



**City of Albany**

Human Resources Policy

Policy #: HR-SF-06-005

Title: Substance Abuse - FTA

**Safety**

**Purpose**

The City is committed to providing and maintaining a safe and healthy work environment for its employees and a safe and dependable transportation system for the public. The use of drugs and/or alcohol can adversely affect the ability to perform safely and may constitute a threat to the health and safety of the public and other City employees and to the efficient operation of the City. Therefore, the City shall establish a work environment where its employees are free from the effects of drugs and/or alcohol.

It is the intent of this policy to achieve a drug and alcohol-free work force in the interest of the health and safety of employees and the public, to enhance worker productivity and safety, and to encourage employees to seek assistance and treatment for drug and/or alcohol-related problems before such problems affect performance and safety.

The objectives of this policy are to:

- Maintain a safe, drug- and alcohol-free transportation system.
- Maintain safe, efficient working conditions for City employees.
- Maintain the City's compliance with applicable federal regulations.
- Promote use of the City's Employee Assistance Program for help with problems related to drugs and alcohol.

**Policy**

**Covered Employees**

Covered employees shall include applicants for employment in positions that require the performance of a safety-sensitive function, contractors performing a safety-sensitive function for the City, volunteers who operate a vehicle for the City that is designed to transport sixteen or more passengers including the driver, and other employees who, owing to their position within the City serve as exemplars to their coworkers and the community. For purposes of this policy, covered employees include those who are incumbents in the positions listed in Appendix A, which is attached hereto.

FTA covered employees will also be subject to DOT regulations and participate in the DOT random pool.

**Prohibited Conduct**

The City expects and requires all covered employees to report to work in an appropriate mental and physical condition to work safely and effectively. No covered employee shall report to work or engage in work while having the presence of alcohol, illegal drugs, or any other disabling or controlled substance in his/her system. A breath alcohol concentration level of 0.02 or greater or a verified positive result on a drug test will be considered by the City to be evidence of the presence of alcohol or a prohibited drug in one's system. Under FTA regulations, the City shall prohibit covered employees who have an alcohol concentration of 0.04 or greater, or a verified positive drug test, from performing or continuing to perform their safety-sensitive duties. Compliance with this policy is a condition of employment. Any violation of this policy may subject the covered employee to discipline, up to and including suspension or discharge.



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Except as specifically provided herein, covered employees are prohibited from engaging in the possession, sale, transporting, distribution, manufacture or use of alcohol, illegal drugs, or any other disabling or controlled substance at any time while on duty and/or on City premises, which include buses or other City owned or operated vehicle(s) or facilities.

Federal Transit Administration (FTA) regulation 49 CFR part 655, "Prevention of Alcohol Misuse in Transit Operations," prohibits a covered employee from performing a safety-sensitive function with a breath alcohol concentration level of 0.02 or greater. In addition, alcohol use is impermissible for four hours prior to performing a safety-sensitive duty, while on-call to perform a safety-sensitive duty, and while performing a safety-sensitive duty. A covered employee must also not consume alcohol up to eight hours following an accident or until the covered employee undergoes a post-accident drug and/or alcohol test, whichever occurs first. FTA regulation 49 CFR part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations", prohibits the use and ingestion of prohibited drugs at all times.

Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all covered employees be tested for marijuana, cocaine, amphetamines, opiates, and phencyclidine. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty. An alcohol test can be performed on a covered employee under 49 CFR Part 655 just before, during, or just after the performance of safety-sensitive job functions. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function.

Participation in the City's drug and alcohol testing program is a condition of employment for all covered employees and applicants for employment. A covered employee who refuses to submit to a drug or alcohol test will be in violation of this policy and may be subject to discipline, up to and including suspension or discharge.

**Prescription/Over-The-Counter Drugs Use**

A covered employee may possess and use medically authorized prescription or over-the-counter drugs at work as long as the prescription or over-the-counter drugs do not have disabling effects or otherwise affect the covered employee's fitness for duty or job performance. Covered employees must report the use of prescription or over-the-counter drugs that could have a disabling effect or otherwise adversely affect the covered employee's fitness for duty or job performance to their immediate supervisor. It is the covered employee's responsibility to determine from the physician, pharmacist, or other health care professional whether or not the prescribed or over-the-counter drugs could affect the covered employee's fitness for duty or impair job performance. Covered employees may be required to provide a written medical authorization to work from a physician, upon reporting the use of prescription or over-the-counter drugs. Failure to report the use of prescription or over-the-counter drugs that have disabling effects or otherwise affect the covered employee's fitness for duty while at work and failure to provide proper evidence of medical authorization to work may result in discipline, up to and including suspension or discharge.



