

808.4 SUBJECT: DRUG FREE WORKPLACE

:1 OBJECTIVE:

To establish City policies and procedures designed to create a substance abuse-free workforce and workplace. This procedure applies to all City employees except where otherwise provided for by collective bargaining agreements. Operators of City motor vehicles and equipment are also subject to Policy and Procedure 800.4.

:2 AUTHORITY

This procedure amended by City Council June 18, 2007, Item A-2.

:3 DIRECTION:

General Administration Director receives direction from the Mayor through the Chief Administrative Officer.

:4 METHOD OF OPERATION:

A. Definitions

1. **Drugs** - Means alcohol, including distilled spirits, wine, malt beverages and intoxicating liquors; amphetamines; cannabinoids; cocaine; phencyclidine (PCP); hallucinogens, methaqualone; opiates; barbiturates; benzodiazepine, synthetic narcotics; designer drugs; or a metabolite of any of the substances listed herein; any other drug which is an illegal and or controlled substance not specifically listed above; another's medication used by the person tested; any misused prescription drug.
2. **Drug Test** - Means any chemical, biological or physical instrumental analysis administered for the purpose of determining the presence or absence of a drug or its metabolites.
3. **Initial Drug Test** - Means a sensitive, rapid and reliable procedure to identify negative and presumptive positive specimens. The initial test shall use an immunoassay procedure or equivalent or a more accurate scientifically accepted method as more technology becomes available.
4. **Confirmation Drug Test** - Means a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen providing requisite specificity, sensitivity and quantitative accuracy. The confirmation test will be different in scientific principle from the initial test procedure.
5. **Chain of Custody** - Refers to the method of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition at each stage in handling, testing, storing specimens and reporting test results.
6. **Driver** - Means any person who operates a City vehicle requiring a Florida driver's license Class A thru E including regularly employed drivers, casual, intermittent or occasional drivers and persons applying to become drivers.

7. **Reasonable Suspicion Drug Testing** - Means drug testing based on a belief that an employee is using or has used drugs in violation of this policy based on specific objective facts and reasonable inferences drawn from those facts in light of experience. Reasonable suspicion may include, but is not limited to: observable abnormal behavior such as drowsiness; smell of alcohol on the breath; slurred or incoherent speech; severe mood changes; observation by a supervisor or a third party of the use, possession, sale or solicitation of any illegal drug; lack of physical coordination; frequent sporadic absences from work; a significant deterioration of work performance; or substantiated report of alcohol use or being under the influence of alcohol on the job or illegal drug use; convictions for drug-related offenses (including D.U.I.s for employees who operate motor vehicles or other motorized equipment).
8. **Safety Sensitive Position** - Means a position in which a drug impairment constitutes an immediate and direct threat to personal and public health or safety, such as a position that requires the employee to carry a firearm, perform life-threatening procedures, work with confidential information or documents pertaining to criminal investigations, or work with controlled substances; a position subject to Florida Statute 110.1127; or a position in which a momentary lapse in attention could result in injury or death to another person.
9. **E.A.P.** - Employee Assistance Program (EAP) means a City-provided benefit available to all employees and members of their households. The EAP provides confidential assessment counseling and possible referral. Employees may personally refer themselves to EAP or may be required to seek assistance by their supervisor as a condition of continued employment. The initial supervisory referral may be during City work hours and may be on City time; all other visits are to be on the employee's personal time or charged to a type of appropriate accrued paid leave.

If referral to a provider outside of EAP is necessary, some costs may be covered by the employee's medical insurance benefit; but employees are responsible for finding out which benefits are covered by medical insurance and which are their personal responsibility.
10. **Medical Review Officer (MRO)** - a medical doctor who has received extensive training on drugs and drug abuse. It is the responsibility of the MRO to make the final determination of a positive test result. If an applicant or employee tests positive for drugs or alcohol, the MRO will contact the applicant or employee for the purpose of reviewing the test results.
11. **Designated Employer Representative (DER)** - An employee authorized by the City to take immediate action(s) to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications to the City related to this policy and procedure.

12. ***Refuse to submit/Refuse to test means:***

- a) Failure to provide adequate specimen, including breath, blood or urine, for testing without valid medical explanations after receiving oral or written notice of requirement.
- b) Engaging in conduct that clearly obstructs the testing process.
- c) Failure to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer.
- d) Failure to remain at the testing site until the testing process is complete.
- e) Failure to provide a urine specimen for any drug test required by this policy and procedure or DOT agency regulations.
- f) In the case of a directly observed or monitored collection, failure to permit the observation or monitoring of the employee's provision of specimen.
- g) Failure or decline to take a second test the employer or collector has directed the employee to take.
- h) Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of "shy bladder" procedures.
- i) Failure to cooperate with any part of the testing process; OR
- j) Producing a verified test result indicating possible adulteration or substitution.

