

Personnel Rule 31 Alcohol and Drug-Free Workplace

31.1 Policy Statement

The City is committed to providing a safe and healthy work environment for employees. It is also the City's goal to provide the best service possible to the public. To achieve these goals, the City is committed to providing an alcohol and drug-free workplace. The City has adopted this policy governing the use, possession and sale of drugs and alcohol by its employees.

This policy prohibits the manufacture, use, possession, distribution, trade, and/or offer for sale of alcohol, illegal drugs or intoxicants. This policy applies during all working hours, lunch hours and whenever conducting business or representing the City, while on-call, on-standby, and on or off City property including vehicles. This policy applies to any individual who conducts business for the City, is applying for a position with the City, or conducts business on the City's property. This policy also applies to all City employees, appointed and elected officials, volunteers, interns, consultants, contractors, and those under the control of contractors.

31.2 Prohibited Substances

31.2.1 Alcohol

Employees may not use, be under the influence, or possess alcohol under any of the following circumstances: while on City property, while performing their duties (whether or not on City property) or while on City time when alcohol would impair, to any extent, the employee's ability to perform their duties or to operate any City equipment. "Alcohol" is defined as the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.

31.2.2 Drugs or Controlled Substances

No employee shall possess, use, sell, transfer, manufacture, purchase or transport drugs or attempt to do so or report to work with drugs in his or her system. No employee shall possess, use, sell, transfer, manufacture, purchase or transport prescription drugs, or attempt to do so, or report to work with prescription drugs in his or her system, unless the prescription drug has been lawfully prescribed to the employee. "Drug" or "drugs" are defined as any controlled substance that is not legally obtainable under State or Federal law, or a prescription drug obtained or used without benefit of a prescription by a licensed physician. "Drug" or "drugs" includes medicinal or recreational marijuana, regardless of whether the marijuana was lawfully obtained under State law.

31.2.3 Prescription Drugs

No prescription drug shall be possessed or used by an employee other than the employee for whom the drug is prescribed by a licensed medical practitioner. A prescription drug shall be used only in the manner, combination, and quantity prescribed. "Prescription drug" is defined as any substance that can be lawfully

obtained or possessed pursuant to a prescription by a licensed physician. Prescription drug does not include medicinal marijuana.

Employees shall ask the prescribing physician and/or in the case of a medication available over-the-counter, review product packaging, to determine whether the use of a prescription drug or over-the-counter medication may impair their ability to perform normal job duties or to safely operate City equipment. An employee taking any over-the-counter medication or prescription drug marked “do not drive,” “do not operation heavy equipment,” or similarly labeled, shall inform the appropriate supervisor or the Human Resources Department of the use of the medication or drug prior to reporting for duty. When informing a supervisor and/or the Human Resources Department, the employee should not identify the name of the medication being used or the reason for its use.

The City will then evaluate and respond to this information on a case-by-case basis. The appropriate supervisor, in conjunction with the Human Resources Department, shall determine whether the employee may work, full duty or light duty, based on the written opinion of the employee’s medical provider that the use of the medication may impair the employee’s ability to perform specific duties. Upon determination that an employee is unable to safely perform his or her normal duties, or that a modified work assignment is not available, an employee may be directed not to work and to return home on paid leave or other leave as appropriate. In the event there is a question regarding an employee’s ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from a qualified treating physician may be required.

An employee’s failure to provide any notice required under this section in a timely manner can result in discipline, up to and including termination.

31.3 Prohibited Conduct

City employees and officials are prohibited from the following acts:

1. Being under the influence of, or in possession of alcohol, drugs, or controlled substances when reporting for work.
2. Ingesting, injecting, or otherwise using alcohol, drugs, or controlled substances while performing job duties, except in accordance with Section 31.2.3 above regarding prescription drugs and/or over-the-counter medications where applicable.
3. Being under the influence of alcohol, drugs, or any controlled substances while subject to being called to duty, including stand-by time.
4. Performing a safety-sensitive function within four (4) hours of using alcohol or while using alcohol.
5. Directly, or through a third party, manufacturing, selling, distributing, dispensing, otherwise attempting to manufacture, sell, or distribute alcohol, drugs, or controlled substances during work hours, including rest breaks, or while on City property.

6. Use of City property or premises to manufacture, sell, or distribute alcohol, drugs, or controlled substances.
7. Absence or tardiness as a result of having been under the influence of alcohol, drugs, or uncontrolled substances during non-work time.
8. Refusing to submit immediately to any alcohol, drug, or controlled substance test required by this Policy when directed by the City. Refusal includes but is not limited to:
 - a. A refusal to provide a urine sample for testing;
 - b. An inability to provide a urine sample without a valid medical explanation;
 - c. A refusal to complete and sign a testing authorization form;
 - d. An inability to provide breath or to provide an adequate amount of breath without a valid medical explanation;
 - e. Tampering with or attempting to adulterate or substitute a urine specimen;
 - f. Not reporting to the collection site in the time allotted by the supervisor or manager who directs the employee to be tested;
 - g. Obstructing the collection procedure or testing process in any way; or
 - h. Leaving the scene of an accident involving a City vehicle or during working hours without a valid reason as to why authorization from a supervisor or manager was not obtained.
9. Consuming alcohol during the eight (8) hours immediately following an accident or drugs or controlled substances during the thirty-two (32) hours immediately following an accident in which the employee was involved, or until the employee undergoes a post-accident alcohol or drug test, whichever occurs first.
10. Refusal to submit to a search of personal properties when directed by the City, upon reasonable suspicion and in accordance with any applicable laws.

Whenever the City has reason to believe that Federal, State or local drug laws are being violated, the City may refer the matter to the appropriate law enforcement agency for investigation and possible criminal prosecution.

31.4 Conviction of a Drug Statute

To fulfill its obligations under the Federal Drug-Free Workplace Act of 1988, the City requires that any employee who is convicted of any criminal drug statute, for a violation occurring in the workplace, provide written notice of that conviction to the City Manager no later than five (5) calendar days after the conviction. In case of such conviction, the City may take appropriate personnel action up to and including termination or require the employee to satisfactorily participate in and complete a substance abuse assistance or rehabilitation program. Any employee who fails to provide this notice will be subject to discipline, up to and including termination.

The City shall encourage employees affected by substance abuse or addiction to seek professional help voluntarily at an early stage. However, if an employee is found to be using or under the influence of alcohol or drugs in the workplace, the employee will be subject to appropriate disciplinary action, up to and including termination.

31.5 Pre-Employment Testing

The City requires certain job applicants to take a drug and alcohol test after a conditional job offer has been given. Those applying for certain positions within the City, including jobs classified by the City as safety-sensitive positions, may be required to take and pass a mandatory drug and alcohol test as soon as practical following their acceptance of an offer of employment that is conditioned upon passing a pre-employment physical and/or drug/alcohol test.

Any external job applicant who refuses to submit to testing, or attempts to tamper with or adulterate a test sample, will be considered to have refused to participate in the testing process and shall not be hired. In addition, the applicant will not be considered for employment for a safety-sensitive position for one (1) year from the applicant's refusal to participate in the testing process.

Any external job applicant who tests positive for drugs and/or alcohol or unauthorized prescription drug use shall not be hired. In addition, the applicant will not be considered for employment for a safety-sensitive position for one (1) year from the applicant's last positive drug test as stated in recruitment and selection documentation.

31.6 Reasonable Suspicion Testing

If a trained Department Head or supervisor has reasonable suspicion to believe that a City employee is under the influence of alcohol and/or controlled substances in violation of this policy, after consultation with the City Manager or the Human Resources Director, the trained Department Head or supervisor may require the employee to submit to an alcohol and/or drug test. An employee's refusal to submit to such a test is cause for discipline, up to and including termination.

The decision to require an employee to submit to a reasonable suspicion alcohol and/or drug test shall be based on a trained individual's determination that reasonable suspicion exists that the employee is in violation of this policy. The determination must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, and speech or body odors of the employee. Such observations can include the employee's activity or inactivity, equilibrium, attention span, mental and physical reactions, slurring of speech, physical or verbal altercation, unfocused vision, odor of intoxicants on the breath or clothing of the employee or information obtained from a reliable person with personal knowledge of the work or other conduct or behavior of the employee which would lead a reasonable person to believe, based on observation, that the employee is under the influence of drugs and/or alcohol. The observations may

also include indications of the chronic or withdrawal effects of controlled substances. If possible, the Department Head or supervisor will obtain the assistance of another trained individual or witness to observe and document the above behavior factors.

The Department Head or supervisor shall arrange to safely transport employees who refuse to submit to testing home. If the employee refuses to accept the arrangements to transport the employee home, or if the employee insists on driving their own vehicle, and, in the trained individual's judgment, the employee is not in a condition to operate a vehicle safely, the Department Head or supervisor has the discretion to summon law enforcement or medical assistance to assist in the safe transport of the employee off City property.

Pending the outcome of an alcohol or drug test, an employee will be assigned to appropriate duties until test results are received unless, in the Department Head's judgment, the continued presence of the employee at a City workplace poses a significant safety risk to himself/herself, other City staff or members of the public, or is disrupting the workplace. In that event, the Department Head or designee shall arrange to safely transport the employee home and the employee shall be placed on paid administrative leave pending receipt of test results.

The Department Head or supervisor who observes the employee's behavior on which reasonable suspicion testing is based must have received at least sixty (60) minutes of training on alcohol abuse and an additional sixty (60) minutes of training on controlled-substances abuse. The training must cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. The person who decides that reasonable suspicion exists to conduct a controlled substance test shall not conduct the controlled substance test of the employee.

If an alcohol test is not conducted within two (2) hours of the observation, the Department Head must prepare and maintain a record stating the reasons the alcohol test was not promptly administered. No alcohol test may be administered if eight hours have passed following the observation.

A written record must be made of the observations leading to a controlled substance reasonable suspicion test, and signed by the supervisor or Department Head who made the observations, within twenty-four (24) hours of the observed behavior or before the results of the controlled substances test are released, whichever is earlier.

31.7 Post-Accident Testing

Post-accident drug and alcohol testing may be conducted on employees following an accident. An "accident" is defined as an occurrence involving a City vehicle, a private vehicle being driven on City business, or operation of power equipment that results in 1) a fatality; 2) injury to a person requiring immediate treatment at a

medical facility, except for minor injuries such as muscle strains, sprains, minor lacerations, or abrasions; 3) receipt of a citation under State or local law for a moving traffic violation arising from the accident; or 4) disabling damage to any vehicle licensed for operation on a public roadway.

An employee shall notify their supervisor (or any on-duty supervisor if their supervisor is not on duty or not available) and their Department Head immediately following an accident. The employee shall refrain from using alcohol for eight (8) hours following the accident or until the employee undergoes a post-accident alcohol test or a supervisor determines that a post-accident alcohol test is not required as provided below. Any employee leaving the scene of an accident without appropriate authorization prior to submitting to an alcohol or drug test or without being released by the supervisor will be considered to have refused the test. If all efforts to contact a supervisor while at the scene of an accident have been exhausted and have failed, the employee should contact police dispatch to request law enforcement assistance and, upon clearance by law enforcement, report back to City Hall and remain there until a supervisor, Department Head or the City Manager have been contacted.

The supervisor at the site of an accident should:

1. Attend to any emergency needs of any injured persons.
2. Take the employee involved in the accident aside and give the employee a direct verbal order to stand by at the site until the supervisor has determined if the accident is one requiring a post-accident alcohol or drug test.
3. Evaluate the accident to determine whether a post-accident test is required under this policy and document with written notes the supervisor's decision to require or to not require a post-accident drug or alcohol test.

If the supervisor at the accident site affirms that a post-accident alcohol or drug test of the employee is required, the supervisor should take the following steps:

1. Inform the employee that the test is required by this policy.
2. Arrange for transport of the employee to the designated collection site to take the necessary tests. The person transporting the employee will stay with the employee, verify the employee's identification at the collection site, and later return the employee to the employee's reporting station.
3. Ensure that the employee does not perform any safety-sensitive duties until the employee is cleared by the post-accident test results. The supervisor should ensure that the employee involved in the accident does not operate the vehicle any further. If necessary, the supervisor will move the vehicle or request another employee not involved in the accident to do so.

