

## *Chapter 10: DRUG-FREE WORKPLACE*

### **Purpose**

The City of Marshall (City) has a vital interest in maintaining safe, healthful, and efficient working conditions for employees, and recognizes that individuals who are impaired because of drugs and/or alcohol jeopardize the safety and health of other workers as well as themselves. The City does not intend to intrude into the private lives of its employees, but strongly believes that a drug- and alcohol-free workplace is in the best interest of employees and the public alike. Alcohol and drug abuse can cause unsatisfactory job performance, increased tardiness and absenteeism, increased accidents and workers' compensation claims, higher insurance rates, and an increase in theft of City property. The City of Marshall's Drug-Free Workplace policy has been established for the purpose of providing a safe workplace for all.

City employees and applicants required to hold a commercial driver's license by the United States Department of Transportation (DOT) for their job will be tested under the City's Drug and Alcohol Policy Testing for Commercial Drivers. All other employees and job applicants offered employment with the City must undergo testing as described by this policy.

This 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 fire department.

To ensure the policy is clearly communicated to all employees and applicants to whom offers of employment have been made, and to comply with state law, employees and applicants are required to review this policy and sign a policy acknowledgement form. A job applicant will also acknowledge on this form that he/she understands that passing the drug test is a requirement of the job.

### **10.1 DRUG AND ALCOHOL POLICY AND TESTING**

#### **Persons Subject to Testing and Circumstances Under Which Testing May Be Required**

Under this policy, the City may test any applicant to whom an offer of employment has been made and may test any employee for alcohol and/or drugs, including cannabis, controlled substance under any of the following circumstances, with a properly

accredited or licensed testing laboratory, in accordance with Minn. Stat. §181.953, subd. 1:

- a. Pre-Employment Testing: Every job applicant offered employment with the City receives the offer conditioned upon successful completion of a drug test, and/or an alcohol or cannabis test, if applicable, among other conditions. The City will not request or require a job applicant to undergo cannabis testing related to "lawful consumable products" pursuant to Minn. Stat. § 181.938, including alcohol, cannabis, lower-potency hemp edibles, and hemp-derived consumer products, except with respect to the categories of positions listed below in the definition of "Drug" or if otherwise required by state or federal law. If the job offer is withdrawn based on drug test results, the City will inform the applicant of the reasons for the withdrawal. A failure of the drug test, a refusal to take the test, or failure to meet other conditions of the offer will result in a withdrawal of the offer of employment, even if the applicant's provisional employment has begun. A negative or positive dilute test result (following a second collection), which has been confirmed, will also result in immediate withdrawal of an offer of employment to an applicant. Additionally, the City may terminate or withdraw an offer based on an adulterated sample.

Temporary and seasonal employees are not subject to pre-employment testing, with the exception of those designated by the hiring department as safety-sensitive positions.

- b. Reasonable Suspicion Testing: Consistent with Minn. Stat. § 181.951, subd. 3, employees will be subject to alcohol and or drug controlled substance testing, including cannabis testing, when reasonable suspicion exists to believe that the employee:
- Is under the influence of alcohol, or a controlled substance, drugs, or cannabis; or
  - Has violated written work rules prohibiting the use, possession, sale or transfer of drugs, or cannabis, or alcohol while working, while on City property, or while operating City vehicles, machinery or any other type of equipment; or
  - Has sustained a personal injury as defined in Minn. Stat. § 176.011, subd. 16 or has caused another employee to sustain an injury; or;
  - Has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

Reasonable suspicion may be based upon, but is not limited to, facts regarding appearance, behavior, speech, breath, odor, possession, proximity to or use of alcohol, or a controlled substance, drugs or cannabis or containers or paraphernalia, poor safety record, excessive absenteeism, impairment of job performance, or any other circumstances that would cause a reasonable employer to believe that a violation of the City's policies concerning alcohol or drugs may have occurred. These observations will be reflected in writing on a Reasonable Suspicion Record of Observed Behavior form (see Human Resources for the form).

For off-site collection, employees will be driven to the employer-approved medical facility by their supervisor or a designee. For an on-site collection service, the employee will remain on site and be observed by the supervisor or designee. The medical facility or on-site collection service will take the urine or blood sample and will forward the sample to an approved laboratory for testing.

Pursuant to the requirements of the Drug-Free Workplace Act of 1988, all City employees, as a condition of continued employment, will agree to abide by the terms of this policy and must notify Human Resources of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction. If required by law or government contract, the City will notify the appropriate federal agency of such conviction within 10 days of receiving notice from the employee.

- c. Treatment Program Testing: In accordance with Minn. Stat. § 181.951, subd. 6., the City may request or require an employee to undergo drug, ~~and alcohol,~~ or cannabis 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 an employee benefit plan. In such a case, the employee may be requested or required to undergo drug, ~~or alcohol,~~ or cannabis 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.
- d. Routine Physical Examination Testing: The City may request or require an employee to undergo drug and/or alcohol testing, but not cannabis testing, except for the categories of positions listed above for which cannabis is considered a drug or unless otherwise required by state or federal law as part of a routine physical examination. The City, in accordance with Minn. Stat. § 181.951, subd. 3, will request or require this type of testing no more than once annually, and the employee will be provided with at least two weeks' written notice that the test will be required as part of the physical examination.
- e. Random Testing: In accordance with Minn. Stat. § 181.951, subd. 4, the City may require an employee to submit to random alcohol, drug, and cannabis testing if the employee is in a safety-sensitive position.

#### **Right of Refusal**

Employees and job applicants have the right to refuse to submit to an alcohol, ~~or drug,~~ or cannabis test under this policy. However, such a refusal will subject an employee to immediate termination. If an applicant refuses to submit to applicant testing, any conditional offer of employment will be withdrawn.

Any intentional act or omission by the employee or applicant that prevents the completion of the testing process constitutes a refusal to test.

An applicant or employee who substitutes, or attempts to substitute, or alters, or attempts to alter a testing sample is considered to have refused to take an alcohol drug, or cannabis ~~and/or alcohol~~ test. In such a case, the employee is subject to immediate termination of employment, and in the case of an applicant, the job offer will be immediately withdrawn.

### **Refusal on Religious Grounds**

An employee or job applicant who, on religious grounds, refuses to undergo alcohol ~~and/or~~ drug ~~or alcohol~~ testing, including cannabis testing, of a blood sample will not be considered to have refused testing, unless the employee or job applicant also refuses to undergo alcohol drug, or cannabis ~~or alcohol~~ testing of a urine sample.

### **Cost of Required Testing**

The City will pay for the cost of all drug, ~~and alcohol~~, or cannabis testing requested or required of all job applicants and employees, with the exception of confirmatory retests. Job applicants and employees are responsible for paying for all costs associated with any requested confirmatory retests.

