

CITY OF VIRGINIA BEACH SUBSTANCE ABUSE POLICY	Policy Number:	6.15
	Date of Adoption:	January 9, 1990
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1.0 PURPOSE:

To promote the health, safety, and well-being of City of Virginia Beach employees, members, and the public by eliminating illegal substance use and abuse from the workplace, and to assist those members who have a drug or alcohol problem with rehabilitation.

2.0 DEFINITIONS:

- 2.1 ALCOHOL USE:** Is defined as the consumption of any beverage, mixture, or preparation, including any medication containing alcohol.
- 2.2 CITY LICENSED FLEET ASSET:** Is defined as any licensed motor vehicle owned, leased, maintained, insured by, or loaned to the Virginia Beach Municipal Government.
- 2.3 COMMERCIAL MOTOR VEHICLE:** Is defined as a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; has a gross vehicle weight rating of 26,001 or more pounds; is designed to transport 16 or more passengers, including the operator; or is of any size and is used in the transportation of hazardous materials requiring placards.
- 2.4 CONTROLLED SUBSTANCE:** Is defined as a substance maintained on Schedules I through V of the Drug Control Act as found in the Virginia Code, Section [54.1-3400](#), *et seq.*
- 2.5 EVIDENTIAL BREATH TESTING DEVICE (EBT):** Is defined as a device approved by the National Highway Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA’s Conforming Product’s List of Evidential Breath Measurement Devices.
- 2.6 ILLEGAL DRUG:** Is defined as a controlled substance which is unlawful under the federal and/or Virginia law or regulation.

- 2.7** MANDATORY REFERRAL: Is defined as a mandatory counseling session(s) between an employee and an EAP counselor pursuant to a [Last Chance Agreement](#) in accordance with the City's [Substance Abuse Policy, No. 6.15](#) and/or a founded incident set forth in the City's [Violence Prevention Policy, No. 6.17](#).
- 2.8** MEDICAL REVIEW OFFICER (MRO): Is defined as a licensed physician who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive DOT test result together with his/her medical history and any other relevant biomedical information.
- 2.9** MEMBER: For purposes of this policy is defined as all individuals this policy applies to as specified in Section 3.0.
- 2.10** ON THE JOB: Is defined as time spent acting in an official capacity as a City member, including breaks, stand-by duty, and call backs, whether on or off City property. (Same as "On Duty")
- 2.11** OPERATOR: Is defined as any member that operates a City licensed fleet asset (including a commercial motor vehicle) or a personal vehicle for City business. For purposes of pre-employment testing, the term includes a person applying for a safety-sensitive position that requires driving. For purposes of random testing, the term includes employees who may be asked to operate a commercial motor vehicle without notice or in emergencies.
- 2.12** REASONABLE SUSPICION: Is defined as the presence or occurrence of specific objective facts or events and reasonable inferences drawn from those facts or events that a member is under the influence of drug(s) or alcohol.
- 2.13** REFUSAL TO SUBMIT: Includes the following action(s):
- A. the failure by a member to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing;
 - B. failure by a member to provide adequate urine for controlled substance testing without a valid medical explanation after he or she has received notice of the requirement for urine testing;
 - C. the failure to appear for testing as directed;
 - D. the failure to remain at the test site until the testing process is complete;

- E. the failure to permit an observer to monitor during the testing process, if required;
- F. the failure to take a second test when directed to do so;
- G. the failure to cooperate with any part of the testing process;
- H. the failure to undergo a medical examination when a sample cannot be produced as required;
- I. the failure to follow an observer's instructions;
- J. the admitted tampering with or providing an adulterated sample; OR
- K. engaging in conduct that clearly obstructs the testing process.

2.14 SAFETY-SENSITIVE DUTIES: Is defined as duties of members required to have a Commercial Driver's License (CDL), or designated as safety-sensitive and includes:

- A. all times at a carrier or shipper plant, terminal, facility, or other property, waiting to be dispatched, unless the operator has been relieved from duty by the City;
- B. all times inspecting equipment as required by [Federal Motor Carrier Safety Act Regulations \(FMCSA\)](#), or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- C. all times spent at the driving controls of a commercial motor vehicle;
- D. all times, other than driving time, spent on or in a commercial motor vehicle;
- E. all times loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
- F. all times spent performing the operator requirements associated with an accident; AND
- G. all times repairing, obtaining assistance or remaining in attendance upon a disabled vehicle.

2.15 SAFETY-SENSITIVE POSITIONS: Is defined as a position characterized by duties fraught with such risk of injury to others that even a momentary lapse of attention could have disastrous consequences, or which bears a direct and immediate impact on the safety of the public or fellow members. Safety-sensitive positions shall include, but not be limited to, positions which require an employee to hold and maintain a commercial driver's license, require operation of a commercial motor vehicle, sworn public safety positions, positions which routinely require frequent driving of a City licensed fleet asset or a personal vehicle for official City business. The determination that a position is safety-sensitive shall be made by the Director of Human Resources, or designee, Occupational Safety and Health Services Manager, and City Attorney's Office.

2.16 SUBSTANCE ABUSE PROFESSIONAL (SAP): Is defined as a qualified individual who evaluates employees who have violated drug/alcohol program requirements, and makes recommendations concerning education, treatment, follow-up testing, and after-care:

3.0 APPLICABILITY:

3.1 This policy shall apply to:

- A. All full-time and part-time employees as defined by the [Code of the City of Virginia Beach](#);
- B. All sworn law enforcement officers performing secondary duty employment in police issued uniform and using police issued equipment;
- C. All temporary services members and all volunteers, including all members of the volunteer rescue squads;
- D. All members under the age of 18 with an authorization signed by a parent or legal guardian and the member which shall be a requirement of employment; AND
- E. All applicants for safety sensitive positions, including, but not limited to, sworn law enforcement; firefighter; auxiliary for police and fire; career paramedic; positions that require a CDL, and all other positions identified as safety sensitive.

