

See ORDINANCE NO. 26-88 from Page B1(6) **Return to Duty Testing**

Any employee who is allowed to return to safety-sensitive duty after failing or refusing to submit to a DOT drug and/or alcohol test must first be evaluated by a substance abuse professional (SAP), complete a SAP-required program of education and/or treatment, and provide a negative return-to-duty drug test result and/or an alcohol test result of less than 0.02. Any return-to-duty drug testing will be directly observed. All tests will be conducted in accordance with 49 CFR Part 40, Subpart O.

(7) **Follow-up Testing**

Employees returning to safety-sensitive duty following a return-to-duty test will be required to undergo unannounced follow-up alcohol and/or drug testing for a period of one (1) to five (5) years, as directed by the SAP. The duration of testing will be extended to account for any subsequent leaves of absence, as necessary. The type (drug and/or alcohol), number, and frequency of such follow-up testing shall be directed by the SAP.

A covered employee may only be subject to follow-up alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. A covered employee may be subject to follow-up drug testing anytime while on duty. All follow-up drug tests will be directly observed. All testing will be conducted in accordance with 49 CFR Part 40, Subpart O.

(E) **Testing Procedures**

All FTA drug and alcohol testing will be conducted in accordance with 49 CFR Part 40, as amended.

(1) **Dilute Urine Specimen**

If a Return to Duty test results in a negative dilute test result, City of Huntsville will conduct one additional retest. The result of the second test will be the test of record. If there is a negative dilute test result and the test type was not a Return to Duty, City of Huntsville will accept the test result and there will be no retest, unless the creatinine concentration of a negative dilute specimen was greater than or equal to 2 mg/dL, but less than or equal to 5 mg/dL.

Dilute negative results with a creatinine level greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL require an immediate recollection under direct observation (see 49 CFR Part 40, section 40.67).

(2) **Split Specimen Test**

In the event of a verified positive test result, or a verified adulterated or substituted result, the employee can request that the split specimen be tested at a second laboratory. The City guarantees that the split specimen test will be conducted in a timely fashion.

(F) **Test Refusals**

As a covered employee, you have refused to test if you:

- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the supervisors or the City's Designated Employer Representative (DER).
- (2) Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
- (3) Fail to provide a specimen for a drug or alcohol test. An employee who does not provide a specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
- (4) In the case of a directly observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
- (5) Fail to provide a sufficient specimen for a drug or alcohol test without a valid medical explanation.
- (6) Fail or decline to take a second drug test as directed by the collector or [City's Designated Representative].
- (7) Fail to undergo a medical evaluation as required by the MRO or the City's Designated Employer Representative.
- (8) Fail to cooperate with any part of the testing process.
- (9) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly observed urine drug test.
- (10) Possess or wear a prosthetic or other device used to tamper with the collection process.
- (11) Admit to the adulteration or substitution of a specimen to the collector or MRO.
- (12) Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
- (13) Fail to remain readily available following an accident.

As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

As a covered employee, if you refuse to take a drug and/or alcohol test, you incur the same consequences as testing positive and will be immediately removed from performing safety-sensitive functions and provided with contact information for SAPs.

(G) **FMCSA Clearinghouse**

The Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) is a database containing information regarding drivers who are subject to FMCSA drug and alcohol testing regulations. The following personal information will be reported to the Clearinghouse for covered drivers:

- (1) A verified positive, adulterated, or substituted drug test result;
- (2) An alcohol confirmation test with a concentration of 0.04 or higher;
- (3) A refusal to submit to DOT test;
- (4) An employer's report of actual knowledge that a driver has:
 - a. used alcohol while performing safety-sensitive functions;
 - b. used alcohol within four hours of performing a safety-sensitive function;
 - c. used alcohol for eight hours following involvement in an accident or until he or she submits to the post-accident drug and alcohol test;
 - d. used a controlled substance;
- (5) A substance abuse professional (SAP) report of the successful completion of the return-to-duty process;
- (6) A negative return-to-duty test; and
- (7) An employer's report of completion of follow-up testing.

(H) **Voluntary Self-Referral**(1) **FTA Procedures**

Any employee who has a drug and/or alcohol abuse problem and has not been notified of the requirement to submit to reasonable suspicion, random or post-accident testing or has not refused a drug or alcohol test may voluntarily refer her or himself to the Kimon Washington, Health Center Resources and Program Manager or Shaunese Niecei Tucker, Health Center Program and Resources Specialist, who will refer the individual to a substance abuse counselor for evaluation and treatment.

The substance abuse counselor will evaluate the employee and make a specific recommendation regarding the appropriate treatment. Employees are encouraged to voluntarily seek professional substance abuse assistance before any substance use or dependence affects job performance.