13. ***Dilute Specimen*** - means a specimen with creatinine and specific gravity values that are lower than expected for human urine.

14. ***Adulterated Specimen*** - means a specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high it is not consistent with human urine.

15. ***Substituted Specimen*** - means a specimen with temperature, creatinine and specific gravity values that are not consistent with human urine.

16. ***Verified Test*** - means a drug test result or validity testing result that has undergone review and final determination by the MRO.

B. Policy

The City recognizes that alcohol abuse, use of illegal drugs or misuse of prescription or non-prescribed medications, is a serious social problem that can also impact the workplace and the services the City provides. The City also recognizes the importance of Fla. Stat. §440.102, related to drug-free workplaces. The City is committed to creating and maintaining a substance abuse-free workplace. Any violation of this policy shall subject the employee to disciplinary action up to and including termination.

1. Prohibited Activities

a) Drugs

Illegal use, possession, sale or solicitation of drugs is prohibited at all times on or off the job.

Being under the influence of illegal drugs is prohibited at all times on or off the job.

b) Alcohol

Use or being under the influence of alcohol is prohibited:

(1) When in uniform.

(2) During work hours.

(3) While operating City equipment - Equipment operators and other personnel who operate motor vehicles or other motorized equipment on the job shall not use or possess or be under the influence of alcoholic beverages at any time during their work shift, including meal breaks.

Consumption of alcoholic beverages prior to reporting to the workplace when the use impairs or impedes performance, or is otherwise apparent, is prohibited. Federal law specifically prohibits drivers with a Commercial Driver's License (CDL) from consuming alcohol four (4) hours prior to going on duty to perform a safety sensitive function. (Refer to 800.4)

C. Testing

1. Types of Testing - Drug or alcohol testing samples will be obtained at the City's Occupational Medical Provider site or other City-designated facility when occupational healthcare is not available. Applicants and employees are required to show picture identification before testing. The specimen collected must be undiluted, unadulterated, and must not be a substituted specimen. Every effort will be made to assure the accuracy and confidentiality of the tests in accordance with Federal and State testing guidelines and applicable legislation.

The Following types of drug testing will be conducted:

- a) **Post Offer Employment Testing** - Applicants selected for City employment must submit to a drug test. Refusal to submit to a drug test, including providing a verified adulterated or substituted specimen, or a confirmed positive drug test showing the presence of illegal drugs shall preclude the applicant from being hired. Applicants testing positive or refusing to test will be precluded from applying for City employment for a period of at least one year.
- b) **Reasonable Suspicion Testing** - Employees shall submit to reasonable suspicion drug testing. Additionally, employees may be required to submit to a drug test if they are involved in an on-duty accident resulting in bodily injury or if they are driving a City vehicle and are involved in an accident resulting in bodily injury or physical damage to property estimated at \$1,000 or more. Drug testing for other on-duty accidents will

only be required if the Supervisor and/or Safety Team Administrator has a reasonable suspicion that the acts or omissions of the employee caused or contributed to the accident. Employee must be accompanied by Supervisor or designee when required to submit to reasonable suspicion testing. The Supervisor or designee must travel with the employee to the City's Occupational Healthcare Provider site for the test and take the completed Reasonable Suspicion Observation Form.

- c) ***Routine Duty Examination*** - Employees shall submit to a drug test if: the test is conducted as part of a scheduled employee medical examination; during contractually required annual physicals; annually for those assigned a City vehicle (8 hr. and 24 hr.); prior to any voluntary transfer initiated by an employee; or prior to any promotion.
 - d) ***Follow-Up Testing*** - Employees who are placed under a drug or alcohol continuing Employment Contract/Last Chance Agreement must submit to drug/alcohol tests to return to duty and also follow-up testing for a designated period of time. Employee shall not be given advance notice. Follow-up testing will be conducted at least once a year for a 2-year period.
 - e) ***Return to Work Testing*** - An employee returning to work following an absence of more than thirty (30) calendar days will be required to take a physical that includes drug testing.
2. Conditions – The following conditions apply:
- a) Any employee who fails/refuses to submit to a drug test as required by this policy shall be treated as having a verified positive drug test, and is subject to immediate disciplinary action up to and including termination.
 - b) As a term and condition of employment, employees must notify their Office Head/Department Director/Division Manager within five (5) calendar days of any conviction for a drug violation. (Such a conviction or failure to report such a conviction are violations of this policy.) In addition to disciplinary action for violations of policy, the Office Head/Department Director/Division Manager shall refer the employee to the City's Occupational Healthcare Provider site for a drug test.
 - c) Procedure for Reporting Drug Use