### **Prohibited Conduct**

#### **a. Use and Possession of Alcohol or Drug(s) in the Workplace**

Employees are prohibited from the use, possession, transfer, transportation, manufacture, distribution, sale, purchase, solicitation to sell or purchase, or dispensation of alcohol, drugs, including cannabis, or drug paraphernalia while on duty; is on City premises; while operating any City vehicle, machinery, or equipment; or when performing any City business, except (1) pursuant to a valid medical prescription used as properly instructed; (2) the use of over-the-counter ~~controlled substance~~ drugs used as intended by the manufacturer; or (3) when necessary for approved law enforcement activity.

Besides having a zero-tolerance policy for the use or possession of alcohol, illegal drugs, or misused prescription drugs on the worksite, we also prohibit the use, possession of, impairment by any cannabis or medical cannabis products (e.g., hash oils, edibles or beverages containing cannabinoids, or pills) on the worksite by a person working as an employee at the City or while "on call" and subject to return to work. Having a medical marijuana card, patient registry number, and/or cannabis prescription from a physician does not allow anyone to use, possess, or be impaired by that drug while working for the City. Likewise, the fact that cannabis may be lawfully purchased and consumed does not permit anyone to use, possess, or be impaired by them while working for the City. The federal government still classifies cannabis as an illegal drug, even though some states, including Minnesota, have decriminalized its possession and use. There is no acceptable concentration of marijuana metabolites in the blood or urine of an employee who operates our equipment or vehicles or who is on one of our worksites. Applicants and employees are still subject to being tested under our alcohol ~~and~~ drug, including cannabis, ~~and alcohol~~ testing policy.

Employees are subject to being disciplined, suspended, or terminated after testing positive for cannabis if the employee used, possessed, or was impaired by cannabis, including medical cannabis, while on the premises of the place of employment or during the hours of employment.

b. Alcohol or Drug Impairment

Employees are prohibited from being under the influence of alcohol or drugs, including cannabis, or having a detectable amount of an illegal drug in the blood or urine when reporting for work; while on duty; while on the City's premises; while operating any City vehicle, machinery, or equipment; or when performing any City business, except (1) pursuant to a valid medical prescription used as properly instructed; or (2) the use of over-the-counter controlled-substancedrug used as intended by the manufacturer.

c. Driving While Impaired

A conviction of driving while impaired in a City-owned vehicle at any time during business or non-business hours, or in an employee-owned vehicle while conducting City business, may result in discipline, up to and including discharge.

**Criminal Controlled SubstanceDrug Convictions**

Any employee convicted of any criminal drug statute must notify his or her supervisor and the City's Human Resources Department in writing of such conviction no later than five days after such conviction. Within 30 days after receiving notice from an employee of a controlled-substancedrug-related conviction, the City will take appropriate personnel action against the employee up to and including discharge, or require the employee to satisfactorily participate in a controlled-substancedrug abuse assistance or rehabilitation program as an alternative to termination. In the event notice is not provided to the supervisor and the employee is deemed to be incapable of working safely, the employee will not be permitted to work and will be subject to disciplinary action, including dismissal from employment. In accordance with the Federal Drug-Free Workplace Act of 1988, if the City is receiving federal grants or contracts of over \$25,000, the City will notify the appropriate federal agency of such conviction within 10 days of receiving notice from the employee.

**Failure to Disclose Lawful Controlled SubstanceDrug**

Employees taking a lawful controlled-substancedrug, including prescription and over-the-counter controlled-substancedrugs, or cannabis, which may impair their ability to perform their job responsibilities or pose a safety risk to themselves or others, must advise their supervisor of this before beginning work. It is the employee's responsibility to seek out written information from his/her physician or pharmacist regarding medication and any job performance impairment and relay that information to his/her supervisor. In the event of such a disclosure, the employee will not be authorized to perform safety-sensitive functions.

**Review and Notification of Test Results**

- a. **Notification of Negative Test Results:** In the case of job applicants and in accordance with Minn. Stat. § 181.953, Human Resources will notify a job applicant of a negative drug result within three days of receipt of result by the City, and the hiring process will resume. In accordance with Minn. Stat. § 181.953, subd. 3, a laboratory must report results to the City within three working days of the confirmatory test result. A “Negative Test Results Notification” form will be sent to the job applicant, and the job applicant may request a copy of the test result report from Human Resources.

In the case of current employees and in accordance with Minn. Stat. § 181.953, Human Resources will notify the employee of a negative drug and/or alcohol result within three days of receipt of result by the City. A “Negative Test Results Notification” form will be sent to the employee, and he or she may request a copy of the test result report from Human Resources.

- b. **Notification of Positive Test Results:** In the event of a confirmed positive blood or urine alcohol and/or drug, or cannabis, test result, the City will notify the employee of a positive drug and/or alcohol result within three days of receipt of the result. Human Resources will send to the employee or job applicant a “Positive Test Results Notification” letter containing further instructions. The employee or job applicant may contact Human Resources to request a copy of the test result report if desired. In accordance with Minn. Stat. § 181.953, subd. 3, a laboratory must report results to the City within three working days of the confirmatory test result.

#### **Right to Provide Information after Receiving Test Results**

Within three working days after notice of a positive ~~controlled substance~~drug, or alcohol, or cannabis test result on a confirmatory test, the employee or job applicant may submit information to the City to explain the positive result. In accordance with Minn. Stat. § 181.953, subd. 10, if an employee submits information either before a test or within three working days after a positive test result that explains the positive test result, such as medications the employee is taking, the City will not take an adverse employment action based on that information unless the employee has already been under an affirmative duty to provide the information before, upon, or after hire.

#### **Right to Confirmatory Retest**

A job applicant or employee may request a confirmatory retest of the original sample at the job applicant’s or employee’s own expense after notice of a positive test result on a confirmatory test. Within five working days after notice of the confirmatory test result, the job applicant or employee must notify the City in writing of the job applicant’s or employee’s intention to obtain a confirmatory retest. Within three working days after receipt of the notice, the City will notify the original testing laboratory that the job applicant or employee has requested the laboratory to conduct the confirmatory retest or transfer the sample to another qualified laboratory licensed to conduct the confirmatory retest. The original testing laboratory will ensure the control and custody procedures are followed during transfer of the sample to the other laboratory. In accordance with Minn. Stat. § 181.953, subd. 3, the laboratory is required to maintain all

samples testing positive for a period of six months. The confirmatory retest will use the same ~~controlled substance drug~~ and/or alcohol threshold detection levels as used in the original confirmatory test.

In the case of job applicants, if the confirmatory retest does not confirm the original positive test result, the City's job offer will be reinstated, and the City will reimburse the job applicant for the actual cost of the confirmatory retest. In the case of employees, if the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test will be taken against the employee, the employee will be reinstated with any lost wages or salary for time lost pending the outcome of the confirmatory retest result, and the City will reimburse the employee for the actual cost of the confirmatory retest.

