

<b>Policy Title</b>	Drug-Free Workplace
<b>Effective Date</b>	2-1-2021
<b>Approved by</b>	City Manager

**1. Statement of Purpose**

- A. It is the policy of the City of Trenton (the “City”) that the abuse of alcohol and drugs by employees is detrimental to the health, safety and morals of the public. The unauthorized use, possession, transfer or sale of drugs or alcohol by a City employee, while on or off City property, while doing or after City business, or operating City equipment or vehicles, is strictly prohibited and shall be grounds for discipline, including termination. Possession, use or sale of illegal drugs off premises shall also be grounds for discipline, particularly when affecting the employee’s work performance, his or her own or others’ safety at work, or the City’s reputation as an employer.
- B. The purpose of this policy is to establish reasonable standards and procedures for drug and alcohol testing of City employees for City employment.

**2. Current employees testing; general standard**

- A. The City may require an employee to undergo drug or alcohol testing if there is reasonable suspicion that the employee is under the influence of drugs or alcohol during work hours. "Reasonable suspicion" means an articulable belief based on specific facts and reasonable inferences drawn from those facts that an employee is under the influence of drugs or alcohol. Circumstances which constitute a basis for determining "reasonable suspicion" may include, but are not limited to:
  - i. A pattern of abnormal or erratic behavior;
  - ii. Information provided by a reliable and credible source;
  - iii. A work-related accident;
  - iv. Direct observation of drug or alcohol use;
  - v. Presence of the physical symptoms of drug or alcohol use (i.e., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes); or
  - vi. An accident or injury occurring on the job.

**3. Testing**

- A. Submission to and full cooperation with the City and its agents in connection with alcohol and drug testing is a condition of employment, a violation of which will result in discipline, up to and including termination of employment.

**4. Confirmation of test results**

- A. An employee whose test yields a positive result shall be given a second test.
- B. If the second test confirms the positive test result, the employee shall be notified of the results in writing by the appropriate supervisor, designee, or the City Manager. The letter of notification shall identify the particular substance found and its concentration level.
- C. An employee whose second test confirms the original positive test result may, at the employee's own expense, have a third test conducted on the same sample at a laboratory selected by the City, provided said test is taken within twenty-four (24) hours of the most recent positive test.

5. **Consequences of a confirmed positive test result**

- A. If an employee's positive test result has been confirmed, the employee is subject to disciplinary action up to and including termination.

6. **Right to a pre-disciplinary hearing**

- A. If a full-time employee's positive test result has been confirmed, the employee is entitled to a pre-disciplinary hearing process before the City takes any disciplinary action. Part-time employees are not entitled to a hearing process. Should any of the listed disciplinary actions be taken, the employee may appeal.

7. **Confidentiality of test results**

- A. All information from an employee's drug and alcohol test is confidential and only those with a need to know are to be informed of test results. Disclosure of test results to any person, agency, or organization is prohibited unless written authorization is obtained from the employee. The results of a positive drug test shall not be released until the results are confirmed. The records of confirmed positive test results and negative test results shall be destroyed by the testing laboratory.

8. **Privacy in drug testing**

- A. Urine samples shall be provided in a private restroom stall or similar enclosure so that employees may not be viewed by non-administering personnel while providing the sample. Employees may be given hospital gowns to wear while they are providing test samples in order to ensure that there is no tampering. Street clothes, bags, briefcases, purses and other containers may not be carried into the test area. The water in the commode shall be colored with blue dye to protect against dilution of test samples. A similar process aimed at protecting individual privacy, as well as the integrity of the testing process and sample, may be substituted by the administering facility or laboratory.

9. **Special Procedures for Employees having a Commercial Driver's License**

- A. The City, as a condition of continued employment, requires all employees of the Service Department to maintain a valid Commercial Driver's License (CDL) at all times. The City Manager may designate certain other positions, due the nature of their duties and operations, to maintain a CDL as well.
- B. The requirements of this section differ from sections 1-8. Employees covered by this section are also covered by sections 1-8. The City may take action against an employee covered by this section as well as sections 1-8 for an event which is a violation of the Drug-Free Workplace policy.
- C. Definitions
- i. Illegal Drugs as used in this policy refers to drugs specifically prohibited by the Department of Transportation, currently cocaine, PCP, amphetamines, marijuana and opiates, as well as any other listed elsewhere in the Drug-Free Workplace Policy.
  - ii. Alcohol Concentration means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath. Alcohol limits in this policy are expressions of Alcohol Concentration.
  - iii. An accident is an incident in which a person has died or is treated at a medical facility, or when one or more vehicles incurs disabling damage as a result of the incident.

