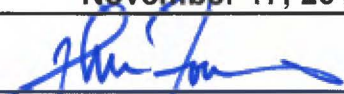




Human Resources Policies and Procedures

Policy Title: Drug and Alcohol Use and Testing	Policy Number: 2.4
Effective: January 17, 2020 Supersedes previous version of policy effective dated November 17, 2014	
Approval: 	Page 1 of 11

1.0 Scope

- | | |
|--------------------------------------------------------|-------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Full-time | <input checked="" type="checkbox"/> Union |
| <input checked="" type="checkbox"/> Part-time | <input checked="" type="checkbox"/> Independent Contractors |
| <input checked="" type="checkbox"/> Temporary/Contract | <input checked="" type="checkbox"/> Visitors, Vendors, Volunteers |
| <input checked="" type="checkbox"/> Non-Union | <input checked="" type="checkbox"/> Board and Commission Members |

Employees who are covered under the provisions of a collective bargaining agreement will follow the standards as contained in their respective contracts to the extent any part of this policy conflicts with the language in the contract.

2.0 Purpose

- 2.1** The purpose of this policy is to eliminate substance abuse and its effects in the workplace and to implement and follow applicable federal and state laws relating to drug possession and use, including the Drug Free Workplace Act of 1988 and the United States Department of Transportation's Mandatory Drug and Alcohol Testing Programs.
- 2.2** Involvement with Illegal Drugs, Legal Drugs or Alcohol may negatively affect job performance and employee safety, and can hurt productivity and efficiency. Employees must be in a condition to perform their duties safely and efficiently, in the interests of their fellow workers and the public, as well as themselves.
- 2.3** This policy provides guidelines for the detection and deterrence of alcohol and drug abuse. It also outlines the responsibilities of the City's managers, supervisors, and employees. Substance abuse increases the potential for accidents, absenteeism, substandard performance, poor employee morale and potential damage to City property, and to the City's reputation.

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Employees violating this policy will be subject to discipline up to and including termination of employment.

- 2.4** The City recognizes that Michigan voters approved the legalization of adult-use recreational marijuana in the fall of 2018, and also recognizes that employees who are under the influence of marijuana may contribute to a less effective and, in some instances, a dangerous workplace. The City, through this policy, makes clear that recreational use of marijuana outside of work may not disqualify a person from employment with the City in certain job categories. However, use of marijuana that impacts an individual's mental or physical abilities in the workplace or while on the job may disqualify an individual from employment opportunities or continued employment with the City.

3.0 Definitions

- 3.1** **Illegal Drug**, for the purpose of this policy, is defined as any substance listed under the federal Controlled Substances Act of 1970 as amended that is possessed without a DEA recognized medical prescription or used in a way that is not in compliance with the instructions of a DEA recognized medical prescription.
- 3.2** **Legal Drugs**, for the purposes of this policy, are defined as any substance listed under the federal Controlled Substances Act of 1970 as amended but that is possessed and used in accordance with a valid DEA recognized medical prescription and any over-the-counter pharmaceutical substance.
- 3.3** **Alcohol**, for the purposes of this policy, is defined as any consumable product containing an alcohol intoxicant.
- 3.4** **Substance Abuse** for the purpose of this policy is defined as the use of Illegal Drugs and/or the abuse of Legal Drugs and Alcohol which may impair an employee's ability to safely and effectively perform the functions of his or her job.
- 3.5** **Impaired**, for purposes of this policy, means being in an Illegal Drug, Legal Drug or Alcohol induced physical or mental condition while on duty (including any break period) which may (1) create a risk to the safety or well-being of the individual, other employees, members of the general public or City public or private property; or (2) impair judgment, performance or behavior, including the ability to perform assigned tasks or fulfill employment obligations; or (3) having a sufficient amount of Illegal Drugs, Legal Drugs, or Alcohol in one's system to result in a positive test for consumption of said substances above a scientifically valid threshold for impairment.

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3.6 Drug free workplace means the prohibition of the unlawful manufacture, distribution, dispensation, possession or use of Illegal Drugs at work.

3.7 Reasonable suspicion is a belief, based on objective facts, sufficient to lead a reasonably prudent supervisor to suspect that an employee is under the influence of drugs or alcohol, or is impaired by drugs or alcohol while on the job.

Any of the following (but not limited to the following), alone or in combination, may constitute reasonable suspicion:

- A. Slurred speech, slowed speech, accelerated speech or talkativeness;
- B. Alcohol and/or other unusual odors on breath, or on the person;
- C. Unsteady walking and movement;
- D. An accident involving City property or while on duty;
- E. Physical altercation;
- F. Verbal altercation;
- G. Unusual behavior or change in behavior;
- H. Possession of alcohol or drugs;
- I. Information obtained from a reliable person with personal knowledge of Illegal or Legal Drug or Alcohol use;
- J. Reddened eyes, unusual pupil size;
- K. Inability to concentrate, restless or aggressive behavior;
- L. Anxiety and/or confusion;
- M. Profuse sweating

4.0 Policy

4.1 It is the policy of the City of Ann Arbor that the City is a Drug Free Workplace and that employees shall not be impaired by the consumption of Illegal Drugs, Legal Drugs, or Alcohol pursuant to this policy.

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- 4.2** The possession and/or consumption of Illegal Drugs while on duty (including any break period), at any City facility, while in any City vehicle, or while representing the City at any function is strictly prohibited. Possession or consumption of Illegal Drugs is grounds for discipline up to and including termination of employment.
- 4.3** The possession and consumption of Legal Drugs is allowed under this policy so long as an employee is not impaired as a result of the consumption of the Legal Drug.
- 4.4** Consumption of Alcohol while on duty (including any break period), at any City facility, while in any City vehicle, or while representing the City at any function is strictly prohibited. Consumption of alcohol while traveling for work is permitted provided that it is consumed in moderation and in a socially acceptable setting. Consumption of Alcohol in moderation while representing the City at official functions where Alcohol is served by the host is permitted, provided that:
- No employee may appear impaired while representing the City in an official capacity.
 - No employee may receive hourly compensation in the form of regular pay, overtime pay, or compensatory time for any time representing the City at an official function after a point in time when they have begun consuming an alcoholic beverage.
 - No employee may possess or consume alcohol in violation of the provisions of *Chapter 39 – Parks—General Regulation* of the Ann Arbor City Code.
- 4.5** An employee shall not take or be impaired by any Legal Drugs that the employee knows or should know may interfere with his or her safe and effective performance of duties or operation of City equipment while they are working.
- 4.6** If a supervisor believes with reasonable suspicion that an employee is impaired at work, the employee shall be prevented from engaging in further work and will be transported to the designated medical clinic for testing.
- 4.7** A drug and/or alcohol test may test for any Illegal Drug, Legal Drug, or Alcohol which could impair an employee’s ability to effectively and safely perform the functions of his/her job. If a scientifically valid standard for impairment does not exist for a particular substance, then a test that results in a positive indication of consumption in addition to the reasonable

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suspicion of impairment by a supervisor shall suffice for disciplinary purposes.

- 4.8** The City has established a voluntary Employee Assistance Program (EAP) to assist those employees who wish to seek help for alcohol or drug problems. Participation in this program is confidential. Employees may contact their supervisor or Human Resources for additional information or information can be found online.

5.0 Responsibility

5.1 Employee Responsibilities

An employee:

- A. Shall comply with Section 4 of this policy.
- B. If the employee is under treatment that could impair their ability to safely carry out their job functions, then they are to take leave until they are no longer impaired by the treatment or they are to notify the Benefits Office in Human Resources and seek alternative work arrangements for the duration of their treatment after providing a doctor's note indicating that they have a prescription that may impair them at work. The employee is not obligated to disclose the details of their treatment or prescription, however they are obligated to ensure their own safety and that of their co-workers in the workplace
- C. Shall submit immediately to an alcohol and drug test when requested by management. Failure to submit to a drug or alcohol test or obstruction of a drug or alcohol test may result in discipline up to and including termination of employment. In addition, refusal to take a drug or alcohol test will be deemed a positive test.
- D. Shall notify Human Resources in writing within five days of any conviction of a criminal drug violation in the workplace.

5.2 Management Responsibilities

Managers and supervisors are responsible for:

- A. Distribution and reasonable enforcement of this policy.

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- B. Assuring that standards for drug testing programs are clearly communicated to all employees and are administered consistently throughout the City.
- C. Working with Human Resources to take appropriate disciplinary action, up to and including termination of employment, within 30 days (or other applicable union contractual timelines) of notification of a conviction as described above.
- D. Establishing and implementing a program to inform employees about the dangers of drug and alcohol abuse, the City's policy of maintaining a drug-free environment, the availability of drug or alcohol counseling, rehabilitation, and employee assistance programs, and penalties for violation of this policy.
- E. Should stay current on reasonable suspicion training to help determine whether an employee is under the influence of alcohol or drugs. All supervisors of CDL drivers must participate in a training course related to reasonable suspicion testing.