4.0 POLICY STATEMENT:

- 4.1** Any member who has a substance use or abuse problem is encouraged to voluntarily contact the City's employee assistance program (EAP) for counseling and appropriate treatment

In accordance with [EAP Policy, No. 5.02](#), no information regarding a voluntary referral to EAP, or follow-up treatment as a result thereof, shall be shared with anyone without the member's consent. For guidelines regarding voluntary self-identification procedures refer to [Section 5.1](#) herein.

4.2 The City Prohibits:

- A. Using, purchasing, selling, possessing, distributing or accepting illegal drugs or drug-related paraphernalia while on or off the job.
- B. Consuming, purchasing, selling, possessing, distributing or accepting alcohol while on the job or on stand-by duty.
- C. Using alcohol within four (4) hours of reporting for duty or after receiving notice to report to duty.
- D. Reporting for duty, including secondary jobs while in City issued uniform, or being on the job while under the influence of alcohol, controlled substances, and/or illegal drugs. This prohibition includes but is not limited to marijuana/cannabis.
- E. Reporting for duty, including secondary jobs while in City issued uniform, or remaining on duty any time there is the presence of a prohibited drug in the body at or above the current, approved cut-off limitation for controlled substances or illegal drugs as determined by an U.S. Department of Health and Human Services (HHS) approved laboratory. This prohibition includes but is not limited to marijuana/cannabis.
- F. Reporting for duty, including secondary jobs while in City issued uniform, or remaining on the job while having an alcohol concentration of 0.02 or greater, regardless of when the alcohol was consumed.
- G. Transporting illegal drugs, drug-related paraphernalia or alcoholic beverages in a City licensed fleet asset; this includes the possession of medicines which contain alcohol, unless the seal is unbroken.
- H. Consuming alcohol within eight (8) hours following the accident or prior to undergoing a post-accident test, whichever occurs first.

4.3 Medications

- A. The medically authorized use of prescription drug(s) or medicines, and use of over the counter, non-prescription medication(s) or herbal(s) which is inconsistent with labeling or doctor recommended use is prohibited.
- B. Members holding a safety-sensitive position are required to advise their supervisor if the member is prescribed and using prescription drugs or medications for which the medical information sheet, directions, or warning label warns that the individual should not drive or operate machinery/equipment while taking the medication.
- C. Any member who has reason to believe that his or her ability to safely and effectively perform the duties and responsibilities required of their position may be impaired by an over-the-counter, non-prescription drug, medication or herbal shall advise their immediate supervisor of the use of such drug(s), medication(s) or herbal(s) prior to beginning work.
- D. Members who are on prescription or non-prescription drugs or medication(s) may be placed on modified duty if the drugs or medication(s) may affect their ability to operate equipment, a vehicle, or otherwise work safely during the performance of their duties for the duration of substance use.
- E. In order to maintain confidentiality, members need not disclose to the supervisor the name of the drug, medication or herbal. The supervisor shall refer the member to Occupational Safety and Health Services (OSHS) for review of the drug, medication or herbal and appropriate direction.

4.4 The City shall test its members for illegal or inappropriate use of substances pursuant to the procedures outlined herein.

4.5 Exceptions

- A. The City Manager, or designee, may make limited exceptions from the prohibitions regarding alcohol consumption outlined in [Section 4.2B](#) and [Section 4.2C](#) based on the functions, expectations or responsibilities of certain City positions that require business related networking and other engagements with potential event organizers, other government leaders, and business leaders in order to promote the City of Virginia Beach and enhance economic development and sustainability of the City.

- B. Due to the nature of undercover police work, the Chief of Police may make limited exceptions to the prohibitions outlined in [Section 4.2](#) when duties, responsibilities, or expectations of an undercover police officer require or justify an exception.

5.0 PROCEDURES:

5.1 Voluntary Self-Referral or Self-Identification

- A. In the absence of a request for a reasonable suspicion test or of any conduct that would subject the member to discipline, members who voluntarily admit to a substance use or abuse problem shall be allowed the opportunity to seek evaluation, education and/or treatment for the substance use or abuse problem and shall be referred to EAP, if the following criteria are met:
 - (1) The member must voluntarily seek treatment **prior to** being notified of a pending drug and/or alcohol test or being involved in a situation that requires a reasonable suspicion or post-accident drug and alcohol test.
 - (2) The member cannot self-identify in order to avoid testing within 30 days prior to a scheduled physical examination.
- B. The member shall comply with the procedures set forth by EAP counselors/clinicians for the prescribed course of treatment.
- C. Members are required to execute a release of information form allowing the City to verify the member's participation in, and successful completion of the treatment plan as required by the [Last Chance Agreement](#).
- D. Members shall be permitted to return to work and safety sensitive functions only upon successful completion of the following:
 - a. an education or treatment program, as determined by EAP; and
 - b. [Section 5.6D](#) below, which includes a City return to work drug or alcohol test with a verified negative result.
- E. If a member does not complete an education or treatment program as determined by EAP, the employee cannot perform safety-sensitive functions until such time as they complete an approved course of treatment and undergo a City return to work drug or alcohol test with a verified negative result.

- F. The City prohibits adverse action from being taken against an employee making a voluntary admission of alcohol misuse or having a substance use or abuse problem.

5.2 Basis for Drug and Alcohol Testing

- A. **Pre-Employment, Pre-Career Progression, Pre-Promotional, Pre-Transfer, Physical Examinations**

A physical examination shall be required of a non-member applicant selected to fill a safety-sensitive City position, or of a member selected to fill a safety-sensitive City position from a non-safety-sensitive role. This examination shall include a drug test. This test will be completed prior to the first time a member performs safety-sensitive functions for the City. In addition, no safety-sensitive functions shall be performed until the City has received a drug test result with a verified negative result. Testing for marijuana will not occur unless required by a federal or state law or regulation, or by a contract or grant with a federal or state agency.

- B. **Routine Periodic Physical Examinations**

A member may be required to submit to a periodic physical examination to determine the member's fitness to perform the duties and responsibilities required of the position. Members who hold positions identified as safety-sensitive shall be required to submit to annual physical examinations to determine the member's fitness to perform the duties and responsibilities required of the position. The physical examinations may include a drug test. Testing for marijuana will not occur unless required by a federal or state law or regulation, or by a contract or grant with a federal or state agency.

- C. **Reasonable Suspicion**

A member shall be required to submit to a urine and/or breath test for analysis to determine the presence, if any, of drug(s), including marijuana, or alcohol in the member's system when any supervisor or OSHS staff member has a reasonable suspicion that the member is under the influence of drug(s) or alcohol. The following procedural safeguards shall be observed to ensure that reasonable suspicion exists:

- (1) The supervisor must have knowledge of objective facts or events that would reasonably lead them to suspect that a member is under the influence of drug(s) or alcohol.
 - (a) Facts which alone are sufficient to form reasonable suspicion and require a urine and/or breath test include:

1. observed possession or use of drugs or alcohol by the member on the job or prior to reporting for duty;
 2. the corroborated smell of marijuana or alcohol on the member's person; AND
 3. occurrence of an accident or incident involving an injury or fatality while on the job or operating a City licensed/leased fleet asset, or a personal vehicle while conducting official City business.
- (b) Facts which combined together or with [Section 5.2C\(1\)\(a\)](#) above, may form reasonable suspicion and require a urine and/or breath test include:
1. damage to City property when there is no reasonable explanation for the occurrence thereof;
 2. mood swings, agitation, hyperactivity, violence, explosiveness, combativeness or other behavior that is uncharacteristic of the member;
 3. excessive absenteeism, tardiness or other significant changes in job performance;
 4. damage to City owned or leased equipment from operation contrary to manufacturer's instructions, standard operating procedures and/or training; OR
 5. any other factor(s) listed on the [Incident Checklist](#) and/or the [Observation Checklist](#)
- (2) The determination by a supervisor that reasonable suspicion exists shall be supported by at least one additional supervisory-level member and/or by an OSHS staff member if a second supervisor is not immediately available. In all instances, OSHS will have authority to make a final decision if there is reasonable suspicion to support testing.
- (3) The [Incident Checklist](#) and/or the [Observation Checklist](#) must be completed and forwarded to OSHS within at least 24 hours of the facts or event leading to the determination that reasonable suspicion exists. See Exhibit A, [Incident Checklist](#) and Exhibit B, [Observation Checklist](#).

- (4) Occupational Safety and Health Services (OSHS) shall facilitate Reasonable Suspicion Training for Alcohol and Substance Abuse for Supervisors. This training shall be required for all supervisors of CDL employees.

D. Motor Vehicle Accident

- (1) Members who are involved in a motor vehicle accident while operating a City licensed/leased fleet asset at any time, or personal vehicle while conducting official City business, shall be required to submit to a urine and/or breath test for analysis to determine the presence, if any, of drug(s), including marijuana, or alcohol in the member's system when the accident results in:
 - (a) a fatality; OR
 - (b) bodily injury requiring immediate medical treatment away from the scene and the member is issued a traffic citation, OR
 - (c) disabling damage to a motor vehicle requiring towing and the member is issued a traffic citation.
- (2) When more than one member is in a City licensed fleet asset during a motor vehicle accident that results in one or more of the occurrences set forth in [Section 5.2D\(1\)](#) above, and if there is doubt which member was actually operating the vehicle at the time of the accident, then all members in the vehicle shall be tested. In addition, any other member whose performance was determined to have contributed to the accident shall be tested.
- (3) The supervisor shall indicate on the [Incident Checklist](#) that the member was involved in a traffic accident and shall forward the form to OSHS at OccHealth@vbgov.com. Testing shall be conducted as outlined in [Section 5.3](#) below immediately following a motor vehicle accident.
 - (a) Alcohol testing shall be conducted within two (2) hours but no later than eight (8) hours of a motor vehicle accident.

1. If two (2) hours have passed and the member(s) has not submitted to an alcohol test, the incident shall be reported to OSHS and the Department shall maintain documentation describing why a test was not promptly administered. Attempts to obtain a post-accident alcohol test shall continue until eight (8) hours have passed since the accident occurred.
 2. If eight (8) hours have passed and no alcohol test has been administered, attempts shall cease, and the Department shall maintain documentation describing why a test was not administered.
- (b) Drug testing shall be conducted within thirty-two (32) hours of a traffic accident in accordance with Section 5.3A below. If thirty-two (32) hours have passed and the member(s) has not submitted to a drug test, attempts shall cease, and the Department shall maintain documentation describing why a test was not administered.
- (4) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured member(s) following an accident or to prohibit a covered member from the leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary medical care. If medical treatment is necessary, testing may be performed at the medical treatment facility
 - (5) Following an accident, any drug or alcohol specimen collected by a medical treatment facility while treating the employee for injuries shall be deemed a valid drug or alcohol test for the purposes of this policy. OSHS will obtain results, if possible, and maintain the record(s) as part of the employee's OSHS file.
 - (6) If the criteria set forth in Section 5.2(D) are not met, then the employee driver can only be required to undergo a drug and/or alcohol test if there is sufficient information to conduct such testing due to reasonable suspicion and the requirements of Section 5.2(C) are met.

E. Random Testing

- (1) Members subject to Random Drug and Alcohol Testing include:
 - (a) Members whose position requires a CDL;
 - (b) Members who do not have driving as an essential function of their job, but who hold a CDL and may be called upon at any time, on an occasional or emergency basis to drive must be in the random drug testing pool at all times. However, alcohol testing may only be conducted just before, during or just after the performance of CDL safety-sensitive duties as defined in Section 2.13; OR
 - (c) Members who are subject to follow-up testing upon completion of EAP, as set forth in [Section 5.6D](#).
- (2) Placement on the random testing list shall begin once the member starts performing safety-sensitive duties, not necessarily when a member received a CDL.
- (3) Random alcohol and drug testing shall meet or exceed the minimum annual percentage rate set each year by the federal Department of Transportation (DOT).
- (4) Random alcohol testing is limited to the time period surrounding the performance of safety-sensitive duties. A member may only be randomly tested while the member is performing safety-sensitive duties, just before performing safety-sensitive duties or just after performing safety-sensitive duties.
- (5) Random drug testing may be performed at any time a member is on the job.
- (6) A scientifically valid method shall be used to perform the random selection. The method must ensure that each member has an equal chance of being selected each time testing is required.
- (7) Random tests shall be unannounced and conducted throughout the calendar year.
- (8) Members selected for a random test shall proceed immediately to the specified testing site upon notification; unless the member is in the middle of performing safety-sensitive duties in which case the member shall proceed to the test site as soon as such

duty is completed.

- (9) Failure to report within a reasonable time for random testing may result in disciplinary action, up to and including termination.
- (10) In the event a member selected for random testing is on vacation or an extended medical absence, the City must keep the selection confidential until the member returns, or the test period expires.
- (11) Any member actively participating in an approved treatment program remains subject to the terms and conditions of the City's last chance agreement, which includes upon-request testing.

5.3 Testing Procedures

When a determination is made that a member will undergo drug or alcohol testing, OSHS contacts affected supervisors to bring their subject employees in for necessary testing or recommend an alternate testing site. OSHS shall maintain a list of approved alternate testing sites. The member shall be transported by a supervisory-level department representative to OSHS or the designated alternate testing site. Drug and alcohol testing for CDL and non-CDL members shall be performed in accordance with all federal, state and local requirements, standards and procedures, including DOT Regulations, [49 CFR Part 40](#). However, random drug testing will only be performed on members performing safety sensitive duties in their position as mandated by DOT regulations. See [Section 5.2E](#) herein.

A. Drug Testing Procedures

- (1) The member shall be required to supply a urine sample to be tested by a U.S. Department of Health and Human Services (HHS) approved independent laboratory of the City's choice.
 - (a) CDL members
 - i. Urine Drug Screen (UDS) sample shall undergo the Department of Transportation Drug Test pursuant to [49 CFR Part 40](#).
 - ii. A second UDS sample may be obtained to analyze the City substances not included in the Department of Transportation Drug Test.

(b) For non-CDL members, UDS sample shall undergo testing to provide an analysis for all substances required under the City of Virginia Beach drug test.

(2) Under no circumstances shall an employee be required to submit to a blood test. The only time a blood test might be accepted is if during treatment at a medical facility for injuries due to an accident, the medical facility staff obtains bloodwork as the normal course of treatment. In that case, the results shall be considered a valid drug and/or alcohol test.

(3) Department of Transportation (DOT) Drug Testing

DOT drug test may include an analysis for the following:

- i. Marijuana as required herein,
- ii. Cocaine,
- iii. Opioids (including, but not limited to codeine, heroin, morphine, oxycodone, oxymorphone, hydrocodone, and hydromorphone),
- iv. Phencyclidine (PCP) AND/OR,
- v. Amphetamines

(4) City of Virginia Beach Drug Test

OSHS shall have a separate drug test performed for any other substance which could impair a member's ability to safely and effectively perform the duties and responsibilities required of the job, this drug test may include, but is not limited to, an analysis of the following:

- i. Marijuana as required herein,
- ii. Cocaine,
- iii. Opioids (including, but not limited to codeine, heroin, morphine, oxycodone, oxymorphone, hydrocodone, and hydromorphone),
- iv. Phencyclidine (PCP),

- v. Amphetamines,
 - vi. Benzodiazepines,
 - vii. Barbiturates,
 - viii. Methadone,
 - ix. Synthetic Narcotics,
 - x. Ecstasy AND/OR,
 - xi. Any controlled substances used to enhance physical development of athletic performance.
- (5) Once it is determined that a member will undergo drug testing and the member is informed, the member shall refrain from consuming alcohol or controlled substance(s) and shall not eat, drink or put anything (e.g. cigarette, chewing gum) into the mouth until the member submits to the drug test.
- (6) Sample collection shall be conducted with due respect for the privacy of the member; however, in given circumstances observed or monitored collection may be required.
- (7) Urine samples shall be collected by OSHS staff or designee of the same sex as the member following DOT guidelines when observed or monitored collection is required.
- (8) A positive drug test shall be one that is reported at or above the current, approved cut-off limitation as determined by an U.S. Department of Health and Human Services (HHS) approved laboratory without proof of valid prescription by the person tested. For specific direction relating to employees whose job requires a CDL see 5.3(10) below.
- (a) Whenever a screening test of an applicant's or member's urine sample is reported by the laboratory as dilute negative, the applicant or member is required to provide a second sample for re-testing within 24 hours of reported results.
 - (b) Whenever a screening test of an applicant's or member's urine sample is reported by the laboratory as dilute positive, the sample shall be considered a positive test.

- (9) When the laboratory reports that a urine sample is dilute positive for the presence of drugs, the member may request that an independent test be conducted on the same sample. The request must be made in writing to the Director of Human Resources, or designee, within 72 hours of the date in which the member receives the results of the initial drug test. When a member elects to have an independent test and that test is positive, the member shall bear the cost of the independent test.
- (10) Medical Review Officers (MRO) will not verify a drug test as negative based upon information that a physician recommended that the employee use "medical marijuana".