Any safety-sensitive employee who admits to a drug and/or alcohol problem will immediately be removed from his/her safety-sensitive function and will not be allowed to

(K) **Interpretations**

To the extent that any portion or provision of this policy conflicts with any applicable federal or state laws or regulations, such federal or state laws or regulations will be controlling.

This policy shall not be construed to confer to any employee any property interest in such employee's continued employment, unless such employee falls within a class of employees which has been granted such rights under the City's Personnel Policy and Procedures Manual. Any requirements or obligations imposed by this policy on third parties shall not confer any rights or benefits upon the employee or applicants unless otherwise conferred by law.

(L) **Severable**

The provisions of this City of Huntsville Drug and Alcohol Policy are severable. If any part of the City of Huntsville Drug and Alcohol Policy is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

(M) **Current Illegal Drug Use**

Current illegal users of drugs are not "individuals with disabilities" under the Americans with Disabilities Act (ADA). Therefore, marijuana use is not permitted as a reasonable accommodation in any situation, in accordance with the ADA.

18.2 CITY OF HUNTSVILLE'S DRUG AND ALCOHOL POLICY FOR ALL EMPLOYEES (excluding employees tested pursuant to the authority of the Federal Transit Administration and Federal Motor Carrier Safety Administration requirements set forth in Section 18.1) (ORD. 24-284)

The City of Huntsville acknowledges the problem of drug and alcohol abuse in our society. Furthermore, the City recognizes drug and alcohol abuse as a serious threat to its employees. Substance abuse in the workplace may result in poor work attendance or unsatisfactory job performance and may also create safety hazards for employees and the public at large. It is the intention of the City to implement a Drug and Alcohol Policy that will allow the City to effectively detect substance abuse by its employees. The City's goal is the following: (i) to assure that its employee's ability to perform his/her job is not adversely affected or impaired; (ii) to create a workplace environment free from the adverse effects of drug and alcohol abuse; and, (iii) to prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substance in the workplace. In an effort to meet these goals, the City is adopting this City of Huntsville Drug and Alcohol Policy. Employee participation in the City's Drug and Alcohol Policy is required and is a condition of employment.

The City's contact person for information about this City of Huntsville Drug and Alcohol Policy is Kimon Washington, Health Center Resources and Program Manager or Shaunese Niecei Tucker, Health Center Program and Resources Specialist. They may be reached by telephone at (256) 883-3730.

(A) **Prohibited Behavior**

(1) It shall be a violation of City policy for any employee to manufacture, distribute, sell, purchase, use, or possess alcohol, marijuana, cocaine, opioids, amphetamines, phencyclidine (PCP), non-prescribed controlled substances (including but not limited to anabolic steroids), or any unlawful substances while on duty or while in the workplace.

(2) It shall be a violation of City policy for any employee to report to work, be at work under the influence of, adversely affected by, or impaired by alcohol, marijuana, cocaine, opioids, amphetamines, phencyclidine, non-prescribed controlled substances (including but not limited to anabolic steroids), or any unlawful substances while on duty or while in the workplace.

(3) It shall be a violation of City policy for any employee to use prescription drugs unlawfully. It is not a violation of our policy for an employee to use lawfully prescribed medications, where those medications were lawfully prescribed for the individual employee. However, the employee shall notify Kimon Washington, Health Center Resources and Program Manager or **Shaunese Niecei Tucker**, Health Center Program and Resources Specialist if the prescribed medication may affect the employee's ability to perform his/her job.

(4) It shall be a violation of City policy for an employee to report to or to be at work with prescribed or over-the-counter drugs in the blood or urine or taking prescribed or over-the-counter drugs where the use of such has adversely affected or impaired the employee's ability to perform the duties of his/her job or has posed a safety risk. Each employee shall advise Kimon Washington, Health Center Resources and Program Manager or **Shaunese Niecei Tucker**, Health Center Program and Resources Specialist in writing of the taking of a prescribed or over-the-counter drug which may adversely affect or impair his/her ability to perform the duties of his/her job or which may create a safety risk. Failure of the employee to promptly notify Kimon Washington, Health Center Resources and Program Manager or **Shaunese Niecei Tucker**, Health Center Program and Resources Specialist in writing of the taking of a prescribed or over-the-counter drug which may adversely affect or impair the employee's ability to perform his/her job or which may create a safety risk is also considered to be a violation of City policy. An employee who takes a prescribed or over-the-counter drug which may impact or adversely affect the employee's ability to perform his/her job or which may create a safety risk may remain on his/her job, may be required to take sick leave or a leave of absence or may be subject to other appropriate action, such as temporary reassignment, as determined by his/her Department Head or Division Manager.

