

SECTION 24

Drug-Free Workplace and Alcohol Policy

24.01 - GENERAL POLICY

The City's Drug-Free Workplace Policy is aimed at ensuring zero tolerance to illegal drugs at all times and its alcohol-free policy to zero tolerance under circumstances that affect or might affect the safety and wellbeing of employees, citizens and others, or that adversely affect or might affect the effective operation of City operations. This policy has been implemented in accordance with sections 440.101 and 440.102 of the Florida Statutes.

24.02 - PROHIBITIONS

- A. Illegal Controlled Substances. The City prohibits the use, distribution, possession, manufacture, cultivation, sale or attempt to manufacture, sell or distribute illegal controlled substances at any time whether on or off duty and whether on or off City property. Illegal controlled substances are defined by applicable state and federal laws. ~~Please be advised that marijuana, even if prescribed for a medical purpose and even if deemed lawful by some states for other purposes, remains an illegal controlled substance under federal law. As such, the City strictly prohibits the use of marijuana for any purpose.~~
- B. Alcohol Abuse. Employees of the City are prohibited from using or possessing alcohol while on duty; while on City premises; while driving a City vehicle; while operating a piece of City equipment; or while being transported in City vehicles at any time. In addition, employees are prohibited from reporting to work under the influence of alcohol and from otherwise using alcohol in a manner at any time which adversely affects or might adversely affect the interests or operations of the City.

24.03 - DEFINITIONS

- A. Mandatory Testing Position. Mandatory testing position shall mean a job assignment that requires the employee to:
1. Carry a firearm;

2. Work closely with an employee who carries a firearm;
 3. Perform life-threatening procedures;
 4. Work with heavy or dangerous machinery;
 5. Work as a safety inspector;
 6. Work with children;
 7. Work with detainees in the correctional system;
 8. Work with confidential information or documents pertaining to criminal investigations;
 9. Work with controlled substances;
 10. Undergo an employee security background check pursuant to section 110.1127 of the Florida Statutes;
 11. Perform job assignments in which a momentary lapse in attention could result in injury or death to another person; or,
 12. Perform safety-sensitive job duties and responsibilities.
- B. Special Risk Position. Special risk position shall mean a position that is required to be filled by a person who is certified under:
1. Chapter 633 of the Florida Statutes (Fire Prevention and Control); or,
 2. Chapter 943 of the Florida Statutes (Law Enforcement).

24.04 -LEGAL USE OF PRESCRIPTION AND NON-PRESCRIPTION DRUGS

~~The legal use of prescription and non-prescription drugs is often necessary. Unless used in accordance with a valid prescription from a medical professional or in accordance with accepted over the counter uses, the City prohibits the use, distribution, possession, manufacture, cultivation, sale or attempt to sell or distribute prescription drugs. Employees are required to advise his or her supervisor if he or she is taking prescription or non-prescription drugs which have the potential to adversely impact the employee's job performance or the employee's ability to work in a safe and efficient manner.~~

- A. The legal use of prescription and non-prescription drugs is often necessary. Unless used in accordance with a valid prescription from a medical professional, lawful medical authorization, or in accordance with accepted over the counter uses, the City prohibits the use, distribution, possession, manufacture, cultivation, sale or attempt to sell or distribute prescription drugs. Employees are required to advise his or her supervisor if he or she is taking prescription or non-prescription drugs, including medical marijuana, whether on duty or off duty, which have the potential to adversely impact the employee's job performance, judgment, alertness, reaction time, ability to safely operate vehicles or equipment, ability to possess or use firearms (if required by the employee's job), or ability to perform the essential functions of the employee's position in a safe and efficient manner. Disclosure allows the City to determine whether the employee can safely perform the essential functions of the position, whether temporary work restrictions are necessary, whether any reasonable accommodation is available and appropriate, and whether any safeguards need to be implemented. Employees may be required to provide medical documentation or submit to a fitness-for-duty evaluation concerning their ability to safely and effectively perform the essential job functions of their position.
- B. It should be emphasized that this policy generally prohibits the use of marijuana, both on and off duty. However, as a qualified physician may issue a physician certification permitting the use of medical marijuana for a qualifying medical condition under Florida law, the City will consider granting exceptions to the general prohibition on off duty marijuana use as a reasonable medical accommodation. Exceptions will be reviewed and decided on a case-by-case basis dependent on all relevant facts and circumstances. In all cases, exceptions must be requested *in advance* of an employee's use of medical marijuana so that the City can engage in the analysis referenced in Section IV(A) above. If an employee tests positive for marijuana and has not previously been granted a reasonable accommodation exception, it will be considered a violation of this policy and grounds for disciplinary action.

