An employee who has been suspended without pay will be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.

All other employees obtaining a positive test result and not participating in a rehabilitation program will be subject to discipline including discharge. An employee required to take time off in order to participate in a rehabilitation program will be permitted to use sick leave, vacation time, compensatory time, floating holidays, and/or unpaid leave. An employee who undergoes substance abuse treatment and counseling under this policy and who continues to work must meet all established standards of conduct and job performance.

#### **Data Privacy**

Test results and other information gathered under this policy will be treated as private data on individuals. Positive results will be disclosed to the employee/applicant, the employee's Division Director, the Administration Office Administrative Assistant, the Assistant to the City Administrator, and the City Administrator. Results will not be disclosed to others unless requested in writing by the employee/applicant or required by law.

### **10.2 DRUG AND ALCOHOL PROGRAM—COMMERCIAL MOTOR VEHICLE OPERATOR**

#### **Purpose**

This policy describes the City's Drug and Alcohol Program for certain personnel required to hold Commercial Driver's Licenses. The purpose of this program/policy is to ensure a drug and alcohol free transportation and work environment and to reduce and eliminate drug and alcohol related accidents, injuries, fatalities and damage to City property resulting from the misuse of alcohol or use of controlled substances by drivers who operate vehicles requiring a Commercial Driver's License. This program is being implemented through a consortium with other municipal utilities and local governments through the MMUA Drug and Alcohol Testing Consortium. As consortium participants, municipal utilities and local governments share costs for program administration and recordkeeping and pool their employees for the purpose of random testing.

#### **Policy**

This policy applies to every City employee (full-time, ¾-time, part-time and temporary), and applicant for employment in the case of pre-employment drug testing, who holds a Commercial Driver's License (CDL) and whose job description requires the employee to drive a Commercial Motor Vehicle (CMV).

This policy implements the drug and alcohol testing requirements of the U.S. Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA). It is in addition to the City-Drug and Alcohol Policy which is established under Minnesota state law and the Drug Free Workplace Act of 1988.

It is the City's intention to comply fully with the DOT regulations. In the event DOT regulations are amended, this policy and the requirements shall be deemed to have been amended automatically. Redrafting will not be necessary in order to reflect and be in compliance with DOT regulations. The City reserves the right to apply the amended requirements immediately, without giving prior notice to employees and/or applicants who may be covered by this policy, unless such notice is required by DOT or other applicable law.

### **Definitions**

Definitions as used under this Policy set forth below and in greater detail in 49 CFR § 40.3 and 382.107.

- A. Driver: Any employee who holds a CDL and operates a CMV which falls under the specific DOT criteria. This includes, but is not limited to, full-time, ¾-time, part-time, temporary, intermittent or occasional employees of the City. The word driver and employee will be used throughout this policy interchangeably.
- B. Accident: An occurrence involving a commercial motor vehicle while being operated for the City which results in:
  - 1. A loss of human life; or
  - 2. The employee receiving a citation under State or local law for a moving traffic violation arising from the accident if the accident involved:
    - Bodily injury to a person who as a result of the injury, immediately receives medical treatment away from the scene of the accident; and/or
    - One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
- C. Breath Alcohol Technician (BAT): An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device.
- D. Commercial Motor Vehicle: CMV means a motor vehicle or a combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
  - Has a gross combination weight rating of 26,001 or more pounds, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000; or
  - Has a gross vehicle weight rating of 26,001 pounds or more; or
  - Is designed to transport 16 or more passengers including the driver; or
  - Is of any size and is used in the transportation of materials found to be for the purposes of the Hazardous Transportation Act and which require the motor vehicle to have a placard under the Hazardous Materials Regulations.
- E. Confirmatory Test:  
Alcohol: a second test, following a screening test with a result of 0.02 or greater that provides quantitative data of alcohol concentration.  
Drugs: a second testing of the original test sample when the initial test produces a positive test result.
- F. Confirmatory Re-Test: A third testing of the original test sample when the confirmatory test produces a positive test result. A confirmatory retest is done at the request and the expense of the employee/applicant.
- G. Controlled Substances (Drugs): For purposes of this policy, drug means a controlled substance. The term includes prescribed drugs not legally obtained, prescribed drugs not being used for prescribed purposes, and any prescribed drugs not taken in accordance with a prescription. In other words, medications prescribed for someone other than the driver will be considered unlawfully used under any circumstances. Pursuant to DOT regulations, all DOT-required drug tests must test for the following substances identified in 49 CFR § 40.85: marijuana, cocaine, amphetamines, opiates (e.g. opium heroin, morphine or codeine) and phencyclidine (i.e. PCP or "angel dust"). The City reserves its independent authority and discretion to prohibit and test for other drugs.