B. Alcohol Testing Procedures

- (1) Alcohol testing shall be conducted using a calibrated evidential breath testing device.
- (2) Members shall be required to provide a breath sample which entails blowing into a federally approved evidential breath testing device in OSHS or approved alternative testing site.
- (3) Once it is determined that a member will undergo alcohol testing and the member is informed, the member shall refrain from consuming alcohol or controlled substance(s) and shall not eat, drink or put anything (e.g., cigarette, chewing gum, breath mints, etc.) into the mouth until the member submits to the breath test.
- (4) A positive alcohol test shall be any evidential breath test resulting in a blood alcohol content (BAC) of .02 or greater. For consequences resulting from a BAC of .02 - .039 refer to [Section 5.5](#). For consequences resulting from a BAC of .04 or greater refer to [Section 5.5](#) and [Section 5.6](#).
- (5) Whenever an applicant's or member's initial evidential breath test is positive for the presence of alcohol, a confirmatory evidential breath test shall be conducted in accordance with DOT regulations and procedures for alcohol testing and the [Federal Motor Carrier Safety Act](#) (FMCSA) requirements.

5.4 Refusal to Submit to Drug or Alcohol Test

A. Applicants

An applicant who refuses to submit as defined in [Section 2.11](#) shall be denied employment.

B. Members

(1) A member who refuses to submit as defined [Section 2.11](#) shall be deemed to have a positive test and the member shall receive a mandatory referral to EAP.

(2) A member who refuses to participate in EAP or refuses to sign the [Last Chance Agreement](#) as required in [Section 5.6C](#) shall be dismissed.

(3) A member who has completed EAP and then refuses to submit as defined in [Section 2.13](#) to a follow-up test shall be deemed to have a positive test and the member shall be dismissed for failure to abide by the [Last Chance Agreement](#).

5.5 Post-Incident Administrative Leave and Duty Status

A. A member shall be placed on paid administrative leave until the start of the next regularly scheduled workday, or twenty-four (24) hours (whichever is later) following the administration of a positive alcohol breath test.

B. A member shall be placed on paid administrative leave for up to seventy-two (72) hours pending laboratory results due to reasonable suspicion of being under the influence of drugs while on the job following the completion of the applicable checklist as outlined in [Section 5.2C](#) above or due to a traffic accident that requires drug testing as outlined in [Section 5.2D](#).

C. A member who is placed on administrative leave:

(1) Shall be transported home by a supervisory-level member or required to remain on the premises until a friend, relative, or OSHS approved alternative driver can transport the member home; AND

- (2) Upon return to work following a positive alcohol test, the supervisor shall escort the member to OSHS before performing any duties for an alcohol breath test to confirm the member's ability to return to duty status.
- D. Nothing herein shall be deemed to prohibit management from temporarily reassigning a non-CDL member, or from having members remain in an administrative leave status in accordance with the requirements of applicable Human Resources policies including Discipline Policy and Procedure, and Administrative Leave Policy, pending laboratory results.
- (1) The required procedures for requesting extensions of administrative leave set forth in applicable Human Resources policies including Discipline Policy and Procedure, and Administrative Leave Policy must be followed to extend administrative leave beyond three days. Such action shall be approved by the Director of Human Resources, or designee.
 - (2) The member's temporary reassignment or continued administrative leave status shall not be considered disciplinary in nature, nor shall any presumption that the test is positive be made pending the results of a drug test.
- E. Following initial post incident administrative leave,
- (1) After receipt of an MRO verified positive drug test and/or positive alcohol evidentiary breath test, members holding safety sensitive positions and performing safety sensitive duties shall be placed in a modified duty status until the completion of their required treatment program per the Last Chance Agreement and released back to full, unrestricted duty by OSHS.
 - (2) After receipt of an MRO verified positive drug test and/or positive alcohol evidentiary breath test, members for whom driving is an essential function of their job, shall be placed in a modified duty status of "no driving a city vehicle or a personal vehicle for city business" until completion of their required treatment program per the Last Chance Agreement and they are released back to full, unrestricted duty by OSHS.

5.6 Consequences for Engaging in Prohibited Conduct

A. An applicant subject to a pre-employment drug test resulting in a confirmed positive drug test result shall be denied employment unless a valid prescription is provided for a lawful substance. Applicants for positions requiring a CDL, for sworn public safety positions, and for safety sensitive positions, who have a positive drug test for marijuana shall be denied employment regardless of having a prescription. Future employment offers to applicants with a known history of substance abuse are conditional upon proof of successful completion of an approved substance abuse program. A member whose confirmatory drug test is positive or whose confirmatory evidential breath test is .04 BAC or greater shall not be allowed to perform safety-sensitive functions, including but not limited to operating fleet vehicles or machinery and/or operating a personal vehicle in the performance of City duties until the member has successfully completed a treatment plan approved by EAP and has a return to duty test with an alcohol concentration of less than .02 BAC and/or a drug test with a verified negative result, and been returned to full duty status by OSHS.

B. EAP Mandatory Referral Guidelines

A member whose confirmatory drug test is positive or whose confirmatory evidential breath test result is .04 BAC or greater shall

- (1) Receive a mandatory referral to EAP for evaluation, diagnosis, and treatment coordination.
 - (2) Be required to sign a [Last Chance Agreement](#) (See [Exhibit C](#)) with the City agreeing to comply with the following:
 - (a) participate in the treatment plan recommended by EAP;
 - (b) attend all appointments for the EAP treatment plan;
 - (c) abstain from consuming any alcohol and controlled substances during the treatment program;
 - (d) take prescribed medications in accordance with a medical doctor's directions;
 - (e) comply with all requirements of the treatment program;
- AND

- (f) successfully complete an in-person treatment program within one hundred twenty (120) days. The timeframe may be extended upon the recommendation of the EAP counselor and/or treatment provider in coordination with OSHS, but in no case shall the treatment program exceed a period of two hundred ten (210) days.
 - (g) attend aftercare as directed by EAP.
- (3) Be required to execute a release of information form allowing the City to verify the member's participation in, and successful completion of the treatment plan as required by the [Last Chance Agreement](#).
 - (4) Failure of the member to execute the [Last Chance Agreement](#) or sign a release of information form shall result in dismissal from employment with the City.
 - (5) Failure of the member to successfully complete an in person treatment plan within one hundred twenty (120) days or as extended based on the recommendation of the EAP counselor or treatment provider in coordination with OSHS and/or failure of the member to abide by the terms of the [Last Chance Agreement](#) shall result in dismissal from employment with the City.
- D. Return to Duty and Follow-up Testing Upon Completion of EAP
- (1) Members shall be required to have a follow up drug test at OSHS upon completion of a EAP directed treatment program under a [Last Chance Agreement](#) in order to return to duty.
 - (2) All return to duty drug testing after completion of EAP shall be performed under direct observation.
 - (3) A member shall be required to submit to a minimum of six (6) follow-up drug and/or alcohol tests during the twelve (12) months immediately following the member's successful return to duty test after completion of EAP, as determined by OSHS. These tests are in addition to any required random testing, if applicable. Follow-up testing shall also be performed under direct observation.

E. Disciplinary Penalties

Notwithstanding the provisions of [Section 5.6C](#) above, when a member is in violation of the prohibitions contained in [Section 4](#) above, the member shall be subject to disciplinary action, up to and including dismissal, in accordance with the City's [Disciplinary Policy and Procedure, No. 4.02](#).

- (1) Any member who has a second positive test for drugs or alcohol within the twelve (12) months immediately following the member's successful return to duty test after completion of EAP shall be dismissed from City employment for failure to abide by the [Last Chance Agreement](#). At the department director's discretion, a member may be dismissed if the member receives a second positive drug or alcohol test result outside of this twelve (12) month period.
- (2) A department director also has the discretion to dismiss a member for a single positive drug or alcohol test in consultation with Human Resources/Employee Relations Division as prescribed in the [Disciplinary Policy and Procedure, No. 4.02](#). Consideration for dismissal shall be made on a case by case basis and consistent with previous actions taken in similar circumstances by the department.
- (3) Any member who is in EAP pursuant to a [Last Chance Agreement](#) due to a positive test for drugs or alcohol and has another positive drug or alcohol test due to a reasonable suspicion test, traffic accident test or random test; shall be dismissed from City employment.
- (4) The City Police Department, Fire Department and Department of EMS may adopt internal policies creating zero tolerance for violations of [Section 4](#) herein.

6.0 CDL TRAINING:

Occupational Safety and Health Services (OSHS) shall be responsible for facilitating CDL training as set forth in DOT and FMCSA Regulations.

6.1 CDL Holders

Members, including supervisors, with CDLs shall receive materials explaining the drug and alcohol regulatory requirements and City's policies and procedures, and 60 minutes of training on alcohol misuses and drug abuse prior to participating in the City's random alcohol and drug testing program. Training shall include the effects and consequences of alcohol and drug use on their personal life, health, safety, and work environment; the behavioral changes that may indicate alcohol or drug use or abuse; and the City's Substance Abuse Policy.

6.2 Supervisors

Supervisors designated to supervise CDL drivers shall receive 60 minutes of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable alcohol abuse and 60 minutes on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use to determine whether reasonable suspicion exists to require a driver to undergo testing in accordance with this policy. Training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and drug use.

7.0 CDL REPORTING OF DRUG TEST RESULTS:

7.1 The Medical Review Officer (MRO) is responsible for receiving/reviewing laboratory results generated by the City's drug testing program.

- A. Prior to verifying a positive test result, the MRO shall make every reasonable attempt to contact the member confidentially and afford the member the opportunity to discuss the test result.
- B. If the MRO is unable to reach the member directly, the MRO shall contact OSHS, who shall then contact the member.

7.2 The MRO shall send signed written notification of a drug test report to OSHS within three (3) business days of the MRO's evaluation. The following information must be certified by the MRO:

- A. The drug test is being reported in accordance with the applicable regulations of [49 CFR Part 40](#);
- B. The name of the individual;
- C. The type of test performed;
- D. Date and location of test collection;

- E. Identification of person/entity performing the collection, analysis of the specimen and serving as MRO;
- F. Verified results of the drug test, and if positive, the identity of the drug(s) for which the test was verified positive; AND
- G. That the MRO has made every reasonable attempt to contact the member.

8.0 RECORD RETENTION REQUIREMENTS:

Occupational Safety and Health Services (OSHS) shall retain and maintain all drug and alcohol test records. The required records will be maintained in a secure location with limited access by OSHS staff only. CDL records shall be maintained in accordance with [49 CFR Part 382.401](#) and applicable [Library of Virginia](#) record retention schedules.

9.0 ALCOHOL AND DRUG TEST INFORMATION

- 9.1** The City shall obtain any information concerning a member's participation in a drug and/or alcohol testing program from previous employers pursuant to a written consent provided by the member.
- 9.2** The City shall obtain and review the following information, from any employer for whom the member performed DOT regulated (e.g., CDL Operator) functions within the last three (3) years
 - A. information on any alcohol test in which a breath alcohol concentration of 0.04 or greater was indicated;
 - B. information on the member's drug test in which a positive result was indicated; AND/OR
 - C. any refusal to submit to a required alcohol or drug test.

10.0 CONFIDENTIALITY

- 10.1** Alcohol and drug test information shall be maintained in secured confidential files in OSHS.

10.2 Generally, alcohol and drug test information shall not be disclosed to outside parties without a member’s consent. Exceptions:

- A. Alcohol and drug test information may be released without a member’s consent in legal proceedings, grievances, or administrative proceedings brought by the member or on the member’s behalf in which the alcohol and drug test information is relevant to the proceedings.
- B. The City is required by law to provide records of CDL member’s alcohol and drug testing to prospective employers if the prospective employer is regulated by a DOT agency.
- C. A member’s alcohol and drug test information may be released as otherwise required by law, regulations, court order, subpoena, or pursuant to a fully executed release.

11.0 CONTACTS:

For questions regarding this policy, members may contact Occupational Safety and Health Services (OSHS).

12.0 REVISIONS:

The City Manager, or designee, may revise this policy, or any portion thereof, at any time.