**Covered Employee Responsibility**

The City expects and requires the support of all covered employees in meeting its commitment to providing a drug and alcohol free work environment. Each employee who observes or has knowledge of a covered employee in a condition that impairs his/her ability to perform his/her job duties or who poses a serious hazard to the safety and welfare of others, has an assertive responsibility to report the information to his or her immediate supervisor, the covered employee’s supervisor, or any member of the Human Resources Department.

**Workplace Drug-Related Convictions**

The Drug Free Workplace Act of 1988 requires covered employees, as a condition of employment, to report any criminal convictions of drug-related activity in the workplace to the City no later than five days after a conviction. The City shall inform its federal contracting agency of such convictions within ten days of learning about a conviction.

Covered employees convicted of workplace drug-related crimes will be subject to suspension or discharge. Disciplinary action will be imposed within 30 days of the City being notified of the conviction.

**Right To Inspection**

When the City has reasonable grounds to believe a covered employee is in improper possession of drugs or open alcohol containers on City property that covered employee may be requested to permit an inspection of his or her person, personal property, clothing, or personal vehicle. The City will have at least one witness and/or union representative present when conducting an inspection of a covered employee or a covered employee’s personal property, clothing, or personal vehicle. Refusal to submit to such an inspection may result in discipline, up to and including suspension or discharge. The City reserves the right to search City property (i.e. desks, file cabinets, lockers) at any time, including when this policy is violated.

**Training**

All covered employees will receive training regarding the effects and consequences of substance abuse use on personal health and safety, and the work environment. Training will also be provided regarding the manifestations and behavioral cues indicating substance abuse.

All supervisors who will be responsible for determining when it is appropriate to administer reasonable suspicion drug and/or alcohol tests will receive training on the physical, behavioral, and performance indicators of probable drug use and alcohol misuse.

**Testing**

Participation in the City’s drug and alcohol testing program is a requirement of each covered employee. Applicants for employment in a safety-sensitive position, covered employees requesting transfer into a safety-sensitive position, and covered employees in a position that requires the performance of a safety-sensitive function are required to submit to drug and possible alcohol testing, as mandated by federal regulations, as a

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condition of employment with the City. The Department of Transportation (DOT) regulation 49 CFR part 40, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” prescribes the testing methods that will be used.

All drug and alcohol testing will be conducted in a manner that assures a high degree of accuracy and reliability by using the techniques, chain of custody procedures, and equipment and laboratory facilities that have been approved by the U.S. Department of Health and Human Services (DHHS) and the DOT.

All drug and alcohol testing will be conducted in an environment that affords maximum privacy practicable for the covered employee being tested. The City will strictly adhere to all standards of confidentiality, maintaining the confidentiality of the covered employee throughout the drug and/or alcohol testing process, and releasing testing records and results only to those authorized by the Federal Transit Administration (FTA) rules to receive such information.

Except as otherwise provided herein, the City will be responsible for all costs directly associated with the drug and alcohol tests specified in this policy.

**Types of Testing:**

**1. Pre-employment**

All applicants for employment in safety-sensitive positions or individuals under the City's authority requesting to be transferred or promoted into safety-sensitive positions must submit to and pass urine testing for drugs.

Failure of a drug test will disqualify an applicant for employment in or transfer to a safety-sensitive position. A verified positive result on a drug test is considered to be a failure of the drug test. An applicant who has failed a pre-employment drug test will be provided the required information for evaluation by a Substance Abuse Professional (SAP). Unless otherwise provided by law, an applicant who has failed a pre-employment drug test will be ineligible to submit another application for employment with the City for a period of six months. Evidence of successful completion of a rehab program from an applicant or employee who has previously failed or refused a DOT test.

If a pre-employment/pre-transfer test is canceled, The City of Albany will still require the applicant take and pass a pre-employment drug test.

If an applicant or a covered employee requesting a transfer to a position listed in Appendix A, are unable to provide an adequate specimen for a pre-employment drug test or if the test is cancelled it will be considered a failed test. The applicant/covered employee will not be eligible for a referral by the City’s Medical Review Officer (MRO) for a medical evaluation to determine if the inability to provide a specimen is for a valid medical reason.