- iv. 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. Excluded is 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; headlamp or taillight damage; or damage to turn signals, horn or windshield wipers which makes them inoperative.
- D. Policy
- i. Participation in all aspects of this policy by covered employees is a requirement of employment with the City.
  - ii. The use of illegal drugs by covered employees is prohibited.
  - iii. The use of alcohol by covered employees is prohibited as follows:
    - a) Four (4) hours prior to performing a safety sensitive function; and
    - b) While performing a safety sensitive function; and
    - c) Up to eight (8) hours following an accident or until an employee undergoes a post-accident alcohol test, whichever occurs first.
  - iv. Covered employees shall be subject to testing for drugs and alcohol under the following situations:
    - a) Pre-employment testing for drugs only shall be conducted prior to the first time a covered employee performs a safety sensitive function.
    - b) Reasonable suspicion testing shall be conducted when reasonable suspicion exists to believe the employee has violated the prohibitions in the Drug-Free Workplace Policy. The determination that reasonable suspicion exists to require the driver to undergo a drug or alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The supervisor shall complete the "Supervisor Reasonable Suspicion Checklist."
    - c) Random testing shall be conducted at an annual rate equal to not less than 10 percent of covered positions for alcohol testing and not less than 50 percent of covered positions for drug testing. These testing rates may be changed by the Department of Transportation in accordance with their regulations.
    - d) Post-accident testing of covered employees shall be conducted in the following situations:
      - All covered employees who were performing safety sensitive functions with respect to the operation of a vehicle involved in an accident if the accident involves the loss of life; or
      - FHWA covered employees who receive a citation for a moving traffic violation arising from the accident; or
      - FTA covered employees who are operating a revenue service vehicle or a vehicle used in ancillary service involved in an accident unless the City management representative determines, using the best information at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident; or
      - FTA covered employees whose performance, as determined by the City management representative responding to the

scene, could have contributed to the accident, as determined by the management representative using the best information available at the time of the decision.

- e) Return to duty testing shall be conducted on employees who have been removed from duty for a positive drug test or an alcohol test of over .02.
  - f) Unannounced follow-up testing shall be conducted 6 times in the first 12 months following return to work and during the following 48 months at a frequency determined by the substance abuse professional on employees who return to work following a positive drug test or an alcohol test of .02 or higher.
  - g) The City shall pay for all tests except for follow-up testing beyond the first 12 months the employee has returned to work following a positive test, and for testing of split urine samples which test positive for drugs. Cost for testing not paid by the City shall be paid by the employee.
- v. Covered employees shall submit to testing required by this policy and the Department of Transportation Regulations. Refusal by the employee to submit to testing shall constitute a positive test.
- vi. Covered employees who test positive for illegal drugs or refuse to submit to a test required under this policy shall be removed from performing a safety sensitive function.
- a) An employee who tests positive for illegal drugs or refuses to submit to a test required by this policy shall be subject to disciplinary action up to and including termination of City employment.
- vii. Covered employees who have a test result showing an alcohol concentration of over .04 or who refuse to submit to a test required under this policy shall be removed from performing a safety sensitive function.
- a) An employee with an alcohol test result showing a concentration of .04 or higher, or who refuses to submit to a test required by this policy shall be subject to disciplinary action up to and including termination of City employment.
- viii. Covered employees who have a test result showing an alcohol concentration of .02 or greater but less than .04 shall be removed from performing a safety sensitive function until:
- a) Employees covered under the Federal Transit Administration regulations have an alcohol concentration level which measures less than .02 or until the beginning of the employee's next regularly scheduled work period, but not less than 8 hours after the administration of the test, or
  - b) If the employee is covered under the Federal Highway Administration regulations, the start of the employee's next regularly scheduled duty period, but not less than 24 hours following administration of the test.
  - c) An employee who tests with an alcohol concentration of .02 or more, but less than .04, shall be subject to disciplinary action up to and including termination of City employment.
- ix. Any of the following actions shall constitute refusal to submit to a test:
- a) Refusal to take a required test;