24.05 - DRUG AND ALCOHOL TESTING

- A. Job Applicant Testing and Testing for Assignment to Special Risk/Mandatory Testing Position. Applicants for employment in special-risk and/or mandatory testing positions are subject to pre-employment drug and alcohol test as a prerequisite to employment with the City. Current employees who are assigned to a special-risk and/or mandatory testing position from a non-special-risk or non-mandatory testing position are subject to being tested at the time of the assignment.

- B. Routine Fitness-for-Duty Testing. Employees may be required to submit to drug and alcohol testing as part of any routinely scheduled employee fitness-for-duty medical examinations.
- C. Follow-up Testing. Employees who enter into an employee assistance program or any similar rehabilitation program will be subject to drug and alcohol testing as a follow-up to such program. Follow-up testing will be conducted without advanced notice and at least once per year for a period of no less than two years.
- D. Reasonable Suspicion Testing. An employee will be subject to drug and alcohol testing whenever reasonable suspicion exists to believe the employee is using drugs or alcohol in violation of this policy or otherwise engaging in conduct in violation of this policy. Reasonable suspicion shall be based on specific, objective and articulable facts and reasonable inferences drawn from those facts in light of experience. In making this determination, relevant factors may include, but are not limited to:
 - 1. Observable phenomena, such as direct observation of drug use or of physical symptoms or manifestation of being under the influence of a drug or alcohol;
 - 2. Abnormal conduct, erratic behavior or a significant unexplained deterioration in work performance;
 - 3. A report of drug use, provided by a reliable source;
 - 4. Evidence that an individual has tampered with a drug test during his or her employment with the City;
 - 5. Information that an employee has caused or contributed to an accident or injury while at work;
 - 6. Evidence that an employee has negligently or recklessly operated a vehicle, equipment or machinery while at work;
 - 7. Evidence that an employee has used, possessed, manufactured, cultivated, sold, solicited, or transferred drugs.

Supervisors who determine that reasonable suspicion exists to require an employee to submit to a drug and/or alcohol test are required to promptly document in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing.

- E. Random and/or Suspicionless Testing. Employees who hold special risk or mandatory testing positions are subject to drug and alcohol testing on either a random or a suspicionless basis.
- F. Other Lawful Testing. The City reserves the right to conduct any other type of lawful drug or alcohol testing. Employees who are subject to the drug and alcohol testing requirements imposed by the Department of Transportation on operators of commercial motor vehicles must fully comply with this policy as well as the DOT-mandated Substance Abuse Policy for Commercial Motor Vehicle Operators. When safety-sensitive CDL employees are being tested pursuant to this policy (i.e., the non-DOT policy), the testing procedures set forth below shall apply. When safety-sensitive CDL employees are being tested pursuant to the DOT-mandated policy, the procedures set forth in that policy shall apply.