6.0 Department of Transportation (CDL Drivers)

- 6.1** The Department of Transportation requires that employees with Commercial Driver's Licenses (CDL) be subject to drug and alcohol testing under a variety of circumstances, including pre-placement, random, post-accident, reasonable cause, and return to duty/follow up.
- 6.2 Pre-placement:** Applicants for City positions who do not pass a pre-placement drug screen in accordance with Department of Transportation regulations will not be hired.
- 6.3 Random:** Those City employees who are employed in positions requiring a CDL will be tested on a random basis in accordance with Department of Transportation regulations.
- 6.4 Post-Accident:** As soon as practicable following an accident involving a commercial motor vehicle, drug and alcohol testing will be required for the driver, if the accident involves the loss of human life, or if the driver receives a citation under State or local law for a moving violation arising from the accident. Under these circumstances, the employee will not be permitted to drive until such time as the testing is completed and results received.
- 6.5 Reasonable Suspicion:** Employees will be required to submit to a drug and/or alcohol test when the employee's conduct or behavior has given rise

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to a reasonable suspicion that the employee may be using drugs or alcohol in violation of Department of Transportation regulations. The decision to test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

- 6.6 Return to Duty/Follow Up:** An employee who has failed a DOT drug or alcohol test and has completed rehabilitation for substance abuse must pass a drug and alcohol screening test prior to being returned to work. In addition, if a disciplinary action requires additional testing for a period of time, the employee must pass all such tests or face further discipline up to and including termination.

7.0 Non-DOT Drug and Alcohol Testing

- 7.1** The City will require drug and alcohol testing for employees who are not subject to DOT requirements under the following circumstances: Pre-placement, reasonable suspicion, return to duty and transfers of existing employees into a position where marijuana is required in pre-placement drug testing.
- 7.2** Marijuana will not be included in pre-placement drug testing for any employee 21 years or older except for employees subject to federal drug testing regulations, such as a CDL driver, or an employee responsible for the administration of justice, the collection of evidence, or the prosecution of criminal complaints such as police officers, fire inspectors, or lawyers. Human Resources will keep a list of all positions that require marijuana to be included in pre-placement drug testing and ensure that the drug testing is conducted properly.
- 7.3 Pre-placement:** Only new hires for positions at the City will be subject to pre-placement drug testing unless otherwise required by federal law and unless an employee is transferring into a position that requires testing for marijuana. New Hires are employees not employed by the City at the time of the commencement of their new job with the City. Those who do not pass the drug test will not be eligible for hire.
- 7.4 Reasonable Suspicion:** Any employee who is reasonably suspected of Substance Abuse or being Impaired in the workplace or while performing official duties will be required to undergo an alcohol and/or drug test. The decision to test must be based on a reasonable belief that the employee may be impaired on the basis of specific, current physical, behavioral or performance indicators of probable drug and/or alcohol use, including, but not limited to accidents which occur on the job. While marijuana may not be included in the pre-placement testing, it is included in the reasonable

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suspicion testing and a positive test result for marijuana may serve as the basis for discipline under this provision of the policy.

- 7.5 Return to Duty:** An employee who has failed a drug and/or alcohol test and has completed rehabilitation for substance abuse must pass a drug and/or alcohol screening test prior to being returned to work. In addition, if a disciplinary action requires additional testing for a period of time, the employee must pass all such tests or face further discipline up to and including termination of employment. While marijuana may not be included in the pre-placement testing, it is included in the return to work drug testing.

8.0 Procedures

8.1 Reasonable Suspicion

- A. If management suspects that an employee is impaired at work, he/she will order the employee to stop work and will contact Human Resources immediately. Management will then arrange for the employee to be transported by City personnel to the City's designated medical clinic for testing. Documentation by the supervisor, as well as any witnesses, will be required, describing any behavior which gave rise to a reasonable suspicion. Following the testing, the employee will be returned to the work facility and arrangements will be made to transport the employee to his/her home. The employee will not be permitted to drive his/her vehicle. The employee's supervisor, as well as any witnesses, must fill out the Reasonable Suspicion Form. Supervisors should send this form to Human Resources immediately after the incident.
- B. Any manager or supervisor encountering an employee who refuses an order to submit to a drug and/or alcohol test upon request shall remind the employee of the requirements and disciplinary consequences of this policy.
- C. A refusal to submit to testing will be considered a positive test result.
- D. An employee who is tested pursuant to the reasonable suspicion provision of this policy will be placed on administrative leave with pay pending the test outcome. If the test is not positive, the employee will be allowed to return to work, unless the administrative leave was imposed for reasons unrelated to this policy. If the test is positive, the employee will be placed on unpaid administrative leave pending completion of an investigation and imposition of discipline.