- b) Inability to provide sufficient quantities of breath or urine to be tested without a valid medical explanation;
  - c) Tampering or attempting to adulterate the specimen or collection procedure;
  - d) Not reporting to the collection site in the time allotted; or
  - e) Leaving the scene of an accident without a valid reason before the tests have been conducted.
- x. All employees covered by this policy at the time of adoption and all employees who are hired, promoted, demoted or transferred into a covered position shall receive a copy of this policy and supporting documents and participate in a training program regarding this policy, testing procedures and the consequences of the use of illegal drugs and the misuse of alcohol.
- a) Each employee shall, upon receipt of the policy, related documents and training, sign a statement certifying receipt of the materials and training. This receipt shall be kept in the employee's personnel file.
- xi. The City Manager shall designate one or more Drug and Alcohol Testing Contacts who shall be available to answer questions of employees regarding this policy. The name, phone number and office location of this or these person(s) shall be widely disseminated.
- xii. Information pertaining to a covered employees drug and alcohol testing results shall be released only when required by law, or expressly authorized or required by the Federal Department of Transportation rules. Situations where testing results may be released include when a covered employee provides specific, written consent to release the results to the covered employee, a subsequent employer, or an identified third party. Results may also be released without the employee's written consent to the Federal Secretary of Transportation, the Federal Transit Administration or Federal Highway Administration, the National Transportation Safety Board as part of an accident investigation, or as part of a lawsuit, grievance or other proceeding initiated by or on behalf of the employee and arising from the results of a drug or alcohol test administered under this policy. When the information is furnished without the employee's consent, it is City policy to notify the employee that the information has been provided to the requesting party.
- E. Testing Procedures
- i. Sample Collection and Testing shall be conducted in a manner to assure confidentiality, a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities that have been approved by the U.S. Department of Health and Human Services (DHHS). All sample collection and testing shall be conducted consistent with the procedures put forth in 49 CFR Part 40.
  - ii. The drugs that shall be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine. An initial drug screen shall be conducted on each specimen. For those specimens that are not negative, a confirmatory gas Chromatography/Mass Spectrometry (GC/MS) test shall be performed. The test shall be considered positive if the amounts present are above the minimum thresholds established in 49 CFR Part 40.
  - iii. Tests for alcohol concentration shall be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved testing device. If the initial test indicates an alcohol concentration of 0.02 or greater, a second

test shall be performed to confirm the results of the initial test using a NHTSA approved evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT).

F. Description of the Effects of Alcohol

- i. The chronic consumption of alcohol (an average of three servings per day of beer, wine or distilled spirits) over time may result in the following life consequences:
  - a) Health: dependency on alcohol; fatal liver disease; increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma; kidney disease; decreased sexual functioning; pancreatitis; spontaneous abortion and neonatal mortality; ulcers; and birth defects.
  - b) Work: impairment in coordination and judgment and increased likelihood of having an accident than that of a sober person.
  - c) Personal Life: increased exposure to committing homicides, vehicle accidents, family problems including separation and divorce, increased likelihood of committing suicide and greater exposure to other forms of accidents.
- ii. Signs and Symptoms: dulled mental processes, lack of coordination, odor of alcohol on breath, possible constricted pupils, sleepy or stuporous condition, slowed reaction rate and slurred speech.
- iii. Services are available to assist employees who feel they have problems with alcohol or drugs through the City's Employee Assistance Program and the City's health insurance programs.

**SUPERVISOR REASONABLE SUSPICION CHECKLIST**

Employee Name: \_\_\_\_\_

Date Observed: \_\_\_\_\_

*The supervisor viewing the behavior should circle or check all that apply:*

- |   |   |
|---|---|
| <p>1 WALKING</p> <p>___ Stumbling</p> <p>___ Holding on</p> <p>___ Staggering</p> <p>___ Unable to Walk</p> <p>___ Unsteady</p> <p>___ Other:</p>                   | <p>6 EYES</p> <p>___ Bloodshot</p> <p>___ Dilated</p> <p>___ Watery</p> <p>___ Droopy</p> <p>___ Closed</p> <p>___ Other:</p>                               |
| <p>2 STANDING</p> <p>___ Swaying</p> <p>___ Unable to Stand Rigid</p> <p>___ Sagging at Knees</p> <p>___ Feet Wide Apart</p> <p>___ Other:</p>                      | <p>7 FACE</p> <p>___ Flushed</p> <p>___ Pale</p> <p>___ Sweaty</p> <p>___ Other:</p>  |
| <p>3 SPEECH</p> <p>___ Shouting</p> <p>___ Rambling</p> <p>___ Slurred</p> <p>___ Incoherent</p> <p>___ Silent</p> <p>___ Slow</p> <p>___ Other:</p>                | <p>8 APPEARANCE/ CLOTHING</p> <p>___ Having Odor</p> <p>___ Dirty or Unruly</p> <p>___ Stains on Clothing</p> <p>___ Neat &amp; Clean</p> <p>___ Other:</p> |
| <p>4 DEMEANOR</p> <p>___ Cooperative or Calm</p> <p>___ Sleepy</p> <p>___ Crying</p> <p>___ Excited</p> <p>___ Talkative</p> <p>___ Fighting</p> <p>___ Nervous</p> | <p>9 BREATH</p> <p>___ Alcoholic Odor</p> <p>___ Musty or Foul Smelling</p> <p>___ Other:</p>   |

Fumbling

Other:

5 ACTION

Threatening

Drowsy

Profanity

Hyperactive

Hostile

Erratic

Other:

10 EATING/ CHEWING

Candy, Mints, or Gum

Nervous Chewing

Other: