



**CITY OF CHESAPEAKE, VIRGINIA**

**NUMBER 2.44**

**CITY DIRECTIVE**

**EFFECTIVE DATE: 12/22/2020**

**SUBJECT: DEPARTMENT OF HUMAN RESOURCES  
SUBSTANCE ABUSE POLICY**

**SUPERSEDES: 2/15/2005**

**I. PURPOSE**

The City of Chesapeake is committed to maintaining a work environment for all employees that is free from the effects of alcohol and drugs and in compliance with all state and federal laws governing alcohol and controlled substance testing. The City is committed to being in compliance with the Drug-Free Workplace Act of 1988, the Omnibus Transportation Employee Testing Act of 1991 and federal regulations promulgated under these acts. The City is committed to being a Drug and Alcohol free workplace.

**II. GENERAL PROVISIONS**

A. The unlawful use, manufacture, distribution, dispensation or possession of drugs or alcohol on the job is strictly prohibited. Further, coming to work under the influence of drugs or alcohol is prohibited.

The Director of Human Resources shall issue a Guide to Substance Abuse Testing, as a supplement to this Policy, which details specific procedures and practices associated with alcohol and controlled substance screening. For the purpose of this policy, references to the Director of Human Resources or department/agency head shall include their designees. The Director of Human Resources is responsible for rendering official interpretations of this policy.

B. Employees who have a substance abuse problem are encouraged to seek professional assistance and may do so through the City's Employee Assistance Program (EAP) or a provider of their choice.

1. If an employee independently self-reports a substance abuse problem prior to notification of being identified for drug or alcohol testing, and there have been no related misconduct or job performance problems, the employee will be referred to a Substance Abuse Professional (SAP).

2. An employee who self-reports a substance abuse problem after being notified of being identified for drug or alcohol testing will be disciplined for positive test results in accordance with policy, up to and including termination.

C. Any employee or applicant whose substance abuse problem or impairment poses a risk of harm to himself/herself, fellow employees, the public, or City or private property, is

obligated to notify his/her supervisor or the Department of Human Resources immediately. Failure to do so may result in disciplinary action, up to and including termination, and/or withdrawal of a conditional offer of employment.

- D. Employees have the responsibility to report any employee they believe to be non-compliant with this policy.

### III. APPLICABILITY

This policy applies to all City employees, applicants, volunteers, interns, temporary service workers and contract workers.

### IV. DEFINITIONS

- A. **Adulterated Sample (Specimen):** A specimen that has been altered in some way to include but not limited to, containing a substance that is not expected to be present in human urine or containing a substance expected to be present but at a concentration so high that it is not consistent with human urine.
- B. **Alcohol:** The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl and isopropyl alcohol. Alcohol also includes any beverage, mixture, preparation, or medication, containing alcohol.
- C. **Breath Alcohol Technician (BAT):** A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing or alcohol screening device respectively.
- D. **Breath Testing Device:** Equipment used for the testing of breath for the presence of alcohol.
- E. **Collection site:** The place designated by the City where an individual presents him/herself for the purpose of providing a urine specimen to be analyzed for the presence of drugs or where the individual's breath is tested for the presence of alcohol.
- F. **Commercial Driver's License (CDL):** A driver's license an individual can obtain to transport interstate or intrastate commerce or to drive a commercial motor vehicle.
- G. **Commercial Motor Vehicle:** A vehicle with a gross vehicle weight rating or gross combination weight rating of 26,001 or more pounds, or with the capacity to carry sixteen (16) or more passengers (including the driver), or of any size that is used to transport hazardous materials which require the vehicle to be placarded.
- H. **Controlled Substance:** Generally a drug or chemical whose manufacture, possession, and/or use is regulated by a government, such as illicitly used drugs or prescription medications that are designated by law.