If the supervisor at the site of the accident determines that the accident does not meet the criteria for a post-accident alcohol or drug test, the employee may continue to perform their job duties.

If an employee is taken into police custody at the site of an accident and tested for being under the influence of alcohol and/or a controlled substance, and the site supervisor has affirmed that the accident is one requiring post-accident alcohol and/or drug testing, the City will rely on the results of the police tests in lieu of additional alcohol and drug test administered by the City.

If a post-accident test is required, the employee will be tested as soon as possible. Testing should be completed within two (2) hours where feasible and should not exceed eight (8) hours for an alcohol test and thirty-two (32) hours for a drug test.

If a post-accident alcohol test is not administered within two (2) hours following the accident, the supervisor shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If the alcohol test is not administered within eight (8) hours, the City shall cease attempts to administer an alcohol test and shall prepare and maintain the same record.

If a post-accident drug test is not administered within thirty-two (32) hours following the accident, the City shall cease attempts to administer a drug test and shall prepare and maintain on file a record stating the reasons the test was not properly administered.

31.8 Department of Transportation Testing for Safety Sensitive Positions

In addition to the above requirements, applicants for and employees in safety-sensitive positions, as defined by the Department of Transportation, shall be subject to pre-employment, reasonable suspicion, post-accident, random and other testing as required under federal law. The City Manager or designee is responsible for overseeing the City's compliance with Department of Transportation regulations for the drug and alcohol testing of safety-sensitive employees. Employees in safety-sensitive positions will be provided with a copy of the City's administrative order for alcohol and drug testing requirements for commercial motor vehicle drivers.

31.9 Employee Assistance

The Employee Assistance Program ("EAP") is available to assist employees who may have a drug and/or alcohol problem. The City encourages employees who have a drug and/or alcohol problem to seek confidential assistance from the EAP. An employee is responsible for seeking assistance before the employee's drug and/or alcohol problem leads to a violation of any City drug and/or alcohol policy, or before the employee is asked to submit a reasonable suspicion drug and/or alcohol test. The City shall not take adverse action against an employee making such an admission as long as the employee has not self-identified in order to avoid testing under federal regulations or the City's policies. An employee's voluntary disclosure of a substance or alcohol abuse problem will not terminate any investigation, criminal or administrative, initiated prior to the disclosure.

Employees must request a leave of absence if time off from work is necessary for any treatment or rehabilitation services, whether or not covered by the employee's medical plan. An employee who voluntarily discloses a drug and/or alcohol problem and requests time off to obtain treatment for a drug and/or alcohol problem will not be automatically terminated by the City. Employees who request time off for treatment or rehabilitation services may be permitted to use accrued sick, vacation or other paid leave for approved absences. In addition, such employees may also be eligible for leave under the Family Medical Leave Act and/or the California Family Rights while receiving treatment. Any costs for treatment or rehabilitation services are the sole responsibility of the employee.

31.10 Violations of this Rule

Any employee who engages in an act prohibited by any part of this rule will be subject to disciplinary action, up to and including termination. In appropriate circumstances and solely within its discretion, the City may consider the employee's commitment to recovery and/or the employee's agreement to enter into an Employer-Employee contract or "Last Chance Agreement" detailing conditions of continuing employment as a mitigating factor in assessing the appropriate disciplinary action. The City reserves the right to terminate the employment of any employee who is unable to perform the essential functions of their job after the City has complied with any duty it may have to reasonably accommodate the employee's disability. An employee who refuses to obey an order to take an alcohol or drug test pursuant to this rule will be terminated.

31.11 Confidentiality

All controlled substance or alcohol test results shall be kept confidential and not subject to disclosure except as provided in this policy or otherwise required by state or federal law.

31.12 Alcohol and Drug-Free Awareness

The City shall distribute and explain this policy to all current employees, new employees, volunteers, and contractors.