8.2 Random

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- A. Only employees who are required to be randomly tested by federal or state law shall be subject to random drug testing. Employee groups who are subject to pre-employment marijuana testing may be subject to random drug testing as a unit at the request of their unit manager. CDL Drivers subject to random testing will be chosen in accordance with DOT standards on a quarterly basis. Other employees subject to random testing will be selected by the City's third party vendor, utilizing a random process.
- B. Notice of those employees subject to random testing will be delivered to Human Resources, who will transmit the information to the applicable managers and employees.
- C. Employees selected for random testing will be taken by their supervisor or designee to the designated medical testing facility for testing. Upon completion of testing, employees will be returned to work. A positive test will result in immediate placement on unpaid administrative leave.
- D. Following an investigation, employees who test positive will receive disciplinary action, up to and including termination.

8.3 Return to Duty/Follow-Up

Employees who have tested positive and have participated in rehabilitation must be tested prior to returning to their work. A positive test at a return to duty test, or a mandated follow up test will result in termination of employment. All such testing will be handled by Human Resources.

8.4 Pre-employment

Applicants who have received a conditional offer of employment and who are new hires will be subject to drug testing. Failure to pass a drug screen will result in a withdrawal of the conditional offer of employment. Such applicants will not be eligible for employment for at least a twelve (12) month period. Pre-employment drug test results shall be valid for ninety (90) days following the testing date. Any employee who has been offered a conditional offer of employment and who has taken a drug test, but who has not started their employment with the City within ninety (90) days must take and pass another drug test and start within the new ninety (90) day period.

8.5 Post Accident

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- A. Employees driving a city-owned vehicular who are involved in an accident may be subject to drug-testing as soon as possible after the accident.
- B. An employee taken for a drug test will not be permitted to drive until such time as testing is completed and results received.
- C. If an accident takes place, an employee must, if able, contact his/her supervisor immediately. The supervisor will inform management and Safety, and then will proceed to the accident site.
- D. After completion of any on-site investigation, the employee will be taken by the supervisor for testing if reasonable suspicion of impairment is established, and will then be relieved of duty and taken to his/her home by the supervisor, or in public transportation.
- E. An employee involved in an accident who is found to be impaired by alcohol and/or drugs may be held personally liable for the accident and injuries including punitive damages.
- F. A positive test for marijuana after a vehicle accident will only be actionable for disciplinary purposes if it can be established that there is reasonable suspicion that the employee was impaired at the time of the accident.

8.6 Suspected Possession of Illegal Drugs at the Workplace

- A. Managers and supervisors shall notify their Service Area Administrator, or designee and Human Resources Services when they have reasonable suspicion to believe that an employee may have Illegal Drugs in their possession or in an area jointly or fully controlled by the City.
- B. In connection with this policy, the City reserves the right to search, at all times, and without prior notice, any and all City property and work areas, without employee consent. In addition, the City may request to search personal belongings brought onto the City's premises. Failure to cooperate in such a search may be considered insubordination and may result in discipline up to and including termination of employment. Searches must have the approval of Human Resources or an officer of the Ann Arbor Police Department prior to being conducted. The City may also notify the appropriate law enforcement agency that an employee may have Illegal Drugs in his or her possession.

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9.0 Drug Rehabilitation

- A. Voluntary: The City of Ann Arbor encourages employees to seek professional help for their drug or alcohol problems. Employees who seek help before their problem becomes a disciplinary matter benefit themselves and the City. An employee who voluntarily notifies the City he or she has a drug or alcohol problem may be allowed, upon request to Human Resources, to take a medical leave of absence to undergo rehabilitation. The employee will work with the Employee Benefits Supervisor and will be tested upon return to work.
- B. Involuntary: An employee who undergoes rehabilitation as a result of a positive drug test may be required to sign a last chance agreement, indicating that he/she is subject to unannounced drug/alcohol screening for a specified period of time not less than twelve months, that he/she will follow the treatment recommended, and that an additional positive test result during the remainder of his/her employment may result in termination of employment.

10.0 Confidentiality of Records

- A. Laboratory reports or test results shall not appear in an employee's personnel file housed in Human Resources Services. Information of this nature will be contained in a separate confidential medical folder that will be securely kept under the control of Human Resources Services.
- B. The reports or test results may be disclosed to City management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without employee consent, may also occur when:
 - 1. The information is compelled by law or by judicial or administrative process.
 - 2. The information at issue has been placed in a formal dispute between the employer and employee, including unemployment claims.
 - 3. The information is to be used in administering an employee benefit plan.
 - 4. The information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

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