#### **Access to Reports**

In accordance with Minn. Stat. § 181.953, subd. 10, an employee will have access to information contained in his or her personnel file relating to positive test results and to the testing process, including all information gathered as part of that process.

#### **Dilute Specimens**

A negative or positive dilute test result (following a second collection) which has been confirmed will subject an employee to immediate termination.

#### **Consequences for Employees 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 illegal drugs as verified by a confirmatory test. The City's conditional offer of employment will also be withdrawn from any job applicant who tampers with their sample; including but not limited to presenting a temperature out of range sample, and/or a sample from another donor.
- b. Employees:
  - No Adverse Action without Confirmatory Test. The City will not discharge, discipline, discriminate against, or request or require rehabilitation of an employee based on a positive test result from an initial screening test that has not been verified by a confirmatory test.
  - Suspension Pending Test Result. The City may temporarily suspend a tested employee with or without pay, or transfer that employee to another position at the same rate of pay pending the outcome of the requested 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. The employee will be asked to return home and will be provided appropriate arrangements for return transportation to his or her residence. In accordance with Minn. Stat. § 181.953, subd. 10, an employee who has been suspended without pay will be reinstated with back pay if the outcome of the requested confirmatory retest is negative.

## Discipline and Discharge

Confirmatory Positive Test Result: The City will not discharge an employee for a first confirmatory positive test unless the following conditions have been met:

- The City has first given the employee 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 physician trained in the diagnosis and treatment of chemical dependency. Participation by the employee in any recommended substance abuse treatment program will be at the employee's own expense or pursuant to the coverage under an employee benefit plan. The certified chemical use counselor or physician trained in the diagnoses and treatment of chemical dependency will determine if the employee has followed the rehabilitation program as prescribed; and
- 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 by a refusal to test or positive test result on a confirmatory test after completion of the program.

### Other Misconduct

Nothing in this policy limits the right of the City to discipline or dismiss an employee on grounds other than a positive confirmatory test result, including conviction of any criminal drug statute for a violation occurring in the workplace or violation of other City personnel policies.

### Emergency Call Back to Work Provisions

If an employee is called out for a City emergency and he or she reports to work and is suspected of being under the influence of alcohol, drugs, and/or alcohol/cannabis, he or she will not be subject to the testing procedures of this policy, but ~~may be subject to discipline and~~ will not be allowed to work. Appropriate arrangements for return transportation to the employee's residence will be made. It is the sole responsibility of the employee who is under the influence of alcohol and/or drugs, including cannabis, and who is called out for a City emergency, to notify his or her supervisor of this information and advise if he or she is unable to respond to the emergency call back.

### Non-Discrimination

The City of Marshall policy on work-related substance abuse is non-discriminatory in intent and application; however, in accordance with Minn. Stat., Ch. 363, disability does not include conditions resulting from alcohol or other drug or cannabis abuse which prevents an employee from performing the essential functions of the job in question or constitutes a direct threat to property of the safety of individuals.



Furthermore, the City will not retaliate against any employee for asserting his or her rights under this policy.

### **City's Employee Assistance Program**

The City has in place a formal employee assistance program (EAP) to assist employees in addressing serious personal or work-related problems at any time. The City's EAP provides confidential, cost-free, short-term counseling to eligible employees. Eligible employees include: full-time employees, firefighters, and part-time police officers. Employees who may have an alcohol, cannabis, or other drug abuse problem are encouraged to seek assistance before a problem affects their employment status. Employee assistance program services are available by calling 866-451-5465 ~~contacting Morneau Shepell at 866-451-5465~~ or online at [www.niseap.com](http://www.niseap.com).

Formatted: Highlight

### **Policy Contact for Additional Information**

If you have any questions about this policy or the City's drug, ~~and~~ alcohol, and cannabis testing procedures, you may contact your immediate supervisor or Human Resources to obtain additional information.

By this policy, the City of Marshall has established a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace and its policy of maintaining a drug-free workplace. Each City employee will receive a copy of this policy and will be required to read it.

### **Definitions**

Alcohol: Means the intoxicating agent in beverage alcohol or any low molecular weight alcohols such as ethyl, methyl, or isopropyl alcohol. The term includes but is not limited to beer, wine, spirits, and medications such as cough syrup that contain alcohol.

Alcohol use or usage: Means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Applicant: Means a person applying for a job with the City.

Cannabis: Means cannabis and its metabolites, including cannabis flower, cannabis products, lower-potency hemp edibles, and hemp-derived consumer products.

Cannabis testing: Means analysis of a body component sample according to the standards established under one of the programs listed in Minn. Stat. 181.953, subd. 1, for the purpose of measuring their presence or absence of cannabis in the sample tested.

City: Means the City of Marshall.

City premises: Means, but is not limited to, all City job sites and work areas. For the purposes of this policy, City premises also includes any other locations or modes of

transportation to and from those locations while in the course and scope of employment of the City.

City vehicle: Means any vehicle which employees are authorized to use solely for City business when used at any time; or any vehicle owned or leased by the City when used for City business.

Collection site: Means a place designated by the City where job applicants and employees present themselves for the purpose of providing a specimen of their breath, urine, and/or blood to be analyzed for the presence of ~~controlled substance~~drugs and alcohol.

Confirmatory test: Means a ~~controlled substance~~drug or alcohol test on a sample to substantiate the results of a prior ~~controlled substance~~drug or alcohol test on the same sample, and that uses a method of analysis allowed under one of the programs listed in Minn. Stat. § 181.953, subd. 1.

Drug: ~~Includes any “controlled substance” as defined in Minn. Stat. § 152.01, subd. 4., and also includes all cannabinoids, including those that are lawfully available for public consumption that do not otherwise qualify as being a “controlled substance” as defined in Minn. Stat. 152.01, subd. 4.~~ Cannabis and its metabolites are considered a “drug” for positions in the following categories, regardless of the kind of testing involved: safety sensitive positions; peace officer positions; firefighter positions; positions requiring face-to-face care, training, education, supervision, counseling or medical assistance to children, vulnerable adults or patients receiving treatment, examination or emergency care or a medical, psychiatric, or mental condition; positions requiring a commercial driver’s license or requiring the employee to operate a motor vehicle for which state or federal law requires drug or alcohol testing; positions funded by a federal grant; or other positions for which state or federal law requires testing of a job applicant or employee.

Drug and/or alcohol testing, ~~drug or alcohol testing,~~ and drug and/or alcohol test: Mean analysis of a body component sample according to the standards established under one of the programs listed in Minn. Stat. § 181.953, subd.1, for the purpose of measuring their presence or absence of drugs, alcohol, or their metabolites in the sample tested. “Drug and alcohol testing”, “drug or alcohol testing”, and “drug or alcohol test” do not include cannabis or cannabis testing, unless stated otherwise.

Drug paraphernalia: Has the meaning set forth in Minn. Stat. § 152.01, subd. 18.