- I. **Designated Representative:** The Director of Human Resources is authorized to receive communications and test results from the Contract Substance Abuse Program Administrator.
- J. **Department of Transportation (DOT):** Agency which provides regulations governing the testing of employees required to maintain a CDL as a condition of employment.
- K. **Dilute Negative Result** - a urine specimen showing low concentration of creatinine in the urine caused by excessive fluid intake combined with specific gravity factors.
- L. **DOT Testing:** Screenings required of all applicants and employees selected for or working in positions requiring a CDL and operating a commercial motor vehicle.
- M. **Driver:** Any City employee, applicant, volunteer, intern, temporary service worker and contract worker who operates a motor vehicle or commercial motor vehicle in the conduct of City business, as well as a City employee who operates a motor or commercial motor take home vehicle.
- N. **Illegal Drug:** Any substance which is not legally obtainable or has been illegally obtained. This term includes prescribed drugs not legally obtained and prescribed drugs not being used for prescribed purposes (abuse).
- O. **Medical Review Officer (MRO):** A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving and reviewing laboratory results generated by an employer's drug testing program. The MRO acts as an impartial advocate for the accuracy and integrity of the drug testing process and evaluates for laboratory confirmed positive, adulterated, substituted, and invalid drug tests while protecting the confidentiality of the drug testing information.
- P. **Non-DOT Testing:** Testing conducted under the guidance of the Department of Health and Human Services and the City including all positions identified as safety sensitive positions that do not fall within the DOT testing requirements.
- Q. **Post-Accident Testing:** Mandatory testing in the event of a motor vehicle accident which results in a fatality or a transport for medical attention. The City also has the discretion to mandate testing when a moving violation with citation is issued, and/or in connection with a reported accident, and/or vehicle towed from the scene as a result of an accident. A post-accident test may also be required for City vehicle accidents where department management and/or a Risk Management representative can find no reasonable explanation for the cause of the accident.
- R. **Qualifying Accident:** Any accident which results in a fatality or a transport for medical attention, a moving violation with citation issued and/or vehicle towed from the scene as a result of an accident and any accident that is obviously preventable and/or if the cause is inconclusive. Also any accident involving an employee with a CDL while performing their safety sensitive functions.

- S. **Random Testing:** The process of identifying employees for testing based upon numerical data in a chance sequence.
- T. **Reasonable Suspicion:** An inference, based upon specific, contemporaneous, articulable observations, that an employee's physical or mental condition could be affected by alcohol and/or drug use.
- U. **Safety & Security Sensitive Positions:** The group of positions determined by the Director of Human Resources to be included in random or pre-employment drug and alcohol testing. The group of positions includes, but is not limited to, positions where the mishandling or the careless handling of equipment or materials could jeopardize the safety of employees or citizens.
- V. **Screening Test (or Initial Test):** In drug testing, a test to eliminate “negative” urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs. In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.
- W. **Substance Abuse Professional (SAP):** A person who has the credentials, knowledge, and training required by the DOT drug testing program to evaluate employees who have violated a DOT drug & alcohol regulation and who makes recommendations concerning education, treatment, follow-up testing, and aftercare.
- X. **Under The Influence:** An observable behavior which indicates the employee is affected by a drug or alcohol or the combination of a drug and alcohol and/or having a breath alcohol level or drugs in the body at any unsatisfactory test levels as established by the U.S. Department of Health and Human Services, the U.S. Department of Transportation and/or the City of Chesapeake.
- Y. **Unsatisfactory Test Levels:** Results obtained from alcohol/drug screening and confirmatory testing indicating that an employee is unfit for duty.
- Z. **Validity testing:** The evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants (substances or concentrations of substances not consistent with human urine) or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.
- AA. **Vehicle:** Any motor vehicle, as described in the Code of Virginia, requiring the operator to have and maintain an operator’s license that is used in the conduct of City business. The vehicle may be a city-owned vehicle or a personal vehicle being used in the conduct of City business, or a city-owned take home vehicle. In addition, the operation of off road mobile equipment is also included in this section which includes golf carts, riding mowers and tractors, forklifts, construction equipment and all other off road all terrain style vehicles that may not require a motor vehicle license.

## V. RESPONSIBILITIES

- A. All persons covered by this policy must follow all of the responsibilities which include, but are not limited to, the following:
1. not reporting to work or being subject to duty while his/her ability to perform job duties is impaired due to alcohol or drug use;
  2. not using alcohol for four hours prior to reporting to work to perform a safety-sensitive function;
  3. not possessing or using illegal drugs or alcohol or having the odor of alcohol on his/her breath during any assigned working hours, including breaks and meal periods, while on City premises or in an official capacity in another location, or while operating any vehicle in the conduct of City business;
  4. not having unsatisfactory levels of alcohol or controlled substances in his or her body while on duty or assigned to "stand-by" or on-call status;
  5. not directly, or through a third party, selling or providing drugs to any person, including any other employee, while either employee or both employees are on duty, or assigned to "on-call" status;
  6. submitting immediately to requests for alcohol and/or drug testing when requested by a responsible City representative;
  7. notifying his/her supervisor, before beginning work, when taking any medication or drugs, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of City equipment;
  8. providing, within twenty-four (24) hours of request, a current valid prescription, in the employee's name, for any drug or medication identified when a drug screen/analysis is positive.
  9. notifying the City of any criminal drug or alcohol statute conviction for a violation occurring in the employee's workplace no later than five (5) calendar days after such conviction; and
  10. not consuming alcohol during the eight (8) hours following an accident in a City vehicle if fault has not been determined and the alcohol/drug analysis has not been administered.