24.06 - DRUGS TESTED FOR AND COMMON MEDICATIONS THAT MAY AFFECT RESULTS

- A. Drugs Tested For. Employees will be subject to drug testing for the detection of the following illegal drugs/drug groups, as well as others that may from time to time be declared illegal by state or federal law:
- Alcohol (including a distilled spirit, wine, malt beverage or other intoxicating liquor)
 - Amphetamines
 - Barbiturates
 - Benzodiazepines
 - Cannabinoids (marijuana)
 - Cocaine
 - Methadone
 - Methaqualone
 - Opiates (heroin, morphine, codeine)
 - Phencyclidine (PCP)
 - Propoxyphene
 - Any other hallucinogen, synthetic narcotic, designer drug or a metabolite of any of the substances listed above
- B. Common Medications Which Could Alter or Affect Test Results. Certain prescription and non-prescription medications may alter or affect a drug or alcohol test. Employees and applicants that are subject to testing are obligated to report any prescription or non-prescription medication which could alter or affect test results to the independent Medical Review Officer

("MRO"). The MRO is Dr. Terrence Delikat , who can be reached at 1350 E Main St Ste C-1, Bartow Florida 33830 and 863-533-7484 . Employees and applicants subject to testing have the right to confidentially consult with the MRO for additional or technical information regarding medications which may alter or affect test results. The most common medications which may alter or affect a test include, but are not limited to:

<u>Drug</u>	<u>Medication Which May Alter or Affect Test</u>
Alcohol	Liquid medications containing ethyl alcohol (ethanol). For example, many cough syrups, Vicks Nyquil, Comtrex, Listerine contain alcohol
Cannabinoids	Marinol (Dronabinol, Tetrahydrocannabinol (THC))
Amphetamines	Obetrol, Biphedamine, Desoxyn, Dexedrine, Didrex, Ionamine, Fastine
Cocaine	Cocaine HCl topical solution (Roxanne)
Phencyclidine	Not legal by prescription
Methaqualone	Not legal by prescription
Opiates	Paregoric, Parepectolin, Donnagel PG, Morphine, Pectoral Syrup, Tylenol with Codeine, Empirin with Codeine, APAP with Codeine, Aspirin with Codeine, Robitussin AC, Guaiatuss AC, Novahistine DH, Novahistine Expectorant, Dilaudid (hydromorphone), M-S Contin and Roxanol (morphine sulfate), Percodan, Vicodin, Tussi-organidin, etc.
Barbituates	Phenobarbital, Tuinal, Amytal, Nembutal, Seconal, Lotusate, Fiorinal, Fioricet, Esgic, Butisol, Mebaral, Butabarbital, Butalbital, Phenrinin, Triad, etc.
Benzodiazepines	Activan, Azene, Clonopin, Dalmane, Diazepam, Halcion, Librium, Xanax, Serax, Tranxene, Valium, Verstran, Paxipam, Restoril, Centrax
Methadone	Dolphine, Metadose

Propoxyphene	Darvocet, Darvon N, Dolene, etc.
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24.07 - TEST RESULTS

The following procedures will be followed if an employee or job applicant has a confirmed positive test result:

An employee or applicant who receives a positive confirmed test result may contest or explain the result to the MRO identified above within five working days. If the MRO determines that the employee's explanation is unsatisfactory, the MRO will report the positive test to the City. The employee or applicant may contest a positive confirmed test result pursuant to this policy, section 440.102 of the Florida Statutes, or other applicable law. If an employee or applicant seeks to contest the laboratory result, it is his or her responsibility to contact the laboratory to advise of any administrative or civil proceeding challenging the results and to request that the test sample be preserved.

Within 180 days of receiving written notification of a positive test result, an employee or applicant may, at his or her expense, have the positive sample retested at a different laboratory licensed and approved by the Agency for Health Care Administration.

Within five working days after receipt of a positive confirmed test result from the MRO, the City will inform the employee or applicant in writing of the test result, the consequences of the test result and any options that the City may elect to afford the employee or applicant in accordance with this policy. Within five working days after receiving notice of a positive confirmed test result from the City, the employee or job applicant may submit information to the City explaining or contesting the test result and explaining why the test result does not constitute a violation of this policy. If the City determines that the explanation is unsatisfactory, the City will provide a copy of the test result to the employee or applicant along with a written reason as to why the explanation was deemed unsatisfactory.