Employee: Means a person who performs services for compensation for the City and includes independent contractors except where specifically noted in this policy.

Initial screening test: Means a drug and/or alcohol test that uses a method of analysis under one of the programs listed in Minn. Stat. § 181.953, subd. 1.

**Job applicant:** Means a person who applies to become an employee of the City, and includes a person who has received a job offer made contingent on the person passing alcohol and/or drug, including cannabis, testing.

**Positive test result:** Means a finding of the presence of alcohol, ~~illegal~~ drugs, cannabis, or their metabolites that exceeds the values listed in the table below. Minimum threshold detection levels are subject to change as determined in the City's sole discretion.

Drug Panel	Initial Level	Confirmation Level
AMPHETAMINES	1000 ng/mL	500 ng/mL
BARBITURATES	300 ng/mL	200 ng/mL
BENZODIAZEPINES	300 ng/mL	300 ng/mL
COCAINE METABOLITES	300 ng/mL	150 ng/mL
MARIJUANA METABOLITES	50 ng/mL	15 ng/mL
METHADONE	300 ng/mL	200 ng/mL
METHAQUALONE	300 ng/mL	300 ng/mL
OPIATES	2000 ng/mL	2000 ng/mL
PHENCYCLIDINE	25 ng/mL	25 ng/mL
PROPOXYPHENE	300 ng/mL	200 ng/mL

**Random selection basis:** Means a mechanism for selection of employees that (1) results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected, and (2) does not give an employer discretion to waive the selection of any employee selected under the mechanism.

**Reasonable suspicion:** Means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.

**Safety-sensitive position:** Means a job, including any supervisory or management position, in which an impairment caused by drug or alcohol, and/or cannabis usage would threaten the health or safety of any person.

**Under the influence:** Means (1) the employee tests positive for alcohol, ~~or~~ drugs, or cannabis, or (2) the employee's actions, appearance, speech, and/or bodily odors reasonably cause the City to conclude that the employee is impaired because of ~~illegal~~ drug use or alcohol use.

## 10.2 Drug and Alcohol Policy and Testing for Commercial Drivers

### Purpose and Objectives

This policy implements the drug and alcohol testing requirements of the Federal Motor Carrier Safety Administration (FMCSA), an agency of the U.S. Department of Transportation (DOT). It is in addition to the Drug and Alcohol Policy (Policy 10.1 above) which is established under Minnesota state law and the Drug Free Workplace Act of 1988.

The City of Marshall (City) has a vital interest in maintaining safe, healthful, and efficient working conditions for employees, and recognizes that individuals who are impaired because of drugs and/or alcohol jeopardize the safety and health of other workers as well as themselves. The City is concerned about providing a safe workplace for its employees, and while the City does not intend to intrude into the private lives of its employees, it is the goal to provide a work environment conducive to maximum safety and optimum work standards. Alcohol and drug abuse can cause unsatisfactory job performance, increased tardiness and absenteeism, increased accidents and workers' compensation claims, higher insurance rates, and an increase in theft of City property. The use, possession, manufacture, sale, transportation, or other distribution of ~~controlled substance~~ or ~~controlled substance~~ paraphernalia and the unauthorized use, possession transportation, sale, or other distribution of alcohol is contrary to this policy and jeopardizes public safety.

In response to regulations issued by United States Department of Transportation (DOT), the City has adopted this Policy on Drugs and Alcohol for employees who hold a commercial driver's license (CDL) to perform their duties. The City also has a separate Policy on Drug and Alcohol Testing for employees not covered by DOT regulations.

Given the significant dangers of alcohol and ~~controlled substance~~ use, each applicant and driver must abide by this policy as a term and condition of hiring and continued employment. Moreover, federal law requires the City to implement such a policy.

To ensure this policy is clearly communicated to all drivers and applicants, and in order to comply with applicable federal law, drivers and applicants are required to review this policy and sign a *Certificate of Receipt*.

Because changes in applicable law and the City's practices and procedures may occur from time to time, this policy may change in the future, and nothing in this policy is intended to be a contract, promise, or guarantee the City will follow any particular course of action, disciplinary, rehabilitative or otherwise, except as required by law. This policy does not in any way affect or change the status of any at-will employee.

Any revisions to the Federal Omnibus Transportation Employee Testing Act and/or Federal Motor Carrier Safety Administration (FMCSA) regulations will take precedent over this policy to the extent the policy has not incorporated those revisions.

### **Persons Subject to Testing & Types of Tests**

All employees, except those specifically exempted below, are subject to testing whose job duties include performing “safety-sensitive duties” on City vehicles that:

1. Have a gross combination weight rating or gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater; or
2. Have a gross vehicle weight rating or gross vehicle weight of 26,001 or more pounds whichever is greater; or
3. Are designed to transport 16 or more passengers, including the driver; or
4. Are of any size and are used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Employees exempted: The Federal Highway Administration (FHWA) has granted states the option of waiving CDL requirements for authorized emergency vehicles. The state of Minnesota has exercised the option not to require CDLs. Therefore, 49 CFR Part 382 is not applicable to City Firefighters or Chemical Assessment Team (CAT) employees. The requirements of Policy 10.1 apply to employees in these job classes.

The following functions are considered safety-sensitive:

- all time waiting to be dispatched to drive a commercial motor vehicle
- all time inspecting, servicing, or conditioning a commercial motor vehicle
- all time driving at the controls of the commercial motor vehicle
- all other time in or upon a commercial motor vehicle (except time spent resting in a sleeper berth)
- all time loading or unloading a commercial motor vehicle, attending the same, giving or receiving receipts for shipments being loaded or unloaded, or remaining in readiness to operate the vehicle
- all time repairing, obtaining assistance, or attending to a disabled commercial motor vehicle.

### **Types of Testing**

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

- a. Pre-Employment Testing: All applicants, including current employees seeking a transfer, applying for a position where duties include performing safety-sensitive duties described above, will be required to take a drug test 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~~ drug test result from the Medical Review Officer (MRO) indicating a verified negative test result. In addition to pre-employment ~~controlled-substance~~ drug testing, applicants will be required to authorize, in writing, former employers to release alcohol test results of .04 or greater, positive ~~controlled-substance~~ drug test results, refusals to test, other violations of drug and alcohol testing regulations, and completion of return to duty requirements within the preceding three years.

The City will contact the candidate's DOT regulated previous and current employers within the last three years for drug and alcohol test results, as referenced above, and review the testing history if feasible before the employee first performs safety-sensitive functions for the City. Beginning in 2020, ~~the City will also conduct a limited query of the Federal Motor Carrier Safety Administration's Clearinghouse for all candidates~~ an applicant must provide consent to the City, and successfully pass a full query of the Federal Motor Carrier Safety Administration's Clearinghouse. In addition, at least once a year, the City will conduct a limited query of the Clearinghouse for each currently employed CDL driver. If the limited query reveals that the Clearinghouse has information about resolved or unresolved drug and alcohol program violations by a candidate or current employee, he or she will be asked to provide electronic consent to a full query of the Clearinghouse (unless he or she has previously provided electronic consent). In the event a full query of the Clearinghouse reveals unresolved violation information for a candidate or current employee, the driver will not be permitted to perform safety-sensitive functions, including the operation of a Commercial Motor Vehicle and, in the case of a candidate, may have their conditional offer of employment rescinded or, in the case of a current employee, may be subject to discipline.