B. A supervisor must:

1. observe and monitor their employees' behavior for signs or symptoms of drug or alcohol use and shall promptly document and report any such observations to the appropriate department head or designee;
2. not allow an employee to perform safety or security sensitive duties, operate a City vehicle or perform any work, if that supervisor has knowledge or "reasonable suspicion" that an employee is using, under the influence, or has possession of alcohol or illegal drugs.
3. immediately remove the employee from a safety sensitive function pending disciplinary action once a test has been verified as positive;
4. protect confidentiality by not sharing test results with inappropriate staff/persons;
5. not provide advanced notice to an employee that he/she has been selected for random testing prior to the official notification to report for testing; and
6. attend all required substance abuse supervisory training programs.

## **VI. OCCASIONS FOR SUBSTANCE ABUSE TESTING**

The City may require an individual covered under this policy to undergo drug and/or alcohol testing under the following circumstances: prior to employment, transfer, promotion, demotion, career progression in a City Manager approved Career Development Program, reasonable suspicion testing, random testing, post-accident testing, return-to-duty testing, self-reporting/follow-up testing. Once the individual going for testing is informed of required alcohol testing, he/she 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 prior to submitting to testing. A positive alcohol test shall be any evidential breath test resulting in a blood alcohol content (BAC) of .02 or greater.

A. Prior to employment, transfer, promotion, demotion, career progression in a City Manager approved Career Development Program:

1. Applicants for the following types of positions shall not be employed or placed on assignment without receipt of a negative test result:
  - a. All public safety positions, including Police, Fire/Emergency Medical Services, Sheriff, Park Rangers and 911 Telecommunicators;
  - b. All positions whose work involves the operation of a vehicle or vehicular equipment (e.g. lawnmower, golf cart) in the conduct of City business;

- c. All positions whose work is involved in the transport of hazardous materials, or whose work is involved in the performance of hazardous or potentially hazardous functions, or the use of hazardous or potentially hazardous equipment;
  - d. All positions requiring a commercial driver's license (CDL);
  - e. All positions involved in road repair and maintenance;
  - f. All positions involved in the repair of motor vehicles and heavy equipment, except those exempt from the CDL requirement;
  - g. All positions involved in operation or repair of vehicles designed to transport sixteen (16) or more passengers;
  - h. All positions deemed safety and/or security sensitive.
2. Should the applicant test positive for alcohol, illegal drug(s) or controlled substances, his/her application for employment, transfer, promotion, demotion, career progression or assignment with the City shall not be processed further.
  3. Internal City applicants who test positive for alcohol, illegal drug(s) or controlled shall be terminated from employment.

B. Reasonable Suspicion Testing

1. An employee shall undergo testing if there is reasonable suspicion that he/she is under the influence of drugs or alcohol while on the job. Circumstances which constitute a basis for determining reasonable suspicion may include, but are not limited to, the following:
  - a. A pattern of abnormal or erratic behavior such as unexplained mood swings, paranoia, hallucinations, hypersensitivity, depression, or withdrawal;
  - b. Direct observations of perceived illegal drug and/or alcohol use on the job, during breaks or at lunch;
  - c. Possession of drugs or drug paraphernalia; or
  - d. Presence of the physical symptoms of drug or alcohol use (e.g., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes, unusual perspiration or shaking, unusual drowsiness or sluggishness).

2. Certain medical conditions may produce symptoms similar to those associated with drug or alcohol use. Therefore, in appropriate cases, the supervisor shall require a medical evaluation in addition to referral for alcohol and controlled substances testing.
3. The supervisors of employees covered by the provisions of the Omnibus Transportation Employee Testing Act of 1991 are authorized to require reasonable suspicion testing if they have received the required minimum of sixty (60) minutes of training on alcohol misuse and sixty (60) minutes of training on substance abuse. The training shall include behavioral indicators, circumstances for testing, procedures that will be used for testing and consequences of a positive test.
4. The supervisors of employees not covered by the Omnibus Transportation Employee Testing Act of 1991 are not required to participate in the mandated training program in order to refer an employee for reasonable suspicion testing.
5. An employee who is directed to be tested for reasonable suspicion may not return to work until the test results are known. The employee may be placed on approved annual leave. If the test results are negative, the employee's leave balance will be restored, and the employee returned to full duty status. If the test results are positive, the employee will receive discipline consistent with City policy, up to and including termination.