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**2. Reasonable Suspicion**

Covered employees will be required to submit to urine testing for drugs and/or alcohol breath testing when reasonable suspicion exists based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee being under the influence of a prohibited drug or has misused alcohol. The authorization to administer a reasonable suspicion test shall be made by one supervisor trained to identify the signs and symptoms of drug use and alcohol misuse, and may be made by multiple supervisor(s) trained to identify the signs and systems of drug use and alcohol misuse. The supervisor(s) are required to articulate and substantiate physical, behavioral, and performance indicators of probable drug use or alcohol misuse. The authorization will be based on the supervisor’s specific observations concerning the appearance, behavior, speech, or body odor of the covered employee. The authorization will be based on the supervisor’s specific observations and completion of the Reasonable Cause Record Form.

When a covered employee has been notified that s/he will be required to submit to reasonable suspicion drug and/or alcohol testing, s/he must report immediately to the collection site designated by the City. Transportation to and from the collection site will be provided by the City. The covered employee will not be permitted to use rest room facilities, consume beverages, or smoke until specimen collection is completed.

The supervisor initiating a reasonable suspicion test will be responsible for documenting the reasons for the suspicion and the facts or circumstances of the incident that precipitated the reasonable suspicion testing. All documents generated in connection with decisions to administer a reasonable suspicion drug and/or alcohol test will be forwarded to and maintained by the Human Resources Director or designee.

**3. Post-accident**

Drug and alcohol testing is required of all covered employees involved in an accident where there is a loss of life. In other nonfatal accidents, drug and alcohol testing is required of all covered employees unless said covered employees’ performance can be completely discounted as a causative or contributing factor.

An accident is defined as an occurrence associated with the operation of a vehicle in which:

- An individual dies, or
- An individual, including a passenger, suffers a bodily injury and immediately receives a medical treatment away from the scene of an accident, or
- One or more of the vehicles involved incurs disabling damage as a result of the occurrence and is transported away from the scene by a tow truck or other vehicle, or



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Following a fatal accident, each surviving covered employee on duty in the mass transit vehicle at the time of the accident must be tested. Covered employees not on the vehicle whose performance could have contributed to the accident, as determined by the City using the best information available at the time of the accident, must also be tested.

Following a nonfatal accident, any covered employee who is involved in and is on duty at the time of said accident will be subject to drug and alcohol testing unless the City determines, using the best available information at the time of the decision that said covered employee's performance can be completely discounted as a contributing factor to the accident.

All covered employees on duty in the vehicle at the time of a nonfatal accident must be tested unless their behavior can be completely discounted as a contributing factor to the accident. Covered employees not on the vehicle whose performance could have contributed to the accident, as determined by the City using the best information available at the time of the accident, will be subject to drug and alcohol testing unless their behavior can be completely discounted as a contributing factor to the accident.

The appropriate transit supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours of the accident for alcohol, and within 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the Supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

Requirements for accident testing is stayed while employee assists in the resolution of the accident or receives medical attention following the accident, however, testing could be administered simultaneously, if conscious, to the covered employee while receiving necessary medical attention.

Any covered employee involved in an accident must remain readily available for drug and/or alcohol testing for up to eight hours after the accident. The covered employee is responsible for notifying the City of his or her location if s/he leaves the scene of the accident prior to submission to testing. Failure by the covered employee to remain readily available may be determined to be a refusal to submit to testing and may lead to disciplinary action up to and including discharge.

When a covered employee has been notified that s/he will be required to submit to post-accident drug and/or alcohol testing, s/he must report immediately to the collection site designated by the City. Transportation to and from the collection site will be provided by the City. The covered employee will not be permitted to use rest room facilities, consume beverages, or smoke until specimen collection is complete.

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Note: Post-accident drug and alcohol tests required by this policy are in addition to and/or separate from any tests conducted for law enforcement purposes.

4. **Random**

All covered employees will be subject to random and unannounced drug and/or alcohol testing. Selections are made using a scientifically valid method. Testing will be spread reasonably throughout all periods of the calendar year and be conducted at all hours and days when safety-sensitive duties are performed. Testing will be unannounced and immediate and will allow no discretion by personnel as to who is selected or notified to proceed to testing. When a covered employee has been notified that s/he has been selected for testing, s/he must report immediately to the collection site designated by the City. Transportation to and from the collection site will be provided by the City. The covered employee will not be permitted to use rest room facilities, consume beverages, or smoke until specimen collection is completed.