- H. Medical Review Officer (MRO): A licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, adulterated or substituted specimen, together with his/her medical history and any other relevant biomedical information.
- I. Refusal to Submit: Refusal to submit to an alcohol and/or a controlled substance test is considered when an employee/applicant:
1. Fails to provide adequate breath for testing without a valid medical explanation after he/she has received notice of the requirement for breath testing;
  2. Fails to provide adequate urine for controlled substances testing without a valid medical explanation after he/she has received notice of the requirement for urine testing; or
  3. Engages in conduct that clearly obstructs the testing process, such as providing an adulterated or substituted specimen.
- J. Safety-Sensitive Function: All time from the time a CMV operator begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work and includes the following:
1. all time at a plant, terminal, facility, or other property waiting to be dispatched, unless the driver has been relieved from duty by the supervisor;
  2. all time inspecting equipment as required by the Federal Motor Carrier Safety Administration, or otherwise inspecting, servicing, or conditioning any CMV at any time;
  3. all time spent at the driving controls of a CMV;
  4. all time, other than driving time, spent on or in a CMV (except for time spent resting in the sleeper berth);
  5. all time loading or unloading a CMV, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
  6. all time spent performing the driver requirements associated with an accident; and
  7. all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
- K. Substance Abuse Professional (SAP): A licensed physician or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.

## **Prohibitions**

An employee covered by this Policy shall not:

- A. Report for duty, operate City vehicles, equipment or machinery, perform safety sensitive functions, or remain on City property while having any detectable or measurable amount of alcohol in his/her system or while under the influence of illegal drugs;
- B. Use, possess, sell, distribute, manufacture, or transport illegal drugs or alcohol while on City property, while operating City equipment, or while on duty;
- C. Consume alcohol within four hours before operating a City vehicle;
- D. Attempt to perform job duties when taking medically prescribed drugs or other substances which may alter job performance, unless the employee has been advised by a licensed medical practitioner that the prescription drug will not adversely affect the driver's ability to safely operate a CMV. If the prescription drug does affect performance, the employee must notify his/her supervisor.
- E. Refuse to submit to a required drug and/or alcohol test as required under this policy.

Any supervisor or manager who has actual knowledge that an employee has violated or attempted to violate any of the above prohibitions shall not permit the employee to perform any job duties, nor to remain on duty.

An employee found to be in violation of any of the provisions of this policy shall be subject to discipline up to and including termination from employment. See Section 10.2 heading titled, "Consequences for Employees Engaging in Prohibited Conduct" of this Chapter for more information.

## **Types of Testing**

The City may test any applicant to whom a conditional offer of employment has been made and may test any Driver for controlled substance and alcohol under any of the following circumstances:

### Pre-Employment Testing

The City will conduct pre-employment controlled substance testing of each applicant for a Driver position after a conditional job offer has been made to the applicant, prior to the first time a Driver performs a safety-sensitive function for the City. A Driver may not perform safety-sensitive functions unless the Driver has received a controlled substance test result from the Medical Review Officer indicating a verified negative test result. As an alternative to pre-employment controlled substance testing, the City may obtain information from the applicant's previous employers certifying compliance with another DOT controlled substance testing program. If requested, each applicant must execute a consent form authorizing the disclosure of such information.

### Post-Accident Testing

As soon as practicable following an accident involving a commercial motor vehicle while being operated for the City, the City will test for alcohol and controlled substance of each surviving Driver:

- A. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
- B. Who receives a citation under state or local law for a moving violation arising from the accident and one of the following two conditions is met:
  - 1) the accident involved bodily injury to any person who, as a result of the injury immediately receives medical treatment away from the scene of the accident, or
  - 2) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

A driver who is subject to post-accident testing must remain readily available for such testing. Drivers not readily available for such testing may be deemed by the City to have refused to submit to testing.

Drivers are required to submit to post-accident controlled substance testing as soon as possible within thirty-two (32) hours of the accident. If the Driver is not tested within thirty-two (32) hours after the accident, the City will cease its attempts to test the Driver and prepare and maintain on file a record stating why the test was not promptly administered.

Drivers are required to submit to post-accident alcohol testing as soon as possible within two (2) hours, and in any event no more than eight (8) hours after the accident. After an accident, consuming alcohol is prohibited until the Driver is tested. If the Driver is not tested within two (2) hours after the accident, the City will prepare and maintain on file a record stating why the test was not administered within that time. If the Driver is not tested within eight (8) hours after the accident, the City will cease its attempts to test the Driver and prepare and maintain on file a record stating why the test was not administered.

In the event of an accident, it is possible the Driver will be directed to submit to a breath, blood, or urine test for the use of alcohol or controlled substance administered by a federal, state, or local law enforcement officer. Whenever such a test is conducted by a law enforcement officer, the Driver must contact the City and immediately report the existence of the test, and if available, provide the name, badge number, and telephone number of the law enforcement officer who conducted the test.

### Random Testing

Every Driver will be subject to alcohol and controlled substance testing on a random selection basis. Drivers will be selected for testing by use of a scientifically valid method under which each Driver has an equal chance of being selected each time selections are made. These random tests will be conducted throughout the calendar year. Each Driver who is notified of selection for random testing must cease performing safety-sensitive functions (other than driving a commercial motor vehicle) and report to the designated test site immediately. It is mathematically possible that Drivers may be selected for more than one (1) random test per year.

If a Driver is selected for a random test while he or she is absent, on leave or away from work, that Driver will be required to undergo the test when he or she returns to work.

At this time, federal law requires the City to test at a rate of at least fifty percent (50%) of its average number of Drivers for controlled substance each year, and to test at a rate of at least ten percent (10%) of its average number of Drivers for alcohol each year. These minimum testing rates are subject to change by the DOT.

#### Reasonable Suspicion Testing

When the City has reasonable suspicion to believe the Driver has engaged in conduct prohibited by federal law, the City must require the Driver to submit to an alcohol or controlled substance test. Alcohol testing will occur while the Driver is performing safety-sensitive functions, just before the Driver is to perform safety-sensitive functions, or just after the Driver has ceased performing such functions.

The City's determination that reasonable suspicion exists to require the Driver to undergo an alcohol test will be based on specific contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the Driver made during, just preceding, or just after the period of the work day that the Driver is required to be in compliance with this policy. In the case of controlled substance, the observations may include indications of the chronic and withdrawal effects of a controlled substance.

The required observations for reasonable suspicion testing will be made by a Supervisor or other person designated by the City who has received appropriate training in identification of actions, appearance and conduct of a Driver which are indicative of the use of alcohol or controlled substance. These observations will be reflected in writing on a Reasonable Suspicion Record Form. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test will not conduct the alcohol test of the Driver, which shall instead be conducted by another qualified person.

If a reasonable suspicion alcohol test is not administered within two (2) hours following the determination of reasonable suspicion, the City will prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If a reasonable suspicion alcohol test is not administered within eight (8) hours following the determination of reasonable suspicion, the City will prepare and maintain on file a record stating the reasons the alcohol test was not administered, and will cease attempts to conduct the alcohol test. If a reasonable suspicion controlled substance test is not administered within thirty-two (32) hours following the determination of reasonable suspicion, the City will cease attempts to administer a controlled substance test and will prepare a record stating the reasons for not administering the test.

Notwithstanding the absence of a reasonable suspicion test, no Driver may report for duty or remain on duty requiring the performance of safety-sensitive functions while the Driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol use, nor will the City permit the Driver to perform or continue to perform safety-sensitive functions until (1) an alcohol test is administered and the Driver's alcohol concentration is less than .02; or (2) twenty-four (24) hours have elapsed following the determination of reasonable suspicion.

#### Return-to-Duty Testing

The City reserves the right to impose discipline against Drivers who violate applicable FMCSA rules or this policy, subject to applicable personnel and collective bargaining agreements. Except as otherwise required by law, the City is not obligated to reinstate or re-qualify such Drivers.

Should the City consider reinstatement of such a Driver, the Driver must undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 if the conduct involved alcohol, or a controlled substance test with a verified negative result if the conduct involved a controlled substance, before the Driver returns to duty requiring the performance of a safety-sensitive function.

#### Follow-Up Testing

The City reserves the right to impose discipline against Drivers who violate applicable FMCSA rules, subject to applicable personnel policies and collective bargaining agreements. Except as otherwise required by law, the City is not obligated to reinstate or re-qualify such Drivers.

Should the City reinstate a Driver following determination by a Substance Abuse Professional that the Driver needs assistance to resolve problems associated with alcohol use and/or use of controlled substance, the City will ensure that the Driver is subject to unannounced follow-up alcohol and/or controlled substance testing. The number and frequency of such follow-up testing will be directed by the Substance Abuse Professional and consist of at least (6) tests in the first twelve (12) months following the Driver's return to

duty. Follow-up testing will not exceed sixty (60) months from the date of the Driver's return to duty. Follow-up alcohol testing will be conducted only when the Driver is performing safety-sensitive functions, just before the Driver is to perform safety-sensitive functions, or just after the Driver has ceased performing safety-sensitive functions.