C. Random Testing

1. All employees designated in Section VI A are subject to random controlled substances testing. CDL holders are also subject to random alcohol testing in accordance with applicable DOT regulations.
2. The random selection procedure is computer generated using a random number generator and the file identifier of these employees.
3. Within every twelve (12) month period, at least ten (10%) percent of employees in the random group will be selected for testing for alcohol, and fifty (50%) percent of the employees in the random group will be tested for drugs.
4. Random controlled substances tests shall be unannounced, and the dates shall be reasonably distributed throughout the calendar year.
5. In the event an employee selected for random testing is on leave, the departmental payroll clerk and supervisor must keep the selection confidential until the employee returns or the test period expires.
6. An employee who is subject to random testing must report to the collection site immediately upon notification by his/her supervisor. A supervisor will accompany

the employee to the collection site. Failure to report promptly, as directed, will result in termination of employment.

7. Under special circumstances, some employees may be subjected to random testing on a more frequent basis and to testing prior to special events due to the City's heightened interest in ensuring these employees are drug free.
8. Random alcohol testing is limited to the time period surrounding the performance of safety-sensitive duties. An employee may only be randomly tested just before performing, while performing, or just after performing safety-sensitive duties.

D. Post-Accident Testing

1. An employee shall be subject to post-accident testing if he/she has a qualifying accident. In addition, any other employee whose performance was determined to have contributed to the accident shall be tested.
2. The testing of drivers following an incident in which there is no personal injury, no vehicles are towed and/or no citations issued, may be administered by on-site law enforcement if there is reasonable suspicion that the driver is under the influence of alcohol or controlled substances. This type of testing may be particularly useful if the test can be administered before the supervisor can report to the scene. The supervisor must obtain a copy of the test results.
3. When more than one employee is in a City vehicle involved in an accident and there is doubt as to which employee was operating the vehicle at the time of the accident, all employees in the vehicle shall be tested. In addition, any other employee whose performance was determined to have contributed to the accident shall be tested.
4. The supervisor shall indicate on the Incident Checklist, obtained from Finance/Risk Management that the employee was involved in an accident and shall forward the form to the Department of Human Resources. Testing shall be conducted based on the following time frame and process:
  - a. Alcohol Testing
    - i. If warranted, an alcohol test must be administered within two hours following the accident. If testing cannot be accomplished within this time frame, the supervisor shall prepare and maintain a record which explains why the test was not promptly administered.
    - ii. If a test required under this section is not administered within eight (8) hours following the accident, the supervisor shall cease attempts to secure an alcohol test and shall document the reasons in a report. This does not constitute a surrender of the City's right to continue an

investigation or resulting use of the disciplinary process if independent facts warrant.

b. Testing for Controlled Substances

Drug tests, if required, must be administered within thirty-two (32) hours following the accident. If unable to test within this time frame, the supervisor shall cease attempts to secure a drug test and shall prepare and maintain a record which explains why the test was not promptly administered. This does not constitute a surrender of the City's right to continue an investigation or resulting use of the disciplinary process if independent facts warrant.

5. An employee who is seriously injured and cannot provide a specimen at the time of the accident shall provide the necessary authorization for obtaining hospital reports and other documents that would indicate whether there were any drugs or alcohol in his/her system. Any drug or alcohol specimen collected by a medical treatment facility shall be deemed a valid drug or alcohol test for the purposes of this policy.
6. An employee who is subject to post-accident testing must remain available at the accident site until directed otherwise by his/her supervisor, or the City will consider the employee to have refused to submit to testing. Refusal to submit to substance abuse testing will result in termination of employment.

E. Return to Duty Testing

1. All employees who previously tested positive on an alcohol test must test negative (a BAC below 0.02 for alcohol) and be evaluated and provide a written release to duty from a Substance Abuse Professional (SAP) before returning to work.
2. All employees who have been referred to a SAP as a result of an independent admission of an alcohol or controlled substance problem shall be subject to return-to-duty testing and must provide a test result of less than a 0.02 BAC for alcohol and/or a negative controlled substance test result.

F. Self-Reporting/Follow-up Testing

1. All employees who independently admit to an alcohol or controlled substance problem and have been referred to a SAP shall be subject to follow-up testing. Employees shall undergo frequent unannounced random alcohol and/or controlled substance testing for up to twenty-four (24) months as determined by the SAP following their return to duty.
2. In addition to the aforementioned follow-up testing, federal law mandates the following requirements for drivers of commercial vehicles:

- a. Follow-up testing shall be conducted just before, during, or just after the driver performs safety-sensitive functions. The number and frequency of tests shall be as directed by the SAP and consist of at least six (6) tests in the first twelve (12) months following the driver's return to duty. The employee shall be subject to unannounced follow-up alcohol and/or controlled substance testing for up to sixty (60) months from the date of the driver's return to duty.
- b. The SAP may terminate the requirement for follow-up testing at any time after the initial six (6) tests have been administered, if he/she determines that such testing is no longer necessary.

## **VII. REFUSAL TO CONSENT TO DRUG AND/OR ALCOHOL TESTING**

### Applicants

A job applicant who refuses to consent to a drug and/or alcohol test when requested will be denied employment with the City. Any refusal or failure to cooperate fully with the administration of a test, any behavior which makes testing more difficult or prevents administration or completion of the test, or in any manner alters or attempts to alter the test results (including adulteration or substitution) will be treated as a refusal to consent, regardless of whether a Consent Form is signed.

### Employees

1. An employee who refuses to cooperate in the administration of a drug and/or alcohol test when requested will be terminated from employment.
2. Any refusal or failure to cooperate fully with the administration of a test, any behavior which makes testing more difficult or prevents administration or completion of the test, or in any manner alters or attempts to alter the test result (including adulteration or substitution) will be treated as a refusal to consent.
3. An employee who fails to immediately report to the testing site when directed by a supervisor is considered to be in violation of the Substance Abuse Policy, and the delay in reporting for testing will be treated as a failure to cooperate.
4. Failure to cooperate also includes failure to provide a urine specimen for any drug screen, failure to permit the observation or monitoring of delivery of a specimen, failure to provide a sufficient amount of urine when directed (and it is determined through a required medical evaluation that there is no adequate medical explanation for the failure), or a report from the Medical Review Officer (MRO) of a verified adulterated or substituted specimen.
5. An employee who is required to submit to a second drug test due to a dilute negative result or an invalidity of the first provided specimen and refuses to submit to the re-test shall be deemed to have a positive test. If that individual is an employee, he/she shall be disciplined in accordance with policy.

## **VIII. CONSEQUENCES OF A CONFIRMED POSITIVE TEST RESULT**

### Applicants

1. External applicants shall be denied employment or assignment and shall be informed by the Department of Human Resources, in writing, if he/she is rejected on the basis of a confirmed positive drug or alcohol test result.
2. An applicant who is denied employment due to a positive drug or alcohol test is not eligible for employment with the City for a period of three (3) years.
3. If an applicant in a safety sensitive position receives a positive drug test result from a previous employer within the past three (3) years, the applicant will not be considered for employment until a full three (3) years has passed since the positive test.

### Employees

1. An employee whose drug test result is confirmed as positive or whose alcohol test is positive at .04 or higher will be terminated from employment. If an employee's alcohol test results in a BAC level of .02 to .039, the employee is subject to disciplinary action up to and including termination. At the discretion of the department head, if the employee has an overall satisfactory record of job performance and conduct, the case can be handled as a medical matter, and the employee shall be referred to a Substance Abuse Professional (SAP) for counseling.
2. An employee who occupies a position requiring a commercial driver's license (CDL) and who has a positive alcohol test must be removed from safety sensitive duties for a minimum of twenty-four (24) hours. Nothing herein shall guarantee that the employee will be returned to safety sensitive duties at the conclusion of the twenty-four (24) hour period.
3. Mitigating circumstances will not be applicable to employees with confirmed positive tests for drugs or alcohol tests resulting in a BAC of .04 or higher.

### **Employment of Persons and Re-Employment of Former Employees with a Record of the Illegal Use of a Controlled Substance**

An applicant who has a record of the illegal use of a controlled substance or a former employee who was in violation of this Policy and who subsequently was dismissed from employment may be eligible for future employment after three (3) years in accordance with regular City recruitment and selection policies if the applicant presents the following:

1. A statement from a qualified SAP or medical professional qualified to treat substance abuse that the individual has successfully completed a rehabilitation program; and

2. Some evidence that the applicant/former employee has not used controlled substances for the preceding twelve (12) months (e.g. rehabilitation program reports, support group attendance reports, controlled substance test reports).