The number of random drug and alcohol tests to be conducted each year will meet the current federal drug and alcohol testing requirements.

All covered employees will have an equal chance of being selected for testing and will remain in the random selection pool even after being tested. For example, it is possible for some covered employees to be tested several times in one year, and other covered employees not to be tested for several years.

5. **Return to Duty**

In accordance with 49 CFR Part 40 Subpart O, all covered employees who have had a verified positive drug test, an alcohol test result of 0.04 or greater, refused to submit to a test, or engaged in any activity that violates this policy, will be immediately removed from his/her safety-sensitive duties and the City will ensure that the employee be evaluated by a Substance Abuse Professional (SAP). Before being returning to duty and performing safety-sensitive duties, the employee must have followed the recommendations for action by the SAP, must pass a return to duty drug test and/or submit to a breath alcohol test with a result showing an alcohol concentration level of less than 0.02, and will be subject to follow-up drug and/or alcohol testing as directed by the SAP

In instances, regardless of the reason, where a covered employee has not performed a safety-sensitive duty for 90 consecutive days or more and has not been in the employer’s random selection pool, the employee will be required to take a pre-employment drug test with a verified negative result before returning to safety-sensitive duties under 49 CFR Part 655.

6. **Follow-up**

In accordance with 49 CFR Part 40, Subpart O, prior to performing safety-sensitive duties, a covered employee who has been permitted to return to duty, following a verified positive drug test, an alcohol test result of 0.04 or greater, or a refusal to submit to a test **WILL BE SUBJECT TO UNANNOUNCED FOLLOW-UP DRUG AND/OR ALCOHOL TESTING FOR A LEAST 12**



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MONTHS BUT NOT MORE THAN 60 MONTHS. THE FREQUENCY AND DURATION OF THE FOLLOW-UP TESTING WILL BE RECOMMENDED BY THE SAP, WITH A MINIMUM OF SIX TESTS DURING THE FIRST 12 MONTHS AFTER THE COVERED EMPLOYEE HAS RETURNED TO DUTY. A covered employee, who has been permitted to return to duty, following voluntary treatment for a drug and/or alcohol problem, may be required to submit to a follow-up drug and/or alcohol testing.

When a covered employee has been notified that s/he has been selected for testing, s/he must report immediately to the collection site designated by the City. Transportation to and from the collection site will be provided by the City. The covered employee will not be permitted to use rest room facilities, consume beverages, or smoke until specimen collection is completed.

Follow-up testing is separate from and in addition to the regular random testing program.

**Covered On-Call Employees**

Any covered employee who is requested to report for duty when s/he is not regularly scheduled to work is considered an on-call covered employee. An on-call covered employee who is requested to report for duty less than four hours prior to the requested report time must inform the City if s/he has consumed alcohol within four hours of the requested report time.

If an on-call covered employee informs the City of his/her use of alcohol and claims s/he has the ability to safely perform his/her safety-sensitive function, the covered employee will be allowed to submit to a breath alcohol test. If the covered employee's breath alcohol concentration level measures less than 0.02, the covered employee will be allowed to perform his/her safety-sensitive function.

An on-call covered employee who informs the City of his/her use of alcohol and fails the breath alcohol test will not be permitted to report for duty and will not be considered to be in violation of this policy. If an on-call covered employee who does not inform the City of his/her use of alcohol and exhibits signs of alcohol misuse, s/he may be subject to reasonable suspicion testing. If the test indicates a breath alcohol concentration level of 0.02, or greater, s/he will be in violation of this policy.

A regularly scheduled covered employee or a covered employee who is given more than four hours notice of the requirement to report for duty must not consume alcohol four hours prior to performing a safety-sensitive function. The option of claiming ability to perform safety-sensitive function and being tested to prove the ability does not apply.

**Drug Testing Procedures**

Drug testing will be conducted using laboratory testing of urine specimens for all substances required by Department of Transportation (DOT) regulation 49 CFR Part 40.



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All urine specimens will be collected at a collection site, designated by the City, which meets the guidelines established by the Department of Transportation (DOT) and Federal Transit Authority (FTA).

The collection site personnel will be responsible for maintaining the integrity of the specimen collection and transfer process and for protecting the dignity and privacy of the covered employee providing the sample.

Chain of custody procedures, using DOT or Federal Transit Authority urine custody and control forms, will be used throughout the collection and analysis process to ensure that test results will be attributed to the correct covered employee. The DOT and FTA "Urine Custody and Control Form" documents the chain of custody and is legal evidence that the reported test results apply to the donor.

The covered employee will be required to urinate into a collection cup or specimen bottle, supplied by the collection site, providing at least 45 milliliters of urine.

The collection site personnel will be responsible for recording the temperature of the specimen and will visually examine the specimen for any unusual color or sediment and note the results on the custody and control form. An applicant with a dilute negative test result will be required to retest.

Collection site personnel will also be responsible for separating the specimen, in the presence of the covered employee, into two specimen bottles. One bottle shall contain thirty (30) ml of urine and will be used as the primary specimen. The second bottle shall contain at least fifteen (15) ml of urine and shall be used as the split specimen.

Both bottles must be sealed and labeled in the presence of the donor covered employee. The labels must be printed with the same specimen identification number as the custody and control form. The donor covered employee will initial the labels verifying that the specimen is his/hers.

If the covered employee is unable to provide at least 45 ml of urine, the covered employee will be permitted to drink not more than 40 ounces of fluids during a period of up to three (3) hours. If the covered employee is still unable to provide an adequate specimen, the testing will be discontinued, the City will be notified, and the MRO designated by the City will refer the covered employee to a physician approved by the MRO for a medical evaluation to determine whether the covered employee's inability to provide a specimen is genuine or constitutes a refusal to submit to a drug test.

**Observed Collections**

In the following circumstances, collection site personnel must observe a second urine collection immediately after the first collection if:

- The covered employee has presented a urine sample that falls outside the normal temperature range (90 to 100 degrees), and/or
- The collection site personnel observe conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample.



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A supervisor of the collection site person or a representative of the City will review and concur in advance with any decision by a collection site person to obtain a specimen under direct observation. Collection site personnel will notify the City of the decision to conduct an observed collection.

In the following circumstances, as permitted by the Federal regulations, the City may authorize an observed collection:

The covered employee has previously been determined to have used a controlled substance without medical authorization and the particular test is being conducted under the FTA regulation as a return to duty or follow-up test.

Direct observation of specimen collection must be by a collection site person of the same gender as the covered employee being tested.

**Return to Duty After Specimen Collection**

A covered employee who is required to submit to random or follow-up drug testing may be returned to duty immediately following specimen collection. If the covered employee is also subject to random or follow-up alcohol testing, the covered employee's return to duty will be dependent upon the outcome of the breath alcohol testing.

A covered employee who is required to submit to a reasonable suspicion or post-accident drug test will not be permitted to return to duty and will be placed on a paid leave pending the receipt by the City of a verified test result.

**Drug Testing Laboratories**

All drug testing must be completed in a laboratory certified by the Department of Health and Human Services (DHHS). Immunoassay screening will be used as the initial test for the testing of the primary specimen. If any prohibited drug registers above the cutoff level, designated in the Federal regulations, a confirmation test using gas chromatography/mass spectrometry (GC/MS) will be conducted.

**Drug Test Results**

All drug test results will be reported by the testing laboratory to a qualified MRO designated by the City. The MRO will be responsible for verifying and validating drug test results. The MRO will review and interpret a covered employee's confirmed positive drug test result by reviewing the individual's medical history and affording the covered employee an opportunity to offer any clarifying information that would explain a positive test result. The MRO will report each verified test result to the City and will notify each covered employee who has a verified positive test result.

**Positive Drug Test Results**

A covered employee who has a verified positive drug test result will be immediately removed from his/her safety-sensitive position, advised of resources available to evaluate and resolve problems associated with drug abuse, and be evaluated by a SAP. The covered employee will be placed on a paid leave of absence pending the results of the evaluation by the SAP and may be subject to discipline, up to and including suspension or discharge.

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Employees who test positive and seek the recommended treatment and counseling shall be responsible for the costs incurred through the City provided health insurance program.

A covered employee who has a verified positive drug test result will have 72 hours, including holidays and weekends, from the time of notification by the MRO, or the City, whichever occurs first, in which to request that the split specimen be analyzed at a different DHHS-approved laboratory. The split specimen will be analyzed, using Gas Chromatography/Mass Spectrometry GC/MS technology, to determine the presence, or absence, of the drug(s) for which a positive result was obtained in the test of the primary sample, without regard to the cutoff levels specified in the federal regulations for analysis of the primary sample.

If the result of the test of the split specimen fails to confirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO will cancel the test and report the cancellation and the reasons for it to the City, the covered employee, and the DOT. The covered employee will be returned to duty and will be compensated for time or benefits lost as a result of being placed on an unpaid leave of absence.

The request by a covered employee for an analysis of the split specimen will not delay the removal of the covered employee from his/her safety-sensitive position.

**Breath Alcohol Testing Procedures**

All breath specimens must be collected through the use of an evidential breath testing device (EBT) approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a Conforming Products List (CPL) for such devices. The breath alcohol tests will be conducted by a trained breath alcohol technician (BAT) at a site that provides visual and aural privacy to the covered employee being tested to the greatest extent practicable. Prior to specimen collection, the BAT must confirm the positive identity of the covered employee being tested, and explain the testing procedures in accordance with 49 CFR Part 40 of the DOT breath alcohol testing regulations, and the employee will be instructed to sign the certification statement prior to providing a breath sample. If the employee does not sign, then it is a refusal to test.

The BAT will conduct an initial screening test, requiring the covered employee to blow forcefully into a disposable mouthpiece, attached to the EBT, for at least six seconds or until an adequate amount of breath has been obtained.

If the result of the initial screening test is an alcohol concentration of 0.02 or greater, the BAT will direct the covered employee take a confirmation test. The BAT will then explain the confirmation test procedures to the employee in accordance with DOT regulations, which includes the employee signing the certification section informing the driver that he/she cannot perform safety-sensitive functions or operate a motor vehicle if the results are 0.02 or greater. If the employee does not sign, the BAT will make a note in the appropriate section that the employee refused to sign. This does not constitute a refusal to test. If the results of the initial screening test and the confirmation test are different, the confirmation test result will be deemed to be the final result.



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The BAT will be responsible for transmitting all test results to the City in a confidential manner.

If a covered employee attempts and fails to provide an adequate amount of breath, the BAT will note this on the alcohol testing form and notify the City. The covered employee will be required to submit to a medical evaluation by a physician of the City's choice, concerning the covered employee's medical ability to provide an adequate amount of breath. If no valid medical reason is determined, then the covered employee's inability to provide an adequate amount of breath will be considered to be a refusal to submit to a test.

**Breath Alcohol Test Results**

If the results of the breath alcohol test are below 0.02, the covered employee may be returned to work immediately.

Under the City's authority, if the results of the breath alcohol test between 0.02 and 0.039, the covered employee will not be permitted to return to duty and will be placed on administrative leave until the start of his/her next regularly scheduled shift and not less than eight hours following the test. The employee must have a negative return to duty test before being allowed to return to work. The covered employee may be subject to discipline for violation of other City policies.

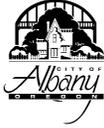
A confirmed alcohol concentration of 0.04 or greater will be considered a positive breath alcohol test result and a violation of this policy, and the covered employee will be immediately removed from his/her safety-sensitive position, advised of the resources available to evaluate and resolve problems associated with alcohol misuse, and be referred to a SAP. The covered employee will be placed on a paid leave of absence pending the results of the evaluation by the SAP. Such employee must comply with the SAP recommendations of rehabilitative treatment, outpatient counseling, and all contents of a signed Last Chance Agreement.

A covered employee with a breath alcohol concentration level of 0.02 or greater will be provided transportation to his/her residence. If the covered employee insists on driving, law enforcement will be notified.

**Refusal to Submit to a Test**

Any covered employee who refuses to submit to a drug or alcohol test must be evaluated by a SAP. A covered employee who refuses to submit to a drug or alcohol test will be placed on a paid leave of absence pending the results of the evaluation by the SAP and may be subject to discipline, up to and including suspension or discharge. A determination of a covered employee's refusal to submit to a test includes:

- Refusal to take the test (except for a pre-employment test)
- Failure to provide a breath or urine specimen
- Failure to provide a sufficient breath or urine specimen with no medical information
- Failure to remain at the testing site until the test is complete
- Admitting to the collector or MRO that you adulterated or substituted the



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specimen.

- Not reporting to the collection site (except for a pre-employment test.), or reporting to the collection site in a reasonable time as determined by the City.
- Not cooperating with the collection process
- For an observed collection, failure to follow the observers instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if any type of prosthetic or other device is being used.
- Possession of or wearing a prosthetic or other unauthorized device.
- Leaving the scene of an accident without a valid reason before the tests have been conducted
- Failure to undergo a medical evaluation as required by an MRO or DER for drug & alcohol testing
- Failure to provide a breath or urine specimen for any drug test required by Part 40 or DOT agency regulations
- In the case of a directly observed or monitored collection in a drug test, failure to permit the observation or monitoring of your provision of a specimen
- Failure to take a second test the employer or collector has directed you to take
- The MRO reports that there is verified adulterated or substituted test result
- Failure or refusal to sign Step 2 of the alcohol testing form

**IN ANY EVENT, A REFUSAL TO TAKE THE TEST WILL BE THE SAME CONSEQUENCES AS A POSITIVE RESULT; AND THE EMPLOYEE WILL IMMEDIATELY BE REMOVED FROM ANY SAFETY-SENSITIVE DUTIES.**

**Discipline**

Compliance with the City’s Substance Abuse Policy is a condition of employment for all covered employees. For covered bargaining unit employees, a violation of any part of the City’s Substance Abuse Policy may result in discipline as provided in the Collective Bargaining Agreement. For other covered employees, a violation of any part of the City’s Substance Abuse Policy may result in discipline, up to and including suspension or discharge. Factors that the City may consider regarding the severity of disciplinary action include, but are not necessarily limited to, the covered employee’s conduct that prompted the application of this policy, the covered employee’s work record, the degree of impairment, the potential for consequences arising from the covered employee’s action, and the drug and/or alcohol test results.

Covered employees who are discharged as a result of violating the Substance Abuse Policy will have access to the City’s current EAP. Access to the EAP program will be limited to treatment directly related to the drug and/or alcohol problem, and is available for a time period not to exceed sixty days.

**Required Treatment**

In the event that a continuing covered employee is referred for treatment by a SAP, said covered employee will be required to satisfactorily complete an approved drug or alcohol treatment program and aftercare as a condition of continuing employment as determined by the SAP.



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Work absences for treatment purposes may qualify for available sick leave benefits and/or personal medical leave, provided the covered employee is following the prescribed treatment program. If sick leave and personal medical leave have been exhausted, the covered employee will be placed on a medical leave of absence without pay. Covered employees working under an agreement that they satisfactorily complete an approved program of drug and/or alcohol dependency treatment will be required to submit to follow-up drug and/or alcohol testing to verify continued abstinence from drugs and/or alcohol for at least 12 but not more than 60 months. The frequency and duration of the follow-up testing will be recommended by the SAP, with a minimum of six tests during the first 12 months after the covered employee has returned to duty.

**Working Conditions**

The presence or treatment of a substance abuse problem does not excuse a covered employee from meeting performance, safety, or attendance standards or following other City instructions. In no circumstances may a covered employee invoke protection under this policy as a means to avoid disciplinary actions resulting from poor work performance or misconduct at work. A voluntary request for assistance will not shield a covered employee from disciplinary action resulting from on-the-job conduct or work performance. Covered employees remain responsible for their on-the-job conduct and work performance.

**Last Chance Agreement**

Covered employees who test positive on a drug test, have a confirmed breath alcohol concentration level of 0.04 or greater, or who are referred to drug and/or alcohol treatment that requires them to be away from work, will be required to sign a last chance agreement prior to being permitted to return to his/her safety-sensitive position. The agreement may include, but is not limited to the following requirements:

- A release to work statement from an approved treatment specialist.
- A negative test for drugs and/or alcohol.
- An agreement to follow-up testing.
- A statement of expected work-related behaviors.
- An agreement to follow specified aftercare requirements as determined by the SAP.
- An expressed understanding that violation of the return to work agreement may result in discipline, up to and including suspension or discharge.

The last chance agreement is not a guarantee of continued employment. Covered employees working under a return to work agreement must also follow all other City policies and procedures.