24.08 - CONSEQUENCES OF A POSITIVE CONFIRMED TEST, A REFUSAL TO SUBMIT TO TESTING OR TAMPERING WITH A TEST

An employee who has a positive confirmed test, who refuses to submit to a test or who tampers with a test is subject to disciplinary action up to and including termination, may forfeit eligibility for workers' compensation medical and indemnity

benefits and may forfeit entitlement to unemployment compensation. A job applicant who has a positive confirmed test, who refuses to submit to a test or who tampers with a test will be ineligible for employment.

24.09 - CONFIDENTIALITY

Absent written consent, all information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or produced as a result of the City's drug testing program are confidential and exempt from the provisions of Chapter 119 of the Florida Statutes (Public Records Law) and may not be used or disclosed except as otherwise provided by section 440.102 of the Florida Statutes or other applicable law.

24.10 - EMPLOYEE ASSISTANCE PROGRAMS

Employee Assistance Programs (EAP) are available to assist employees who voluntarily self-report, prior to being requested to test, drug or alcohol related problems which have not yet adversely affected their job or City operations. Employees who voluntarily seek help, who have not had a positive drug test and who are not participating in EAP at the time or at any previous time, will not be subject to discipline. Employees with drug or alcohol related problems who wish to seek voluntary assistance through the EAP may contact one of the following EAP providers (or any other similar provider):

For more information, please contact the Human Resources Department

Other Helpful Numbers

[Drug-Free Workplace Helpline: 800-WORKPLACE \(967-5752\)](#)

[Substance Abuse & Mental Health Services Admin Helpline: 800-662-HELP \(4357\)](#)

Drug/Alcohol Abuse Helpline: 800-362-2644

Alcoholics Anonymous: 800-252-6465

Drug Abuse Alcoholism & Cocaine: 800-333-4444

Employees and applicants who violate this Policy will ordinarily not be eligible to elect participation in EAP in lieu of disciplinary action. The City may permit exceptions to this provision where the City Manager determines, in his or her exclusive discretion, that the specific circumstances warrant. In such circumstances, the City may require that an employee in violation of this policy participate and successfully complete the EAP as a condition of continued employment.

Employees employed in a mandatory testing or special-risk position who enter into EAP, whether voluntarily or involuntarily, will be removed from their mandatory testing or special-risk position and transferred to another position or placed on leave until the successful completion of the EAP. An employee placed on leave may utilize his or her accrued leave, if any, otherwise the leave shall be unpaid.

24.11 - REPORTING VIOLATION OF THE POLICY

It is the obligation of every employee to report violations of this Policy. Failure to report may subject employees to disciplinary action up to and including termination of employment.

24.12 - COORDINATION WITH THE HUMAN RESOURCES DEPARTMENT

All action taken by supervisors under this policy must be coordinated through the Human Resources Department to ensure compliance with all applicable laws.

24.13 - REPORTING AND CONVICTION OF ARRESTS AND/OR ALLEGED CRIMES INCLUDING DRUGS OR ALCOHOL

All employees must report to their supervisor any arrest, indictment, conviction, plea or pretrial interventions of any type, of a drug or alcohol-related violation or alleged violation of law not later than the next work day after they become aware of it. Failure to so report may result in immediate termination.

Upon conviction of a crime involving illegal drugs, the employee will be immediately terminated.

Without regard to prosecution or conviction by appropriate governmental entities, the City may, at its option, conduct its own independent investigation to determine whether this policy has been violated. If, in the opinion of the City, it believes a violation has occurred, it will take whatever disciplinary action it deems appropriate regardless of the ultimate outcome of any criminal case that may be brought against the employee. The City shall not be obligated to await the outcome of any pending criminal or legal action prior to taking disciplinary action.