## **IX. SUBSTANCES TO BE INCLUDED IN SCREENING TEST**

When drug and/or alcohol screening is required under the provisions of this Policy, a urinalysis, or Breathalyzer Test/Evidential Breath Test in the case of alcohol, will be administered to detect the presence of the following drug groups. For individuals covered under DOT regulations, testing will be administered in accordance with 49 C.F.R. Part 40. Individuals in Non-DOT, Safety & Security Sensitive positions will be tested for the following, however, this list is not all inclusive: Alcohol, Amphetamines/Methamphetamines, Cocaine, Opiates, Opioids (semi-synthetic or synthetic), Phencyclidine, Marijuana and the abuse of any drugs not referred to above.

To ensure specimen validity, screening for creatinine, pH and adulterants will also be conducted.

## **X. TESTING PROCEDURE**

### **A. GENERAL**

1. All drug and alcohol testing of City employees, applicants, volunteers, interns, temporary service workers and contract workers shall be conducted at facilities or laboratories procured by the City. To obtain information regarding testing or testing sites, please contact the Human Resources Department at (757) 382-6492.
2. All procedures for the testing, analysis, labeling, handling, retention and storage of the test samples shall be in accordance with standards established by the Substance Abuse And Mental Health Services Administration (SAMHSA) or 49 C.F.R. (Code of Federal Regulations) Part 40.
3. In the case of an applicant, the hiring department representative will provide the testing form to the applicant with directions to the collection site and instructions on the post-conditional offer medical examination process.
4. The supervisor of any individual covered under this policy will secure a testing form from the designated representative within his/her department. The supervisor will complete the appropriate section on the form identifying the reason for testing. The supervisor will inform the employee of the reason for the test, that the submission to a drug and alcohol screening test is a condition of continued employment, and that refusal to cooperate fully with the administration of the test will result in termination of employment.

5. Prior to the administration of the drug/alcohol test, the employee will sign the Notice to Report form, produce photo identification and is required to comply with the "Chain of Custody" procedure and any other requirements of the collection site.

#### **Administrative Action Pending Receipt of Test Results**

1. All time spent by an employee while undergoing testing pursuant to this Policy, including travel time to and from the collection site, is considered on-duty time and shall be compensated as such.
2. When the employee is required to obtain a medical evaluation to determine whether the employee's inability to provide sufficient breath or urine is genuine or constitutes a refusal to test, the employee is placed on leave until the Department of Human Resources has received the results of the medical evaluation and the department has taken any required disciplinary action.

#### **Substance Abuse Awareness Training**

1. The Department of Human Resources shall be responsible for the development of a Substance Abuse Awareness Training Program which will provide information on the dangers of substance abuse in the workplace, available community resources, and substance abuse detection.
2. Supervisors and managers of employees covered under Department of Transportation (DOT) regulations must participate in this training every two (2) years. Individual departments are responsible for ensuring the training occurs and maintaining the training records.
3. DOT employees will be provided educational material concerning alcohol and drug misuse and the provisions of this policy. Training material on substance abuse awareness will be available for all non-DOT employees who request the information.

### **B. ALCOHOL TESTING**

Alcohol testing shall be conducted by an approved breath alcohol technician (BAT) who is proficient in the operation of the breath testing device that is used for the screening test.

1. The BAT shall give the applicant/employee instructions on how the breath will be collected.
2. If the employee is unable to produce sufficient breath, the Substance Abuse Program Administrator will notify the designated representative within the Department of Human Resources who will then inform the referring department. The referring department will direct that the employee be medically evaluated

within five (5) business days by a licensed physician approved by the City to determine if there is a medical reason why the employee was unable to provide sufficient breath. The Department of Human Resources will provide the physician with the information and instruction required under DOT regulations for the physician to determine whether the employee's inability to provide sufficient breath is genuine or constitutes a refusal to test.