- b. Post-Accident Testing: As soon as practicable following an accident involving a commercial motor vehicle operating on a public road, the City will test each surviving driver for ~~controlled-substance~~ drugs and alcohol when the following occurs:
- The accident involves a fatality, or
  - The driver receives a citation for a moving traffic violation from the accident and an injury is treated away from the accident scene, or
  - The driver receives a citation for a moving traffic violation from the accident and a vehicle is required to be towed from the accident scene.

The following chart summarizes when DOT post-accident testing needs to be conducted:

Type of accident involved	Citation issued to the DOT covered CDL driver?	Test must be performed by the City
i. Human fatality	YES	YES
	NO	YES
ii. Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
iii. Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

A driver subject to post-accident testing must remain readily available or the driver will be deemed to have refused to submit to testing. This requirement to remain ready for testing does not preclude a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary medical care.

- c. Post – Accident ~~Controlled Substance~~Drug Testing: Drivers are required to submit a urine sample for post-accident ~~controlled substance~~drug testing as soon as possible. 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.
- d. Post- Accident Alcohol Testing: Drivers are required to submit to post-accident alcohol testing as soon as possible. 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 eight hours have elapsed since the accident and the driver has not submitted to an alcohol test, 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.

The City may accept the results of a blood or breath test in place of an alcohol test and urine test for the use of ~~controlled substance~~drugs if:

- The tests are conducted by federal, state, or local officials having independent authority for the test, and
- The tests conform to applicable federal, state, or local testing requirements, and
- The test results can be obtained by the City.

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, providing the name, badge number, and telephone number of the law enforcement officer who conducted the test.

- e. Random Testing: Every driver will be subject to unannounced 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 and report to the designated test site immediately. It is mathematically possible drivers may be selected ~~be picked~~ and tested more than once, and others not at all.

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

Beginning ~~2019~~2020, federal law requires the City to test at a rate of at least ~~twenty-five~~ fifty percent (25%) 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.

- f. Reasonable Suspicion Testing: When a supervisor has reasonable suspicion to believe a driver has engaged in conduct prohibited by federal law or this policy, the City will require the driver to submit to an alcohol and/or ~~controlled substance~~ test.

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." 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 leading to an alcohol or ~~controlled substance~~ test, will be reflected in writing on the Reasonable Suspicion Record of Observed Behavior form (see Human Resources for the form) and signed by the supervisor who made the observations. The record will be retained by the City Human Resources department. The person who makes the determination that reasonable suspicion exists to conduct testing, will not be the person conducting the testing, which shall instead be conducted by another qualified person.

Alcohol testing is authorized only if the observations are made during, just before, or just after the driver has ceased performing such functions. 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.

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.

- g. Return-to-Duty Testing: The City reserves the right to impose discipline against drivers who violate applicable FMCSA or DOT rules or this policy, subject to applicable personnel policy and collective bargaining agreements. Except as otherwise required by law, the City is not obligated to reinstate or requalify such drivers for a first positive test result.

Should the City consider reinstatement of a DOT covered driver, the driver must undergo a Substance Abuse Professional (SAP) evaluation and participate in any prescribed education/treatment, and successfully complete return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 and/or or a ~~controlled substance~~ test with a verified negative result, before the driver returns to duty requiring the performance of a safety-sensitive function. The SAP determines if the driver has completed the education/treatment as prescribed.

The employee is responsible for paying for all costs associated with the return-to-duty test. The ~~controlled substance~~ test will be conducted under direct observation.

- h. Follow-Up Testing: The City reserves the right to impose discipline against drivers who violate applicable FMCSA or DOT rules or this policy, subject to applicable personnel policies and collective bargaining agreements. Except as otherwise required by law, the City is not obligated to reinstate or requalify such drivers.

Should the City reinstate a driver following a determination by a Substance Abuse Professional (SAP) that the driver is in need of assistance in resolving problems associated with alcohol use and/or use of ~~controlled substances~~, 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 SAP and will consist of at least six (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. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the SAP determines such test is no longer necessary. The employee is responsible for paying for all costs associated with follow-up tests.

Follow-up alcohol testing will be conducted only when the driver is performing safety-sensitive functions, or immediately prior to or after performing safety-sensitive functions.

### **Cost of Required Testing**

The City will pay for the cost of pre-employment, post-accident, random, and reasonable suspicion ~~controlled substance~~drug and alcohol testing requested or required of all job applicants and employees. The driver must pay for the cost of all requested confirmatory re-tests, return-to-duty, and follow-up testing.

### **~~Required Prior Controlled Substance and Alcohol Checks for Applicants~~**

~~The City will conduct prior drug and alcohol checks of applicants for employment to drive a commercial motor vehicle. Applicants must execute a consent form authorizing the City to obtain the required information. The City will obtain (pursuant to the applicant's written consent) information on the applicant's alcohol test with a concentration result of 0.04 or greater, positive controlled substance test results, and refusals to be tested within the preceding three (3) years which are maintained by the applicant's previous employers. The City will obtain all information concerning the applicant which is maintained by the applicant's previous employers within the preceding three (3) years pursuant to DOT and FMCSA controlled substance and alcohol testing regulations. The City will review such records, if feasible, prior to the first time a driver performs safety-sensitive functions.~~

### **Prohibited Conduct**

The following conduct is explicitly prohibited by applicable DOT and FMCSA regulations and therefore constitutes violation of City policy.

- a. Under the influence of alcohol when reporting for duty or while on duty  
No driver may report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. Drivers reporting for duty or remaining on duty to perform safety-sensitive functions while having an alcohol concentration of 0.02, but less than 0.04, will be removed from duty for 24 hours, escorted home and placed on vacation leave, compensatory time, or other appropriate leave of absence for hours missed from work.
- b. On-Duty Use of Alcohol  
No driver may use alcohol while performing safety-sensitive functions.
- c. Pre-Duty Use of Alcohol

No driver may perform safety-sensitive functions within four (4) hours after using alcohol. If an employee has had alcohol within four hours, they are to notify their supervisors before performing any safety-sensitive functions.

d. Alcohol Use Following an Accident

No driver required to take a post-accident alcohol test may use alcohol for eight (8) hours following the accident, or until the driver undergoes a post-accident alcohol test, whichever occurs first.

e. Refusal to Submit to a Required Alcohol or ~~Controlled Substance~~ Drug Test

No applicant or driver may refuse to submit to pre-employment, post-accident, random, reasonable suspicion or follow-up alcohol or ~~controlled substance~~ drug testing.