(5) It shall be a violation of City policy for an employee who is convicted of any violation of a criminal drug statute or alcohol statute to fail to notify his/her supervisor in writing within five (5) days after such conviction.

(6) It shall be a violation of City policy to alter, adulterate, or dilute or attempt to alter, adulterate, or dilute urine specimens. It shall also be a violation of City policy to substitute or attempt to substitute a urine specimen.

(7) It shall be a violation of City policy for any employee to report for duty or remain on duty while having an alcohol concentration of 0.02 or greater.

(8) It shall be a violation of City policy for any safety-sensitive employee, as hereinafter defined, to use alcohol within four (4) hours prior to performing safety-sensitive functions or while being "on-call" to perform safety-sensitive functions, to perform safety-sensitive functions within four (4) hours after using alcohol, or to use alcohol while performing safety-sensitive functions.

(9) It shall be a violation of City policy for an employee to refuse to take, consent to, or complete any drug or alcohol test as required by this Drug and Alcohol Policy. Refusal to take, consent to, or complete a drug or alcohol test means that the employee fails to provide an adequate urine sample for a drug test or an adequate breath sample for an alcohol test without a valid medical explanation after he or she had received notice of the requirement to be tested; or the employee engages in conduct that obstructs or avoids the testing process after receiving notice of the requirement to be tested. For the purpose of this policy and for disciplinary purposes, a violation of this rule shall be treated as though it were a positive drug or alcohol test result.

(10) It shall be a violation of City policy for a supervisor to allow an employee known to be in violation of these rules to perform or continue to perform safety-sensitive functions.

(11) It shall be a violation of City policy for an employee to violate or fail to comply with any provisions, terms, conditions, procedures, or requirements of this policy.

(B) **Disciplinary Proceedings**

A City employee in violation of this drug and alcohol policy shall be subject to one or more of the following as disciplinary actions:

(1) Suspension without pay for ten (10) days or more and successful completion of a SAP recommended education or Drug or Alcohol Treatment Program. Successful completion must be within the recommended timeframe by the SAP. The City shall pay in accordance with the Group Health Plan under which the employee is covered;

(2) Demotion and successful completion of a SAP recommended education or a Drug or Alcohol Treatment Program. Successful completion must be within the recommended timeframe by the SAP. The City shall pay in accordance with the Group Health Plan under which the employee is covered; or

(3) Termination.

Failure of the employee to complete the SAP recommended education or Drug or Alcohol Treatment Program as referenced within this policy, or failure of the employee to complete additional requirements as recommended by the SAP, (e.g., additional treatment, aftercare or support group services), even after the employee returns to safety-sensitive duties shall be grounds for further disciplinary action up to and including termination.

The factors to be considered in determining the appropriate disciplinary response include, but are not limited to, the circumstances giving rise to the drug or alcohol test as required herein, the employee's work history, length of employment, current job performance, and the existence of past official disciplinary actions. An employee who is in violation of this Drug and Alcohol Policy a second time shall be terminated, if the violation is consistent with the Finding of Facts rendered by the Hearing Officer.

An employee, prior to receiving notice of the requirement to be tested, who voluntarily identifies himself or herself as a substance abuser, obtains counseling and rehabilitation through a qualified substance abuse treatment facility approved by the Health Center Resources and Program Manager or the Substance Abuse Professional (SAP), and thereafter refrains from violating this Section 18.1 is not subject to disciplinary action under this policy. However, this provision does not preclude the employee from disciplinary action related to misconduct otherwise in violation of the City's Personnel Policies and Procedures.

(C) **Submission to Drug and Alcohol Testing**

For the purpose of the City's Drug and Alcohol Policy, the policy and procedure for submission to drug and alcohol testing shall be as set forth in 18.1 of the FTA/FMCSA Drug and Alcohol Policy. Employees may be subject to broader drug and alcohol testing for the purposes of training, licensing, certifications, and/or state requirements necessary for their jobs.

(D) **Testing Based on Reasonable Suspicion**

A Department Head, Division Manager or his/her designated representative may request and authorize the drug or alcohol testing of any City employee where there is a "reasonable suspicion" that the employee has violated this drug and alcohol policy by the use of alcohol or prohibited drugs. The request for reasonable suspicion testing and determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable, observations concerning the appearance, behavior, speech, or body odors of the employee including, but not limited to, the following:

(1) The presence of recognizable physical symptoms of drug or alcohol use, e.g., slurred speech, bloodshot eyes, alcohol on breath, inability to stand or to walk a straight line;

(2) Indications of the chronic and withdrawal effects of controlled substances;

(3) Direct knowledge or observation of drug or alcohol use or possession, or possession of drug paraphernalia; or

(4) Aberrant conduct or behavior that is so unusual that it warrants summoning a supervisor or other assistance.