3. The physician shall provide to the City a written statement of the basis for his/her conclusion

### **Confirmation of Test Results and Employee/Applicant Notification**

1. In the case of a positive alcohol test, the evidential breath test will be given again, after waiting no more than fifteen (15) minutes following the initial test.
2. The applicant/employee may not eat, drink, put any object or substance in his/her mouth, and, to the extent possible, refrain from belching during the period between the screening test and the confirmation test.
3. If the BAT becomes aware that the applicant/employee has not complied with this instruction, the BAT shall document same in the remarks section of the testing form.
4. The pass/fail results of the confirmed test will be forwarded by the Department of Human Resources to the department head or his/her designee.
5. In the event that the screening and confirmation test results are not identical, the confirmation test result is deemed to be the final result upon which any action regarding disciplinary action is based, if necessary.

### **C. CONTROLLED SUBSTANCE TESTING**

Controlled substance testing procedures require that a split urine sample be obtained from the applicant/employee at a designated collection site under strict chain of custody conditions. Privacy is assured unless reasonable suspicion exists that there has been tampering with specimens.

1. The collection site representative shall instruct the individual to provide at least forty-five (45 ml) milliliters of urine. In the presence of the donor, the collection site representative checks the specimen for volume, temperature and color and pours the urine into two specimen bottles. At least thirty (30 ml) milliliters of obtained urine is poured into one bottle to be used as the primary specimen with the remaining fifteen (15 ml) milliliters or more poured into a second bottle to be used as the split specimen. The individual being tested shall view the entire collection and sealing process to ensure conformity with procedure.

2. If the individual being tested is unable to provide a sufficient or valid sample for testing, he/she will remain at the collection site for up to three (3) hours or until able to provide a sufficient urine sample. The individual will be allowed to consume up to forty (40) ounces of fluids during this period. If after three hours the individual is unable to provide a minimum of forty-five (45 ml) milliliters required for testing, all testing will be stopped and the City notified. The individual has five (5) business days to be evaluated by a physician to determine whether or not there is a medical explanation for the individual's inability to provide the required forty-five (45 ml) milliliters for testing. If an individual leaves the testing facility during the 'shy bladder period' without completing the test, it is then considered a 'Refusal to Test'.

### **Inconclusive/Invalid Drug Screen**

1. An inconclusive/invalid drug screen occurs when the testing laboratory cannot obtain results due to an unexpected interfering substance in the specimen, temperature outside a given range, or due to the absence of a definitive result. Such outcomes will be deemed an Invalid Result.
2. When a laboratory reports that the test results are invalid, the Medical Review Officer (MRO) will discuss the results with the certifying scientist to obtain more information. The MRO will contact the individual being tested and inform him/her that the specimen was invalid. The MRO will inquire about medications the applicant/employee may have taken that may interfere with the testing. Following this process, if the test results are still inconclusive/invalid, the MRO will make a ruling on the test results and communicate same to the Department of Human Resources.

### **Diluted/Adulterated Specimen**

Urine specimens that are determined by the laboratory to be diluted/adulterated specimens shall be handled in accordance with the Department of Health and Human Services (HHS) SAMHSA mandatory guidelines for workplace drug testing programs, and the individual being tested may be required to re-test if recommended by the MRO.

1. When a screening test is reported by the laboratory as "dilute negative," the individual being tested is required to provide a second sample for re-testing. If an individual is directed to take another test, the City shall ensure the individual is given the minimum possible advance notice to go to the collection site. If the individual is directed by the City to take another test, the result of the second test, not that of the original test, becomes the test of record, on which the City will rely for purposes of a diluted specimen.
2. When a screening test is reported by the laboratory as "dilute positive," the sample shall be considered a positive test.

3. If the individual being tested admits to having adulterated or substituted the specimen, the MRO must, on the same day, document the admission in writing and report the adulteration or substitution to the Department of Human Resources.

### **Confirmation of Test Results and Employee/Applicant Notification**

1. An individual being tested will be notified of a negative test result by the department representative ordering the test.
2. If a urine sample tests positive or is adulterated, the laboratory automatically performs a second procedure using a portion of the same test sample, to again assure accuracy of the testing result. The result is then communicated to the MRO. The individual being tested has the opportunity to discuss the positive result with the MRO.
3. All positive drug test results are reported by the MRO who will notify both the subject as well as the City's designated Human Resources (HR) representative.
4. The individual being tested has seventy-two (72) hours in which to notify the MRO that an additional test of the split specimen is requested. The reconfirmation test will be at the employee's expense. Once requested, the MRO will have the split specimen sent to a different certified laboratory to be tested. If there are circumstances beyond the control of the individual being tested which result in the individual being unable to meet the seventy-two (72) hour notice, the Department of Human Resources or the MRO can waive that requirement.
5. This notification is required in all cases of confirmed positive laboratory results except in cases where the individual being tested has waived the opportunity to talk to the MRO. The individual is not required to wait until after a verified positive test in order to request an analysis of the split specimen. The verification to the employer would not be delayed pending the result of the analysis of the split specimen.
6. Once a test is verified as positive, the individual must be removed from safety-sensitive functions immediately pending disciplinary action. The MRO shall send all verified positive test requests to the Department of Human Resources. If the split specimen test is negative, the MRO shall report to the City a cancelled test result. Once the employing department has been notified of the negative result, the individual shall be reinstated to full duty.