In the event an applicant or driver does in fact refuse to submit to required alcohol or ~~controlled substance~~ drug testing, no test will be conducted. Refusal by a driver to submit to ~~controlled substance~~ drug or alcohol testing will be considered a positive test result, will cause disqualification from performing safety-sensitive functions, and may appear on the driver's permanent record. Drivers who refuse to submit to testing will be subject to discipline, up to and including termination. In accordance with the Federal Motor Carrier Safety Administration's (FMCSA) Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse reporting requirements, beginning January 6, 2020, the City will report a driver's refusal to submit to a DOT test for drug or alcohol use to the Clearinghouse within three business days. If an applicant refuses to submit to pre-employment ~~controlled substance~~ drug testing, any applicable conditional offer will be withdrawn.

For purposes of this section, a driver is considered to have refused to submit to an alcohol or ~~controlled substance~~ drug test when the driver:

- Fails to provide adequate breath for alcohol testing without a valid medical explanation after he or she has received notice of the requirement for breath testing.
- Fails to provide adequate urine for ~~controlled substance~~ drug testing without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement for urine testing.
- Fails to report for testing within a reasonable period of time, as determined by the City.
- Fails to remain at a testing site until testing is complete.
- In the case of directly observed or monitored collection, fails to permit observation or monitoring.
- Fails or declines to take a second test as required by the City and/or collector.
- Fails to undergo a medical examination as directed by the City pursuant to federal law.
- Refuses to complete and sign the alcohol testing form, to provide a breath or saliva sample, to provide an adequate amount of breath, or otherwise cooperate in any way that prevents the completion of the testing process.

- Engages in conduct that clearly obstructs the test process.

f. Altering or attempting to alter a urine sample or breath test

A driver altering or attempting to alter a urine sample or ~~controlled substance drug~~ test, or substituting or attempting to substitute a urine sample, will be subject to providing a specimen under direct observation. Both specimens will be subject to laboratory testing. In such case, the employee may be subject to immediate termination of employment and any job offer made to an applicant will be immediately withdrawn.

g. Controlled Substance Drug Use

No driver may report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any ~~controlled substance drug~~, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the driver in writing the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. Drivers must forward this information regarding therapeutic ~~controlled substance drug~~ use to the City immediately after receiving any such advice.

Having a medical marijuana card and/or a cannabis prescription from a physician does not allow anyone to use or possess that drug in the City's workplace. The federal government still classifies cannabis as an illegal drug. There is no acceptable concentration of marijuana metabolites in the urine or blood of an employee who performs safety-sensitive duties for the City. Employees are still subject to being tested under our policies, as well as for being disciplined, suspended or terminated after testing positive for cannabis while at work.

h. Controlled Substance Drug Testing

No driver may report for duty, remain on-duty or perform a safety-sensitive function if the driver tests positive for ~~controlled substance drug~~.

- i. Additional Prohibited Conduct: In addition to the conduct prohibited by applicable DOT and FMCSA regulations, the City also maintains other applicable policies regarding drug and alcohol that are applicable to all employees. For specifics regarding those requirements, refer to the City's Prohibited Conduct within Policy 10.1.

### **Collection and Testing Procedures**

Drivers are required to report immediately upon notification to the collection site. For random tests conducted off site, employees may use a City vehicle to drive to the collection site. Drivers will be expected to provide a photo ID card for identification to the collection staff. All drivers will be expected to cooperate with collection site personnel request to remove any unnecessary outer garments such as coats, sweaters or jackets and will be required to empty their pockets. Collection personnel will complete a Federal Custody and Control Form (CCF) which drivers providing a sample will sign as well.

a. Alcohol Testing

Employees will be tested for alcohol just before, during, or immediately following performance of a safety-sensitive function. If a driver is also taking a DOT controlled substance drug test, ~~generally speaking,~~ the alcohol test is completed before the urine collection process begins. 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. An alcohol test usually takes approximately 15 minutes if the result is negative. If a driver's first attempt is positive (with an alcohol concentration of .02 or greater), the driver will be asked to wait at least 15 minutes and then be tested again. The driver may not eat, drink or place anything in his/her mouth (e.g., cigarette, chewing gum) during this time. 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. Any results less than 0.02 alcohol concentration is considered a "negative" test result.

If the driver attempts and fails to provide an adequate amount of breath, he/she will be referred to a physician to determine if the driver's inability to provide a specimen is genuine or constitutes a refusal to test. Alcohol test results are reported directly to the Employer-City by the collection site staff.

b. Controlled Substance Drug Testing

The City will use a "split urine specimen" collection procedure for controlled substance drug testing. Collection of urine specimens for controlled substance drug testing will be conducted by an approved collector and will be conducted in a setting and manner to ensure the driver's privacy.

Controlled substance Drug testing generally takes about 15 minutes. At the collection site, the driver will be given a sealed container and must provide at least 45 ml of urine for testing. Once the sample is provided the collection personnel will check the temperature and color and look for signs of contamination. The urine is then split into two separate specimen containers (A, or "primary," and B, or "split") with identifying labels and security seals affixed to both. 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 365-day period.

If an employee fails to provide a sufficient amount of urine to permit a controlled substance drug 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 over 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 calendar 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 the driver has a medical condition, 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.

The primary specimen is used for the first test. If the test is negative, it is reported to the MRO who then reports the result, following a review of the CCF Form for compliance, to the City. If the initial result is positive or non-negative, a "confirmatory retest" will be conducted on the primary specimen. If the confirmatory re-test is also positive, the result will be sent to the MRO. The MRO will contact the driver to verify the positive result. If the MRO is unable to reach the driver directly, the MRO must contact the City who will direct the driver to contact the MRO.

#### **Review of Test Results**

The MRO is a licensed physician with knowledge and clinical experience in substance abuse disorders, and is responsible for receiving and reviewing laboratory results of the ~~controlled substance~~ drug test as well as evaluating medical explanations for certain drug test results. Prior to making a final decision to verify a positive test result, the MRO will give the driver or the job applicant an opportunity to discuss the test result, typically through a phone call. 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 employee or job applicant wishes to discuss the test result:

- 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.
- 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. If the employee or job applicant, believes a mistake was made at the collection site, at the labor, on a chain-of-custody form, or that the drug test results are caused by lawful substance use, the employee should tell the MRO.
- 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
- 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 upholds the positive, adulterated or substituted drug determination, that test result will be provided to the City. There is no opportunity to explain a positive alcohol test provided in the DOT regulations.

The driver can request the MRO to have the split specimen (the second “B” container) tested at the driver’s expense. This includes all costs that may be associated with the re-test. There is no split specimen testing for an invalid result. The driver has 72 hours after they have been notified of the positive result to make this request. If the employee requests an analysis of the split specimen, the MRO will direct the laboratory to send the split specimen to another certified laboratory for analysis.