The required observations must be made by a supervisor who has been trained in detecting the symptoms of drug use and alcohol misuse. The Department Head, Division Manager or his/her designated representative shall make a written determination of reasonable suspicion based on the observation as indicated above. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on the employee.

Employees to be tested for "reasonable suspicion" shall be escorted to the testing site by a supervisor or the supervisor's designee as soon as possible so that the test may be administered within two (2) hours of the determination to test. Employees may still be tested if the test can be accomplished within eight (8) hours of the reasonable suspicion determination; however, if employees are not tested within eight (8) hours of the determination that reasonable suspicion exists for testing, then such event must be reported to the Health Center Resources and Program Manager and an investigation must be conducted to determine why the employee was not tested as required herein.

An employee who has a positive drug or alcohol test result or equivalent based on reasonable suspicion testing shall be subject to the same disciplinary proceedings, return to duty, and follow-up testing imposed upon safety-sensitive employees, including the Return to Duty Agreement.

(E) **Testing for Safety-Sensitive Positions** In addition to the reasonable suspicion testing provided for all City employees in the foregoing paragraph, additional drug and alcohol testing is required by the City for employees performing safety-sensitive functions.

For the purposes of this policy set forth in this Section 18.2, the following types of functions or jobs are considered safety-sensitive: (i) a position requiring or having regular, direct access to a controlled substance; (ii) a position requiring having access to NCIC information; (iii) a position where the employee's action or inaction directly affects public safety; and, (iv) supervisors performing or directly supervising an employee performing those safety-sensitive functions listed in (i), (ii), and, (iii) herein.

A Department Head or Division Manager who believes that a job position has safety-sensitive functions shall identify each such position and submit it to the Health Center Resources and

Program Manager and/or the Health Center Resources and Program Specialist who, in consultation with the City Attorney's Office and Director of Human Resources shall review the request before certifying that a position is safety-sensitive. Human Resources shall maintain a list designating which job classifications/positions are considered to be safety-sensitive for the purposes of this Section 18.2.

Employees in safety-sensitive positions as defined in this subsection 18.2(E) shall be notified that they are in such positions and that they are subject to pre-employment, post-accident, random, return to duty, follow-up, and reasonable suspicion testing.

Pre-employment, post-accident, random, return to duty, reasonable suspicion and follow-up drug and alcohol testing for employees in safety-sensitive jobs as defined above in this subsection 18.2(E) shall be in accordance with the procedures set forth in Section 18.1(D) of the FTA/FMCSA Drug and Alcohol Policy except as modified herein.

(1) **Pre-employment testing**

Testing shall be in accordance with subsection 18.1(D)(1).

(2) **Post-accident testing**

Mandatory drug and alcohol testing shall be required of all employees who are in safety-sensitive job classifications as defined in this subsection 18.2(E), after the occurrence of a workplace accident which results in personal injury to any person, damage to any property, or after the occurrence of any event or action which could reasonably be foreseen to cause an accident likely to result in personal injury to any person or damage to any property, unless the employee's performance can be discounted as a causative or contributing factor. Employees shall report for post-accident alcohol testing as soon as practicable following the accident, but not later than two (2) hours after the accident. Failure to report for post-accident testing within the two (2) hour post-accident period shall be deemed a refusal to submit to testing unless the employee was detained in order to seek emergency medical care, to obtain assistance in responding to the accident, or was physically unable to report due to injuries received in the accident. No post-accident alcohol testing shall be performed later than eight (8) hours after the accident.

Employees required to take a post-accident alcohol test shall not use alcohol for eight (8) hours following the accident, or until he or she undergoes a post-accident alcohol test, whichever occurs first.

Employees required to undergo post-accident drug tests shall report to the test facility in sufficient time for the test to be administered within thirty-two (32) hours of the accident. Failure to report for testing within the thirty-two (32) hour time frame subsequent to the accident shall be deemed a refusal to submit to testing unless the employee was detained in order to seek emergency medical care, to obtain assistance in responding to the accident, or was physically unable to report due to injuries received in the accident.

Nothing contained herein shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(3) **Random testing**

Subject to the availability of funding, all safety-sensitive employees as defined in this subsection 18.2(E) above shall also be tested on a random basis. Random drug and alcohol testing shall be conducted in accordance with subsection 18.1(D)(5). Random testing pursuant to this subsection shall be based on a random testing pool separate from the random testing pools established for employees tested pursuant to subsection 18.1.