Revision History

Version	Revision Date	Description of Revision
1	July 27, 2021	Revision History tracking started this date.
2	July 27, 2021	Updated document to address occupational parameters of marijuana use for all safety-sensitive and public safety positions which are subject to drug and alcohol testing under City Prohibitions, revise Voluntary Self-Referral or Self-Identification process, and to update Post Testing Administrative Leave and Duty Status.
3	November 5, 2021	Revisions to Section 5.2 and Section 5.3 regarding the use of marijuana testing.

EXHIBIT A INCIDENT CHECKLIST

Member: _____ Dept/Div: _____ Date _____, Time _____ am/pm

Primary Supervisor: _____ Phone: _____
(Print)

Second Supervisor: _____ Phone: _____
(Print)

Use this check list for your documentation when an incident occurs which provides reasonable suspicion that a member may be under the influence of a prohibited drug substance or alcohol. Check all the items that apply and make any other notes which you believe are important.

What Happened?

	Involved in motor vehicle accident while conducting official City business
	Observed/reported possession or use of prohibited substance(s)
	Appears to be under the influence of drug and/or alcohol
	Observed abnormal or erratic behavior
	Arrest or conviction of drug-related offense
	Evidence of tampering on a previous drug test
	Other (e.g., flagrant violation of safety standards/policies or serious misconduct, accident or "near-miss", fighting or argumentative/abusive language, refuse to follow supervisor instructions, unauthorized absence on the job.) _____ _____ _____ _____

Behavior

	Verbal Abusiveness
	Physical Abuse
	Extreme aggressiveness or agitation
	Withdrawal, depression, tearfulness, or unresponsiveness
	Other erratic or inappropriate behavior (e.g., disorientation, confusion, excessive euphoria, hallucinations) _____ _____ _____ _____ _____ _____

Appearance

EXHIBIT A INCIDENT CHECKLIST

	Witnessed possession, dispensing or using prohibited substance(s)
	Slurred or incoherent speech
	Unsteady gait, poor coordination, other loss of physical control
	Dilated (wide) or constricted (small) pupils, or unusual eye movement
	Bloodshot or watery eyes
	Extreme fatigue or sleeping on the job
	Excessive sweating or clammy skin
	Flushed or very pale face
	Highly excited or nervous
	Nausea or vomiting
	Odor of alcohol
	Odor of Marijuana
	Disheveled appearance, or out of uniform
	Dry mouth (frequent swallowing or wetting lips)
	Dizziness or fainting
	Shaky hands, body tremors/twitching
	Irregular or difficult breathing
	Runny nose, sores around nostrils
	Wearing sunglasses inappropriately
	Puncture marks or "Tracks"
	Other: _____

Summary/Notes: Summary of facts and circumstances of incident, the member's response, what actions were taken by the supervisor and any other information not previously noted.

Primary Supervisor Signature _____ Date _____ Time _____ am/pm

Second Supervisor Signature _____ Date _____ Time _____ am/pm

OSHS Nurse (Initials) Concurrence ___ or Deferral ___ (Deferral Must Be Documented in Nursing Notes)

OSHS Nurse Signature _____ Date _____ Time _____ am/pm

EXHIBIT B OBSERVATION CHECKLIST

Member: _____ Dept/Div: _____ Period of evaluation: ___/___/___ to ___/___/___	
Primary Supervisor: _____ Phone: _____ (Print)	
Second Supervisor: _____ Phone: _____ (Print)	
Use this check list when referring a member for drug testing. <u>Check</u> all the items that apply and make any other notes which you believe are important. Place a "D" next to the check if there is written <u>documentation</u> of the behavior.	
Quality & Quantity of Work	
<input type="checkbox"/>	Clear refusal to do assigned tasks
<input type="checkbox"/>	Significant increase in errors
<input type="checkbox"/>	Repeated errors in spite of increased guidance
<input type="checkbox"/>	Reduced quantity of work
<input type="checkbox"/>	Inconsistent (ups & downs) quantity or quality of work
<input type="checkbox"/>	Behavior that disrupts work flow
<input type="checkbox"/>	Procrastination on significant decisions or tasks
<input type="checkbox"/>	More than usual supervision necessary
<input type="checkbox"/>	Frequent, unsupported explanations for poor work performance
<input type="checkbox"/>	Noticeable change in written or verbal communication
Interpersonal Work Relationships	
<input type="checkbox"/>	Significant change in relationships with co-workers, supervisors, others
<input type="checkbox"/>	Frequent or intense arguments
<input type="checkbox"/>	Verbal abusiveness
<input type="checkbox"/>	Physical Abusiveness
<input type="checkbox"/>	Persistently withdrawn or less involved with people
<input type="checkbox"/>	Intentional avoidance of supervisor
<input type="checkbox"/>	Expressions of frustrations or discontent
<input type="checkbox"/>	Changes in frequency or nature of complaints
<input type="checkbox"/>	Complaints by co-workers or subordinates
<input type="checkbox"/>	Cynical, "distrustful of human nature" comments
<input type="checkbox"/>	Unusual sensitivity to advice or critique of work
<input type="checkbox"/>	Unpredictable response to supervision
<input type="checkbox"/>	Passive-aggressive attitude or behavior, "doing things behind your back"
General Job Performance	
<input type="checkbox"/>	Excessive unauthorized absences, _____ in last 12 months
<input type="checkbox"/>	Excessive authorized absences, _____ in last 12 months
<input type="checkbox"/>	Excessive use of sick leave, _____ in last 12 months
<input type="checkbox"/>	Frequent Monday/Friday - type absence pattern
<input type="checkbox"/>	Frequent unexplained disappearances
<input type="checkbox"/>	Excessive "extension" of breaks or lunch