A candidate for City employment or employee must report any use of prescription or non-prescription medications as well as drug abuse prior to or after being tested at the City's Occupational Healthcare Provider site. This information is to be given to the person collecting the specimen. The information will be duly noted in the medical file and held in confidence in accordance with law. Use of foreign obtained medications or someone else's prescription for a controlled substance will not be accepted as an explanation for a "positive" drug test result. If an applicant or employee is taking medication(s) that impact safety-sensitive functions, the MRO will disclose such information to the DER.
3. Handling of Test Results

- a) For applicants, the MRO will notify the Human Resources Division Manager, or designee, immediately by telephone and will follow up in writing within three (3) working days of review of results, whether negative or positive.
 - b) If an employee's test result is positive or the employee refuses to submit/test, the MRO will notify the DER immediately by telephone and will follow up in writing within three working days of review of the results. The DER will then notify the Office Head/Department Director/Division Manager or designee.
 - c) Dilute Specimens: A positive-dilute result will be treated as a verified positive result. If the result is a negative-dilute specimen, the applicant or employee will be required to take another test immediately and without advance notice. The result of the second test becomes the test of record. If the applicant or employee declines to take another test immediately, the applicant or employee is determined to have refused to submit to testing.
4. If a Test Result is Positive, Adulterated, Substituted or otherwise invalid
- a) The MRO (or DER if the MRO is unable to make contact) will schedule an appointment with the applicant or employee normally within three (3) working days after receipt of the results of the test to verify the result. The applicant or employee must contact the MRO as directed and within 72 hours after the MRO or DER makes initial contact.
 - b) The MRO will immediately notify the DER by telephone of a positive drug screen for an illegal drug, or a drug that would interfere with the safe operation of City vehicles/equipment, and/or a safety sensitive position and the DER will then immediately notify the Office Head/Department Director/Division Manager or designee. Written follow-up is required within three (3) working days of test confirmation. The employee shall not perform safety sensitive functions after notification of a positive drug screen.
 - c) The MRO will review any circumstances the applicant or employee believes may mitigate the results of the positive test. The MRO may request physical examination or further medical evaluation as part of the verification process. The cost of further medical evaluation will be borne by the applicant or employee.
 - d) The Medical Review Officer (MRO) will immediately notify the DER by telephone of the verified positive drug test. Upon such notification, the DER will notify the Office Head/ Department Director/Division Manager or designee, who will immediately begin disciplinary action or termination of an employee after consulting with Human Resources Division/Labor Relations Section.
 - e) Contesting a Positive Drug Test
 - (1) An applicant for employment or an employee may contest the results of a positive confirmed drug test by giving the –City's MRO written notice within five (5) working days after receipt of a written

notification of the positive test results (see Policy & Procedure 800.4 (E) (13) for Operator of City Motor Vehicles and Equipment).

- (2) The employee or applicant has the right to consult the MRO for technical information regarding prescription and non-prescription medication.
- (3) The employee or applicant may request a retest of the already submitted specimen by another certified laboratory of his/her choosing. The original laboratory will transfer the specimen using the proper protocols to preserve the chain of custody. The costs of providing for a second test will be borne by the requesting party. The employee or applicant will be reimbursed for his/her costs of the test, if the second test result is negative.
- (4) An employee or applicant for employment has an affirmative obligation to notify the designated laboratory of any administrative or civil action/challenge to the test result. Said notification is required under F.S. 440 and should be done in writing within 10 calendar days from the time the employer was notified of the pending action.
- (5) Applicants and employees may contest the drug test results through the Department of Labor and Employment Security, the Public Employees Relations Commission or the applicable court after exhausting all internal appeals.

D. Policy Violations

1. Any violation of this policy shall subject the employee to disciplinary action up to and including termination.
2. An employee, who is not terminated as a result of an initial violation of this policy, will be offered a Continuing Employment Contract/Last Chance Agreement as additional condition(s) of employment with the City. The Continuing Employment Contract/Last Chance Agreement, will be prepared by the City's Human Resources Division/Labor Relations Section and shall include, at a minimum:
 - (1) An EAP referral;
 - (2) Treatment and/or substance abuse counseling;
 - (3) Random testing for one (1) year and follow-up testing at least once a year for a 2-year period;
 - (4) Ineligibility for promotion or voluntary interdepartmental transfer during the term of the agreement, which shall be no less than 365 days;
 - (5) Suspension of: i) driving privileges for city vehicles, ii) authorization to operate safety sensitive equipment, and iii) authorization to perform a safety sensitive function, with reinstatement thereof only upon written notice by the appropriate Office Head/Department Director/Division Manager, after consultation with Health Safety, and Labor Relations

sections/Human Resources Division, and only after the employee's first negative drug test;

3. Failure to comply with terms of a Continuing Employment Contract/Last Chance Agreement will be grounds for termination. Furthermore, any subsequent verified positive drug test or any other violation of this policy at any time during the employee's employment with the City will subject the employee to termination without applicability of Section D. 2.