## **XI. REFERRAL TO SUBSTANCE ABUSE AGENCIES**

All persons covered by this Policy who are terminated under the Omnibus Transportation Employee Testing Act of 1991 shall be provided information on resources available to resolve alcohol and drug problems (Appendix B). The former employee will be referred to the City's Substance Abuse Professional (SAP). Any costs associated with the evaluation

or any recommended counseling or treatment shall be the responsibility of the former employee.

## **XII. CONFIDENTIALITY OF TEST RESULTS**

- A. All information from an employee's or applicant's drug and alcohol test is confidential and only those with a need-to-know are to be informed of test results. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee or applicant. The results of a positive drug test shall not be released until the results are confirmed.
- B. Disclosure, without an employee's or applicant's consent, may also occur when the information:
  - 1. is compelled by law or by judicial or administrative process;
  - 2. has been placed as an issue in a formal dispute between the employer and employee or applicant;
  - 3. is to be used in administering an employee benefit plan; or
  - 4. is needed by medical personnel for the diagnosis or treatment of an individual who is unable to authorize disclosure.

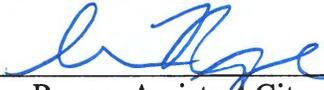
## **XIII. RECORD RETENTION REQUIREMENTS**

- A. Records of verified positive test results, documentation of refusals to take required test, referrals to SAPs, and copies of annual management information reports submitted to the federal government shall be maintained in accordance with the Virginia Library Records Retention guidelines. Records related to the collection process and employee training shall be maintained for two years. Records of negative test results and alcohol test results with a blood-alcohol concentration (BAC) of less than 0.02 shall be maintained for one year.
- B. Test results are kept in a separate file apart from the employee's personnel file.

## **XIV. SEARCHES**

The City reserves the right to search, without employee consent, all areas and property over which the City maintains full control or joint control with an employee. Such areas and property include, but are not limited to, desks, closets, bookcases, lockers, file cabinets, and/or City vehicles. Warrants shall be obtained, if necessary, to search areas or property over which the City has no control.

APPROVED AS TO FORM AND CONTENT:



\_\_\_\_\_  
Andrea Ruege, Assistant City Attorney II

12/11/2020  
\_\_\_\_\_  
Date

APPROVED AND ADOPTED:



\_\_\_\_\_  
Christopher M. Price, City Manager

12.21.20  
\_\_\_\_\_  
Date

**Appendix A**

**CITY OF CHESAPEAKE**

**SUBSTANCE ABUSE POLICY REPORT FORM**

This is to certify that \_\_\_\_\_ has reasonable suspicion to believe  
(supervisor)

that on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m., \_\_\_\_\_ was  
(date) (employee)

in possession of, or

under the influence

of a substance or substances in violation of the City's Substance Abuse Policy.

The following are the specific facts that have led me to suspect that the above-named employee has violated the City's Substance Abuse Policy:

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

\_\_\_\_\_  
Observing Supervisor's Signature

CC: Department Head  
Department of Human Resources (Must be submitted within twenty four hours or next regular City work day.)

## Appendix B

### AVAILABLE INTERVENTION SOURCES

There are a variety of resources available to assist you or provide you with information regarding alcohol or substance abuse.

Inova EAP shall be used as the Substance Abuse Professional. Inova EAP is a service provider who is able to see you on a one-time basis only and will refer you to other treatment. You may reach them by calling 1-800-346-0110.

#### Resources for Substance Abuse (Alcohol or Drugs) Treatment

##### *Community Services Boards*

Chesapeake	547-9334
Portsmouth	393-8896
Virginia Beach	437-6158
Norfolk	664-6670

##### *Hospitals*

Maryview Psychiatric	398-2394
Virginia Beach Psychiatric	496-6000

*Alcoholics Anonymous Hotline*            1-800 274-2042

An information and support group operating through local chapters to provide assistance to recovering alcoholics.