## **Collection and Testing Procedures**

### Alcohol Testing

Employees will be tested for alcohol just before, during, or immediately following performance of a safety-sensitive function. Screening tests for alcohol concentration will be performed utilizing a non-evidential screening device included by the National Highway Traffic Safety Administration on its conforming products list (e.g. , a saliva screening device) or an evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT) at a collection site. All confirmation tests will be conducted in a location that affords privacy to the Driver being tested, unless unusual circumstances (e.g. when it is essential to conduct a test outdoors at the scene of an accident) make it impracticable to provide such privacy.

If a breath test is being conducted, and a Driver does not provide a sufficient amount of breath to permit a valid breath test, the collector will instruct the Driver the proper way to provide sufficient amount of breath, and ask the Driver to attempt to provide a sufficient amount of breath a second time. If the Driver again attempts and fails to provide a sufficient amount of breath, the collector may provide another opportunity for the Driver to do so if the collector believes there is a strong likelihood that another opportunity could result in a sufficient amount of breath. The collector may then change to a saliva alcohol screening test, if the collector is qualified to provide such a test. If none of these procedures result in a sufficient amount of breath for an alcohol test, the Driver must obtain, within five days, a written evaluation from a licensed physician acceptable to the City who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen for testing. If the licensed physician concludes that a medical condition has, or with a high degree of probability could have, precluded the Driver from providing a sufficient specimen, the City will consider the test to be canceled. If the licensed physician cannot make such a determination, the City will consider the Driver to have refused to engage in the testing process, and will take appropriate disciplinary action under this policy.

If the collector is utilizing a saliva alcohol test, and the employee is unable to provide sufficient saliva to complete the test on a saliva screening device, the collector will conduct a new screening test using a new screening device. If the employee has not provided a sufficient amount of saliva to complete the new test, the collector will arrange to administer an alcohol test to the employee using a breath testing device.

### Controlled Substance Testing

The City will use a "split urine specimen" collection procedure for controlled substance testing. Collection of urine specimens for controlled substance testing will be conducted by an approved collector and will be conducted in a setting and manner calculated to ensure the Driver's privacy. The collection facility will be responsible for maintaining a proper chain of custody for delivery of the sample to a DHHS –certified laboratory for analysis. The laboratory will retain a sufficient portion of any positive sample for testing and store that portion in a scientifically-acceptable manner for a minimum of twelve (12) months.

If an employee fails to provide a sufficient amount of urine to permit a controlled substance test (45 milliliters of urine), the collector will discard the insufficient specimen, unless there is evidence of tampering with that specimen. The collector will urge the Driver to drink up to 40 ounces of fluid, distributed reasonably for a period of up to three hours, or until the Driver has provided a sufficient urine specimen, whichever occurs first. If the Driver has not provided a sufficient specimen within three hours of the first unsuccessful attempt, the collector will cease efforts to attempt to obtain a specimen. The Driver must then obtain, within five working days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen. If the licensed physician concludes that a medical condition has, or with a high degree of probability could have, precluded the Driver from providing a sufficient amount of urine, the City will consider the test to have been canceled. If a licensed physician cannot make such a determination, the City will consider the Driver to have engaged in a refusal to test, and will take appropriate disciplinary action under this policy.

### Chain of Custody and Confidentiality of Test Results



All controlled substance and alcohol testing will be performed in compliance with applicable law, including use of an appropriately-licensed urine testing laboratory which observes applicable control and custody procedures. The City will use procedures to test for the presence of alcohol and controlled substance in order to protect the Driver and the integrity of the testing process, safeguard the validity of the test results, and ensure that test results are attributed to the correct Driver. All reports of tests will be kept in the strictest confidence by the laboratory and provided only to the City and the City's MRO, unless the Driver provides written consent or disclosure is otherwise permitted or required by law.

#### Review by Medical Review Officer (MRO)

Results of controlled substance tests will be sent by the testing laboratory to an independent Medical Review Officer (MRO) selected by the City. The MRO is responsible for performing many functions, including reviewing and interpreting test results, reviewing the Driver's medical history to explain a positive test result, and notifying Drivers of confirmed positive test results. Drivers who have been tested for controlled substances must remain available following the test to be contacted by the MRO.