E. Confidentiality

All information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received by the employer through a drug-testing program are confidential communications.

Employers, laboratories, medical review officers, employee assistance programs, drug rehabilitation programs, and other agents who receive or have access to information concerning drug results shall keep all information confidential.

This subsection does not prohibit the City, its agent(s) or laboratory conducting a drug test program from having access to employee drug test information or using such information when consulting with legal counsel in connection with actions brought under or related to this section or when the information is relevant to its defense in a civil or administrative matter. Fla. Statute 440.102(8)(d) 2000. See also 800.4 (E) (12) for comparison.

:5 FORMS:

As referenced (see pages 9 - 10).

:6 COMMITTEE RESPONSIBILITIES:

None.

:7 REFERENCE:

Procedure adopted by City Council February 4, 1991, Item 3/50; amended by City Council, June 21, 1993, Item 2-P; amended by City Council, August 9, 1993, Item OO, amended December 19, 1994, Item S; amended October 21, 1996, Item 8YY; amended August 23, 1999, Item 9CCC; amended April 3, 2000, Item 2PPP January 28, 2002; amended October 14, 2002, Item B23; amended September 15, 2003; re-formatted only April 2004; amended July 25, 2005, Item A11; amended June 18, 2007, Item A-2.

:8 EFFECTIVE DATE:

This procedure effective June 18, 2007.

REASONABLE SUSPICION OBSERVATION FORM

(Strictly Confidential)

EMPLOYEE NAME:

DATE/TIME OF INCIDENT

SUPERVISOR #1 NAME:

SUPERVISOR #2 NAME:

This checklist is to be completed when an incident has occurred which provides reasonable suspicion that an employee is under the influence of a controlled substance or alcohol. The supervisor(s) note all pertinent behavior and physical signs or symptoms, which lead you to reasonably believe that the employee has recently used or is under the influence of, a controlled substance, or alcohol. Mark each applicable item on this form and any additional facts or circumstance, which you have noted. Consult Health & Safety with questions regarding behavior, physical signs, or symptoms.

A. NATURE OF THE INCIDENT/CAUSE FOR SUSPICION

- 1. Observed/reported possessions or use of a controlled substance.
- 2. Apparent controlled substance or alcohol intoxication (as further detailed in Section B & C).
- 3. Observed abnormal or erratic behavior (as further detailed in Section B & C).
- 4. Conviction for controlled substance-related offense.
- 5. Evidence of tampering on a previous controlled substance test.
- 6. Other (e.g., on-duty accident resulting in bodily injury or caused accident while driving a City vehicle resulting in bodily injury or property damage of \$1,000 or more (please specify).

B. UNUSUAL BEHAVIOR

- 1. Verbal abusiveness
- 2. Physical abusiveness
- 3. Extreme aggressiveness or agitation
- 4. Withdrawal, depression, mood changes, or unresponsiveness
- 5. Inappropriate verbal response to questioning or instructions
- 6. Other erratic or inappropriate behavior (e.g., hallucinations, disorientation, excessive euphoria, confusion (please specify)

REASONABLE SUSPICION OBSERVATION FORM

C. PHYSICAL SIGNS OR SYMPTOMS

- 1. Possessing, dispensing, or using controlled substance.
- 2. Slurred or incoherent speech.
- 3. Unsteady gait or other loss of physical control/poor coordination
- 4. Bloodshot or watering eyes
- 5. Extreme fatigue or sleeping on the job
- 6. Excessive sweating or clamminess to the skin
- 7. Flushed or very pale face
- 8. Highly excited or nervous
- 9. Nausea or vomiting
- 10. Odor of alcohol
- 11. Odor of marijuana
- 12. Dry mouth (frequent swallowing/lip wetting)
- 13. Dizziness or fainting
- 14. Shaking hands or body tremors/twitching
- 15. Irregular or difficult breathing
- 16. Runny sores or sores around nostrils
- 17. Inappropriate wearing of sunglasses
- 18. Puncture marks or "tracks"
- 19. Other (please specify)

D. WRITTEN SUMMARY

Please summarize the facts and circumstances of the incident, (including details of any box checked above) employee response, supervisor action, and any other pertinent information not previously noted. Please note the date, times and location of reasonable cause testing or note if employee refused test. Attach additional sheets as needed.

Supervisor #1

Date/Time

Supervisor #2

Date/Time