If an employee has not contacted the MRO within 72 hours, the employee may present information documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO, or other circumstances unavoidably prevented the employee from making timely contact. If the MRO concludes there is legitimate explanation for the employee’s failure to contact within 72 hours, the MRO will direct the analysis of the split specimen.

If the results of the split specimen are negative, the City may pay for all costs associated with the ~~re-test~~ and there will be no adverse action taken against the employee or job applicant.

## **Notification of Test Results**

### **Employees**

The City will notify a driver of the results of random, reasonable suspicion, and post-accident tests for ~~controlled-substances~~ 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.

### **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 re-analysis (confirmatory retest) of the driver’s split specimen. Action required by federal regulation as a result of a positive ~~controlled-substance~~ test (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.

### **Dilute Specimens**

- Dilute Negatives:  
*Creatinine concentration of specimen is equal to or greater than 2 mg/dL, but less than or equal to 5 mg/dL.* If the City receives information that a driver has provided a dilute negative specimen, the City will direct a recollection, pursuant to the MRO’s direction, under direct observation.

*Creatinine concentration of specimen is greater than 5 mg/dL.* If the MRO advises the City that the employee's dilute negative specimen contains a creatinine concentration greater than five mg/dL the City will direct the driver to take a second screening test, not under direct observation. The second screening test will be performed as soon as possible after the City receives word of the dilute negative specimen. This second screening test is applicable to pre-employment testing, reasonable suspicion, post-accident, or random testing.

- 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.

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

### **Job Applicants**

Any applicable conditional offer of employment will be withdrawn from a job applicant or employee seeking a transfer who refuses to be tested or tests positive for a controlled substance/drug pursuant to this policy.

### **Employees**

Drivers who are known to have engaged in prohibited behavior with regard to alcohol misuse or use of controlled substances/drugs, as defined earlier in this policy, are subject to the following consequences:

a. Removal from Safety-Sensitive Functions

No driver may perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by federal law.

No driver who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 may perform or continue to perform safety-sensitive functions for the City, including driving a commercial motor vehicle, until the start of the driver's next regularly scheduled duty, but not less than twenty-four (24) hours following administration of the test.

If a driver tests positive under this policy, or is found to have an alcohol concentration of .02 or greater but less than .04, the driver will be removed from safety sensitive duties and escorted home; the driver should not drive home, but be escorted to his or her home. The driver will then be placed on vacation or may utilize other existing accruals for hours missed from work. If no accruals are available, the employee will be placed on an administrative leave of absence. The driver is not eligible to use sick leave accruals in this situation.

b. Notification of Resources Available



The City will advise each driver who has engaged in conduct prohibited by federal law or who has a positive alcohol or ~~controlled substance~~ test of the resources available to the driver, including but not limited to the City's Employee Assistance Program (EAP), in evaluating and resolving problems associated with the misuse of alcohol and use of a ~~controlled substance~~, including the names, addresses, and telephone numbers of Substance Abuse Professionals and counseling and treatment programs. The City will provide this SAP listing in writing at no cost to the driver.

c. Discipline

The City reserves the right to impose whatever discipline the City deems appropriate in its sole discretion, up to and including termination for a first occurrence, against drivers who violate applicable FMCSA or DOT rules or this policy, subject to applicable personnel policies and collective bargaining agreements. Except as otherwise required by law, the City is not obligated to reinstate or requalify such drivers following a first positive confirmed ~~controlled substance~~ or alcohol test result.

d. Evaluation, and Return to Duty Testing

Should the City wish to consider reinstatement of a driver who engaged in conduct prohibited by federal law and/or who had a positive alcohol or ~~controlled substance~~ test, the driver must undergo a SAP evaluation, participate in any prescribed education/treatment, and successfully complete return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 and/or or a ~~controlled substance~~ test with a verified negative result, before the driver returns to duty requiring the performance of a safety-sensitive function. The SAP will determine what assistance, if any, the driver needs in resolving problems associated with alcohol misuse and ~~controlled substance~~ use and will ensure the driver properly follows any rehabilitation program and submits to unannounced follow-up alcohol and ~~controlled substance~~ testing.

e. Follow-Up Testing

If the driver passes the return-to-duty test, he/she will be subject to unannounced follow-up alcohol and/or ~~controlled substance~~ testing. The number and frequency for such follow-up testing will be as directed by the SAP and will consist of at least six tests in the first twelve months. These tests will be conducted under direct observation.

f. Refusal to test

All drivers and applicants have the right to refuse to take a required alcohol and/or ~~controlled substance~~ test. If an employee refuses to undergo testing, the employee will be considered to have tested positive and may be subject to disciplinary action, up to and including termination. Refer to Refusing to Test provided earlier in this policy.

**Responsibility for Cost of Evaluation and Rehabilitation**

Drivers will be responsible for paying the cost of evaluation and rehabilitation (including services provided by a Substance Abuse Professional) recommended or required by the City or FMCSA or DOT rules, except to the extent that such expense is covered by an applicable employee benefit plan or imposed on the City pursuant to a collective bargaining agreement.

### **Reporting to the FMCSA's CDL Drug and Alcohol Clearinghouse**

In accordance with the Federal Motor Carrier Safety Administration's (FMCSA) Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse reporting requirements beginning January 6, 2020, the City will report the following information to the Clearinghouse within three business days:

- ✓ A DOT alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
- ✓ A negative DOT return-to-duty test result;
- ✓ The driver's refusal to submit to a DOT test for drug or alcohol use;
- ✓ An "Actual knowledge" violation: the employer has knowledge that a driver has used alcohol or drugs, based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or drugs, or an employee's admission of alcohol or drug abuse, except as provided in § 382.121:
  - On-duty alcohol use pursuant to § 382.205;
  - Pre-duty alcohol use pursuant to § 382.207
  - Alcohol use following an accident pursuant to § 382.209
  - Drug use pursuant to § 382.213;
- ✓ Employers will also report negative return-to-duty test results and the successful completion of a driver's follow up testing plan. A report that the driver successfully completed all DOT follow-up tests as ordered by a SAP.

### **Loss of CDL License for Traffic Violations in Commercial and Personal Vehicles**

Effective August 1, 2005, the FMCSA established strict rules impacting when CDL license holders can lose their CDL for certain traffic offenses in a commercial or personal vehicle. Employees are required to notify their supervisor immediately if the status of their CDL license changes in anyway.

### **Maintenance and Disclosure of Records**

Except as required or authorized by law, the City will not release driver's information that is contained in records required to be maintained by this policy or FMCSA and DOT regulations. Beginning in 2020, the City will be required to query and report to the agency's Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse prior to hiring new drivers, will conduct annual checks of existing CDL-drivers, and will report certain violations of the DOT drug and alcohol testing program for holders of CDLs. In addition, a driver is entitled, upon written request, to obtain copies of any records

pertaining to the driver's use of alcohol or a ~~controlled substance~~drug, including any records pertaining to his or her alcohol or ~~controlled substance~~drug tests.