**Confidentiality**

The City will maintain all records regarding the drug and/or alcohol testing of covered employees in a secure manner so that the disclosure of information to unauthorized persons does not occur. The City will only release information regarding the drug and/or alcohol testing of covered employees to those individuals, and in those circumstances, as specified in the federal regulations.



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**Additional Information**

For additional information regarding this policy or the City’s testing program, contact the Human Resources Director or designee.

**Maintenance**

The Human Resources Director is responsible for monitoring the application and revision of this policy.

**Voluntary Employee Assistance**

The City encourages regular employees who feel they may be suffering from problems related to their use of drugs or alcohol to seek treatment from the Employee Assistance Program or medical provider of their choice.

The City shall cover up to \$500 out-of-pocket expenses not covered by the health insurance program for employees who voluntarily seek treatment before any random or other testing is required by the City.

**Over-the-Counter Drugs**

If there is a question regarding an employee’s ability to work safely and effectively while using prescription or non-prescription medications, clearance from a qualified physician will be required. The City will continue to retain the right to make final determination concerning an employee’s fitness to perform work.

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**Definitions**

**Alcohol** - As defined by the FTA, the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol.

As agreed upon by the City and the Union, alcohol means any alcoholic beverage containing more than one-half of one percent alcohol by volume, and every liquid or solid, patented or not, containing alcohol, and capable of being consumed by a human being.

**Alcohol Use** - The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

**Breath Alcohol Technician (BAT)** - An individual who instructs and assists individuals in the alcohol testing process and operates an EBT.

**Chain of Custody** - Procedure to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition. These procedures require that an appropriate drug testing custody form be used at the time of collection to receipt by the laboratory and that upon receipt by the laboratory (an) appropriate chain of custody form(s) account(s) for the sample within the laboratory.

**Controlled Substance** - As agreed upon by the City and the Union, controlled substance means any drug or its immediate precursor classified in Schedules I through V under the

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Federal Controlled Substances Act, 21 USC Sections 811 to 812, as modified under ORS 475.035. The use of the term “precursor” in this subsection does not control and is not controlled by the use of the term “recursor” in ORS 475.940, 475.950, and 475.955. In addition, manufactured drugs recognized by health and law enforcement agencies that are not included in Schedules I through V under the Federal Controlled Substances Act, 21 USC Sections 811 to 812, as modified under ORS 475.035 are considered to be controlled substances.

**Covered Employee** - Any employee who is employed in a position covered by this policy. Said positions are listed in Appendix A attached.

**Medical Review Officer** - A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer’s drug testing program that has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual’s confirmed positive test results together with his/her medical history and any other relevant biomedical information.

**Over-The-Counter-Drugs/Medications** - Drugs and/or medications that is legally available without a prescription.

**Performing a Safety-Sensitive Function** - A covered employee is considered to be performing a safety-sensitive function and includes any period in which s/he is actually performing, ready to perform, or immediately available to perform such functions.

**Prescription Drugs/Medications** - Those drugs/medications that are used in the course of medical treatment and have been prescribed and authorized for use by a licensed practitioner/physician or dentist.

**Safety-Sensitive Function** - Any of the following duties:

- Operating a revenue service vehicle, including when not in revenue service
- Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver’s License
- Controlling dispatch or movement of a revenue service vehicle
- Maintaining a revenue service vehicle or equipment used in revenue service

**Substance Abuse Professional** - A licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, state-licensed marriage/family therapist, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

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**References**

21 U.S.C. 802, U.S. Department of Health and Human Services “Mandatory Guidelines for Federal Workplace Drug Testing Program”; Observed Behavior-Reasonable Cause Record Form

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**Review and Authorization**

Supersedes: HR-SF-06-0034; 06/01/2016	Created/Amended by/date: DS; 12/19/2017	Effective Date: January 1, 2018
HR Director:		City Manager:

Form or worksheet revision related to this document? No  Yes

If yes, attach a copy of the revised form or worksheet.

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**SUBSTANCE ABUSE POLICY  
APPENDIX A**

This policy shall be applied to all of the following safety sensitive positions, which fall under FTA authority:

**ATS Authority**

Drivers:

- Transit Operator
- Transportation Assistant

Dispatchers:

- Transit Programs Supervisor
- Para transit Services Supervisor
- Transit Dispatcher
- Clerk II-If performing Transit Dispatcher duties

**Non-ATS Authority**

Drivers:

- Trip/Tour Driver