Prior to making a final decision to verify a positive test result, the MRO will give the individual an opportunity to discuss the test result. The MRO, or a staff person under the MRO's supervision, will contact the individual directly, on a confidential basis, to determine whether the individual wishes to discuss the test result. If the individual wishes to discuss the test result:

- A. The individual may be required to speak and/or meet with the MRO, who will review the individual's medical history, including any medical records provided;
- B. The individual will be afforded the opportunity to discuss the test results and to offer any additional or clarifying information which may explain the positive test result;
- C. If there is some new information which may affect the original finding, the MRO may request the laboratory to perform additional testing on the original specimen in order to further clarify the results; and
- D. A final determination will be made by the MRO that the test is either positive or negative, and the individual will be so advised.

If the MRO determines that there is a legitimate medical explanation for a confirmed positive test result, the MRO will report the test result to the City as negative. If the MRO determines that there is no legitimate medical explanation for a confirmed positive test result, the MRO will report the positive test result to the City in accordance with DOT regulations. Based on a review of laboratory reports, quality assurance and quality control data, and other controlled substance test results, the MRO may conclude that a particular confirmed positive controlled substance test result is scientifically insufficient for further action. Under these circumstances, the MRO will conclude that the test is negative for the presence of controlled substances or controlled substance metabolites in a Driver's system.

#### Notification of Test Results

1. Job Applicants: The City will notify an applicant of the results of a pre-employment controlled substance test if the applicant requests such test results within sixty (60) calendar days of being notified of the disposition of the applicant's employment application.
2. Employees: The City will notify a Driver of the results of random, reasonable, suspicion, and post-accident tests for controlled substance if the test results are verified positive, and will inform the Driver which controlled substance or substances were verified as positive. Results of alcohol tests will be immediately available from the collection agent.
3. Right to Confirmatory Retest: Within seventy-two (72) hours after receiving notice of a positive controlled substance test result, an applicant or Driver may request through the MRO a confirmatory retest of the Driver's split specimen. Action required by federal regulation as a result of a positive controlled substance (e.g. removal from safety-sensitive functions) will not be stayed during retesting of the split specimen. If the result of the confirmatory retest fails to reconfirm the presence of the controlled substance(s) or controlled substance metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO will cancel the test. Drivers will be reimbursed for any pay lost if taken out of service based upon a positive test result which is later negated by a confirmatory retest, and no adverse personnel action will be taken against the Driver or job applicant based on the original test.
4. Dilute Specimens

- a. Dilute Positives. If the City receives information that a Driver has provided a dilute positive specimen, the City will consider the employee to have tested positive under this policy.
- b. Dilute Negatives. If a Driver provides a dilute negative specimen, the City will direct the Driver to take a second screening test. The second screening test will be performed as soon as possible after the City receives word of the dilute negative specimen and will be performed at the Driver's expense.

### **Refusal to Submit a Test**

Drivers and applicants have the right to refuse to submit to an alcohol or controlled substance test. If a Driver or applicant refuses, no test will be conducted. However, such a refusal by a Driver will be considered a positive test result, will cause disqualification from performing safety sensitive functions, and will result in discipline pursuant to this policy. If an applicant refuses to submit to pre-employment testing, any conditional offer of employment will be withdrawn.

### **Consequences for Drivers engaging in Prohibited Conduct**

- A. Job Applicants. The City's conditional offer of employment will be withdrawn from any job applicant who refuses to be tested or tests positive for a controlled substance pursuant to this policy.
- B. Removal from Safety-Sensitive Function. Employees shall not be permitted to perform safety-sensitive functions; Federal Highway Administration (FHWA) rules require that in the event of an alcohol test result over .02 but less than 0.04, an employee shall not be permitted to perform safety-sensitive functions for at least 24 hours.
- C. Notification of Resources. The City shall advise employees of the resources available to them in evaluating and resolving problems associated with misuse of alcohol or use of controlled substances.
- D. Evaluation and Follow-up Testing. Employees shall be evaluated by a substance abuse professional as determined by the City. The substance abuse professional shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and/or controlled substance use. In addition, each employee identified as needing assistance in resolving problems associated with alcohol or controlled substances shall be evaluated by a substance abuse professional to determine that the employee has followed the rehabilitation program prescribed.
- E. Rehabilitation. Participation in a counseling or rehabilitation program will be at the employee's own expense or pursuant to coverage under the employee's benefit plan.
- F. Return-to-Duty. Before an employee returns to duty requiring performance of a safety-sensitive function he/she shall undergo a return-to-duty test with a result indicating a breath alcohol level of less than 0.02 if the conduct involved alcohol, or a controlled substance test with a verified negative result if the conduct involved controlled substance use. The employee shall also be subject to unannounced follow-up alcohol and controlled substance testing following the employee's return to work. This testing shall be as directed by the substance abuse professional and federal law.