EXHIBIT B
OBSERVATION CHECKLIST

	Frequently leaves work early, _____ days per month
	Increased concern, or actual incidents, of safety offenses involving member
	Experiences or causes job accidents
	Major change in duties or responsibilities
	Interferes with or ignores established procedures
	Inability to follow through on job performance recommendation
Personal Issues	
	Changes in or unusual personal appearance (dress/hygiene)
	Changes in usual speech (incoherent, stuttering, loud)
	Changes in or unusual physical mannerisms (gesture, posture)
	Changes in or unusual facial expressions
	Changes in or unusual level of activity (more or less than usual)
	Changes in or unusual topics of conversation
	Engages in detailed discussions about death, suicide, or harming someone
	Increasingly irritable or tearful
	Persistently boisterous or rambunctious
	Unpredictable or out-of-context displays of emotion
	Unusual fears
	Lacks appropriate caution
	Engages in detailed discussion about obtaining or using drugs and/or alcohol
	Has personal relationship problems (spouse, girl/boyfriend, children, parents, in-laws)
	Makes unfounded accusations against others, i.e., has feelings of persecution
	Secretive or furtive
	Memory problems (difficulty recalling instructions, data, past behaviors)
	Frequent colds, flu or other illnesses
	Comes to work with alcohol on breath
	Excessive fatigue
	Makes unreliable or false statements
	Unrealistic self-appraisal or grandiose statements
	Temper tantrums or angry outbursts
	Demanding, rigid, inflexible
	Major change in physical health
	Concerns about sexual behavior or sexual harassment
Notes: Any other information/ observations _____ _____ _____	
Primary Supervisor Signature _____ Date _____ Time _____ am/pm	
Second Supervisor Signature _____ Date _____ Time _____ am/pm	
OSHS Nurse (Initials) Concurrence ___ or Deferral ___ (Deferral Must Be Documented in Nursing Notes)	
OSHS Nurse Signature _____ Date _____ Time _____ am/pm	

EXHIBIT C
LAST CHANCE AGREEMENT
ALCOHOL/DRUG REHABILITATION OPPORTUNITY

In order to qualify for an offer of alcohol and/or drug rehabilitation opportunity, in accordance with City policy, I, _____, freely and willingly and without coercion or duress, represent and agree as follows:

1. I admit that I have during my City employment, used illegal drugs AND/OR I have reported for duty or have been on the job while impaired by alcohol, illegal drugs, and/or prescription drug(s) with or without a valid prescription OR I voluntarily admit to a substance use or abuse problem.
2. I specifically request an opportunity to rehabilitate myself by participating in the rehabilitation treatment program conducted by the City's Employee Assistance Program (EAP) provider under the guidance of a qualified substance abuse professional or counselor.
3. I agree to participate in the recommended treatment plan, attend all appointments for the treatment plan, abstain from consuming any alcohol and controlled substances during the treatment program, comply with all requirements of the treatment program and successfully complete the program within one hundred twenty (120) days. Timeframe may be extended upon the recommendation of the EAP counselor and/or treatment provider in coordination with OSHS, but in no case shall the treatment program exceed a period of two hundred ten (210) days.
4. If I am recommended for out-patient treatment, I agree to provide to the City, upon request, written evidence verifying that I am attending all required meetings and counseling sessions of this treatment program, and I am cooperating fully, and progressing satisfactorily, and to provide written evidence of my satisfactory completion of the approved treatment program to the City, and to voluntarily participate in any drug and/or alcohol tests as may be specified by the City, including a return to work confirmatory test.
5. If I am recommended for in-patient treatment, I request that I be permitted to take a leave of absence for a period not exceeding days (insert estimated number of days desired) for the purpose of obtaining rehabilitation treatment, to use my earned PTO or sick and annual leave for this purpose, and to be granted leave without pay for any part of the period of absence not covered by paid leave, and I agree to provide written evidence of my satisfactory completion of the approved treatment to the City, and to voluntarily participate in any drug and/or alcohol tests as may be specified by the City including a return to work confirmatory test.
6. I agree that if I fail to satisfactorily complete any program of rehabilitation treatment approved by the City within one hundred twenty (120) days from the starting date of the program (or approved extension), or if I fail to pass any future drug and/or alcohol test requested by the City, I will be subject to dismissal, and I understand that the rehabilitation opportunity being offered by the City is not a waiver of its rights to discipline me or terminate my employment.

EXHIBIT C
LAST CHANCE AGREEMENT
ALCOHOL/DRUG REHABILITATION OPPORTUNITY

7. I agree that for a period of twelve (12) months from the date I complete the treatment program and have received a return to duty authorization, I will, at any time requested by the City, participate in an alcohol and/or drug test, and I will cooperate fully in the administration of any such tests. I further agree and understand that any refusal to undergo any such test or to cooperate fully in such test will constitute grounds for termination of my employment. It is my understanding that any positive test during this twelve (12) month period shall be cause for my dismissal.
8. I understand after successful completion of EAP treatment plan, I shall be required to continue twelve (12) months of aftercare as part of the treatment plan.
9. I agree to sign an authorization allowing Occupational Safety and Health Services (OSHS) to discuss my treatment, compliance and to communicate directly with EAP and/or my treatment provider. It is understood that any information will be kept confidential to the extent permitted by law not necessary to defend the City's interests, and will not be released unless required by subpoena, court order, discovery proceeding, other legal requirement, or the City's interests.
10. It is understood that the agreements and understandings contained in this writing are directly related to my employment and may not be used in any criminal proceeding.
11. I understand that I am financially responsible for the payment of the drug treatment program, including any co-pays or other financial costs associated with this treatment.

Member's Name

Date

Witness – Occupational Safety and Health Services Representative

Date

Policy Title: Policy: Substance Abuse Policy, 6.15

Date of Adoption: January 9, 1990
Date of Prior Revision: August 2, 2021
Date of Revision: Upon Approval

**Approved as
to form and
content:**



Regina S. Hilliard, Director of Human Resources

10/29/2021
Date


**Approved as
to legal
sufficiency:**



Marjorie A. Smith, Senior City Attorney

11/5/21
Date

Approved:



Patrick A. Duhaney, City Manager

11/5/21
Date