### **Policy Contact for Additional Information**

If you have any questions about this policy or the City's ~~controlled substance~~drug and alcohol testing procedures, you may contact your immediate supervisor or Human Resources to obtain additional information.

### **Definitions**

Accident: Means an occurrence involving a commercial motor vehicle operating on a public road which results in a fatality; bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle. The term "accident" does not include an occurrence involving only boarding and alighting from a stationary motor vehicle; an occurrence involving only the loading or unloading of cargo; or an occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle unless the vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 49 C.F.R. § 177.823; 49 C.F.R. § 382.303(a); 49 C.F.R. § 382.303(f).

Alcohol Concentration (or Content): Means the alcohol on a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test. 49 C.F.R. § 382.107.

Alcohol Use: Means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol. 49 C.F.R. § 382.107.

Applicant: Means a person applying to drive a commercial motor vehicle. 49 C.F.R. § 382.107.

Breath Alcohol Technician or BAT: Means an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT). 49 C.F.R. § 40.3.

City: Means City of Marshall.

City Premises: Means all job sites, facilities, offices, buildings, structures, equipment, vehicles and parking areas, whether owned, leased, used or under the control of the City.

Collection Site: Means a place designated by the City where drivers present themselves for the purpose of providing a specimen of their urine or breath to be analyzed for the presence of alcohol or ~~controlled substance~~drug. 49 C.F.R. § 40.3.

Commercial Motor Vehicle: Means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle (1) has a gross combination weight rating or gross combination weight of 26,001 or more pounds, ~~whoever-whichever~~ is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater; or (2) has a gross vehicle weight rating or gross vehicle weight of 26,001 or more pounds, whichever is greater; or (3) is designed to transport sixteen (16) or more passengers, including the driver; or (4) is of any size and is used in the transportation of materials found to be in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulation. (49 C.F.R. part 172, subpart F) § 382.107.

Fire trucks and other City emergency response vehicles are not considered to be commercial vehicles under this policy, and therefore, personnel that operate City emergency response vehicles are exempted from the requirements of 49 CFR Part 382.

Confirmation (or Confirmatory) Test: For alcohol testing means a second test, following a positive non-evidential test, following a positive non-evidential (e.g., saliva) screening test or a breath alcohol screening test with the result of 0.02 or greater, that provides quantitative data of alcohol concentration. For ~~controlled-substancedrug~~ testing, "Confirmation (or Confirmatory) Test" means a second analytical procedure to identify the presence of a specific ~~controlled-substancedrug~~ or metabolite which is independent of the screen test and which uses a different technique and chemical principal from that of the screen test in order to ensure reliability and accuracy. 49 C.F.R. § 382.107.

Controlled Substance: Means those substances identified in 49 C.F.R. § 40.85. Marijuana, amphetamines, opioids, (including heroin), phencyclidine (PCP), cocaine, and any of their metabolites are included within this definition. 49 (C.F.R. § 382.107; 49 C.F.R. § 40.85).

Department of Transportation or DOT: Means the United States Department of Transportation.

DHHS: Means the Department of Health & Human Services or any designee of the Secretary, Department of Health & Human Services. 49 C.F.R. § 40.3.

Disabling Damage: Means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs, including damage to motor vehicles that could have been driven, but would have been further damaged if so driven. Disabling damage does not include damage which can be remedied temporarily at the scene of the accident without special tools or parts, tire disablement without other damage even if no spare tire is available, headlight or tail light damage or damage to turn signals, horn or windshield wipers which make them inoperative. 49 C.F.R. § 382.107.

Driver: Means any person who operates a commercial motor vehicle. This includes, but is not limited to full-time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors who are either directly employed by or under lease to the City or who operate a commercial motor vehicle at the direction of or with the consent of the City. For purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle. 49 C.F.R. § 382.107.

Drug: Has the same meaning as “controlled substance”.

Employee seeking a transfer: Refers to an employee who is not subject to DOT regulations seeking a transfer to a position that will subject them to DOT regulations in the sought-after position.

Evidential Breath Testing Device or EBT: Means a device approved by the National Highway Traffic Safety Administration (“NHTSA”) for the evidential testing of breath and placed on NHTSA’s “Conforming Products List of Evidential Breath Measurement Devices.” 49 C.F.R. § 40.3.

Federal Motor Carrier Safety Administration or FMCSA: Means the Federal Motor Carrier Safety Administration of the United States Department of Transportation.

Medical Review Officer or MRO: Means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by a **controlled substance 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 together with his or her medical history and any other relevant biomedical information. 49 C.F.R. § 40.3

Performing (a Safety-Sensitive Function): Means any period in which a driver is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions. 49 C.F.R. § 382.107.

Positive Test Result: Means a finding of the presence of alcohol or **controlled substance drug**, or their metabolites, in the sample tested in levels at or above the threshold detection levels established by applicable law.

Reasonable Suspicion: Means a belief a driver has engaged in conduct prohibited by the FMCSA **controlled substance drug** and alcohol testing regulations, except when related solely to the possession of alcohol, based on specific contemporaneous, articulable observations made by a supervisor or City official who has received appropriate training concerning the appearance, behavior, speech or body odors of the driver. The determination of reasonable suspicion will be made in writing on a Reasonable Suspicion Record Form 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 a

~~controlled substance~~drug, the observations may include indications of the chronic and withdrawal effects of a ~~controlled substance~~drug.

Safety-Sensitive Function: Means all time from the time a driver begins to work or is required to be in readiness to work until the time he or she is relieved from work and all responsibility for performing work. Safety-sensitive functions include:

- a. All time at a City plant, terminal, facility, or other property, or on any public property,
- b. waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- c. All time inspecting equipment as required by 49 C.F.R. § 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- d. All time spent at the driving controls of a commercial motor vehicle in operation;
- e. All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 C.F.R. § 393.76);
- f. All time loading or unloading a vehicle, 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; and
- g. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle. 49 C.F.R. § 382.107.

Screening Test (also known as Initial Test): In alcohol testing, mean an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in ~~her-his~~ or her system. Screening tests may be conducted by utilizing a non-evidential screening device included by the National Highway Traffic 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). In ~~controlled substance~~drug testing, "Screening Test" means an immunoassay screen to eliminate "negative" urine specimens ~~from~~ further consideration. 49 C.F.R. § 382.107.

Substance Abuse Professional" or "SAP": Means a licensed physician (medical doctor or doctor of osteopathy), licensed or certified psychologist, licensed or certified social worker, licensed or certified employee assistance professional, or licensed or certified addiction counselor (certified by the National Association of Alcoholism and ~~Controlled Substance~~Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and ~~controlled substance~~drug-related disorders. 49 C.F.R. § 40.281.