

CITY OF DENTON

POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE

SECTION: HUMAN RESOURCES	REFERENCE NUMBER: 108.12
SUBJECT: STANDARDS OF CONDUCT FOR EMPLOYEES	INITIAL EFFECTIVE DATE: 07/15/91
TITLE: ANTI-SUBSTANCE ABUSE AND REHABILITATION POLICY	LAST REVISION DATE: 11/26/13

POLICY STATEMENT:

The City of Denton recognizes that employee substance abuse can have a serious, adverse impact on its image as a major employer in Denton, its ability to deliver quality services to its citizens, and the general health, welfare, and safety of its employees and the public. The pervasive presence of substance abuse in our society and the adverse effect on employee health, safety, and productivity in the work place requires the establishment of an Anti-substance Abuse and Rehabilitation Program.

The City, in considering its daily operations of providing quality services to its citizens, recognizes its responsibility to implement appropriate measures necessary to the safe, efficient, and effective use of its resources, people, facilities, equipment, and finances. It is the City's responsibility to ensure public trust and, in doing so, must implement comprehensive safety measures that protect the well-being of its employees and citizens.

It is the policy of the City that employees are prohibited from manufacturing, using, possessing, selling, distributing, consuming, or transporting any controlled substances as defined by the Federal Controlled Substances Act or the Texas Controlled Substances Act, or any alcoholic beverages or *intoxicating substances* on *City property* or at any time when conducting City business or performing their job duties and responsibilities, including during any lunch or rest breaks that may be given in which the employee is required to return to work immediately following.

An employee is prohibited from performing his or her job duties while under the influence of *alcohol* or *drugs*, or if performance is *impaired*, while under the influence of lawfully prescribed or over-the-counter substances. An employee shall not have *drugs* or *alcohol* in his or her urine, blood stream, or breath except pursuant to a valid personal prescription. An employee shall not use or possess *alcohol* outside of *work hours* on *City property* where prohibited by this policy, state, or local law. An employee should not use or possess *alcohol* or *drugs* during any lunch or rest breaks that may be given in which the employee is required to return to work immediately following. The employee shall not use *alcohol* or *drugs* while wearing a City of Denton uniform or any other article of clothing furnished by the City to employees with an approved City of Denton logo(s) (refer to Public Usage and Standards Policy no. 505.02) or name, irrespective of whether the employee is on duty.

There is no intent to intrude upon the private lives of employees or applicants. However, the City is concerned with those job-related situations where the use of *drugs* or *alcohol* interferes with the health and safety of employees and the public, affects the employee's work performance during *work hours*, adversely

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affects the job performance of other employees, is considered serious enough to be detrimental to the City's conduct of business, or affects the reputation of the City to the general public or threatens its integrity.

It is the policy of the City to have an appeal process in the case of employees with confirmed positive tests for *drugs* or *alcohol* and to deny employment to applicants with confirmed positive tests for *drugs*.

The City of Denton complies with all applicable regulations and *drug* and *alcohol testing* programs, including the Department of Transportation (DOT) and American with Disabilities Act (ADA). Unless otherwise specified, the City of Denton has adopted the drug and alcohol testing procedures and guidelines of the DOT.

This policy applies to all employees- regular full-time, regular part-time, temporary, and seasonal. Civil Service employees are subject to the applicable provisions of Chapter 143 of the Texas Local Government Code, Local Rules of the City of Denton Fire Fighters and Police Officers Civil Service Commission, and the general orders of the Police and Fire Departments, which may include the provisions of this policy. This policy also applies to persons serving in an official capacity as a volunteer for the City of Denton as outlined in the Volunteer Procedures policy # 409.07.

ADMINISTRATIVE PROCEDURES:**I. Definitions**

- A. *Adulterated* test results occur when an agent is added to the urine sample by the donor at the time of collection in an attempt to prevent detection of *drug* use.
- B. *Alcohol* is defined as ethyl alcohol. *Alcohol*, as used herein, includes any beverage, mixture, or preparation containing ethyl alcohol.
- C. *Alcohol testing* is testing for blood *alcohol* content by an intoxilizer instrument device operated pursuant to state law.
- D. *Cut-off levels* are established by analytical methods in the laboratory to determine a quantitative level of a *drug* in the body. The specific cut-off level is a standard selected by the DOT.
- E. *City property* or *premises* for purposes of this policy, includes **ALL** property, facilities, buildings, structures, parking areas, and vehicles owned, operated, leased, or under control of the City. An employee is not considered in violation of this policy by transporting or possessing alcoholic beverages on City streets if he or she is:
 - 1. off duty;
 - 2. not wearing a City of Denton uniform or any other article of clothing furnished by the City to employees with an approved City of Denton logo(s) or name;
 - 3. not operating a City-owned, leased, or borrowed vehicle;
 - 4. in a public access area; and
 - 5. in compliance with all applicable laws.

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- F. *Detectable level* indicates the presence of a *drug* or substance found in the body in amounts exceeding an established cut-off level. A detectable level of *alcohol*, as defined by the DOT, is .01 or greater.
- G. *Drug* is a controlled substance, controlled substance analogue, narcotic *drug*, or opiate as defined in Schedules I-V of the Federal Controlled Substance Act, or the Texas Controlled Substance Act, Texas Health & Safety Code, Chapter 481, if obtained or used without a valid prescription for the user or possessor (refer to section IV of this policy). This definition includes but is not limited to marijuana, hashish, cocaine, heroin, morphine, codeine, amphetamines, barbiturates, hallucinogens, inhalants producing mood and mind-altering vapors, and substances chemically similar to these *drugs*.
- H. *Drug test* is the collection of a urine specimen by trained personnel, laboratory analysis of that specimen by Enzyme Immunoassay (EMIT) screening, and confirmation of *drug*-positive EMIT tests using gas chromatography/mass spectrometry (GC/MS) methods and procedures, or other medically acceptable technology (such as oral fluid *drug testing*) deemed appropriate by the City of Denton.
- I. Emergency Call-Back is defined as those employees that on a continuous basis may be asked, but are not scheduled, to report to work outside of normal working hours in an emergency situation.
- J. *Impaired* is an employee's diminished capacity to perform duties of the job as determined by a supervisor and/or physician's statement.
- K. Intoxicating substances is defined to mean those substances that are being utilized for the intentional purpose of causing a physical or mind altering state.
- L. Negative Dilute test results occur when the creatinine and specific gravity levels approach "substituted" values, which might indicate that an attempt has been made by the donor to avoid drug detection.
- M. *On-Call* is defined as a period of time during which an employee is advised by his/her supervisor to be accessible for return to work for operational requirements that may develop outside normally scheduled *work hours*.
- N. Paraphernalia is defined as equipment, a product, or material that is used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing a drug or in injecting, ingesting, inhaling, or otherwise introducing into the human body a drug.

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- O. *Positive Dilute* test results occur when it has been determined by the laboratory through confirmation of the creatinine and specific gravity values that an attempt was made by the donor to avoid *drug* detection by “flushing out” the *drug* or by lowering the level of the *drug* to a concentration less than that of the testing cutoffs.
- P. *Random testing* describes the process of testing that assures each employee has an equal chance of being tested each time covered employees are selected for testing. All test results and selected employee names are confidential, and records are maintained separate from employee personnel files.
1. The Department of Transportation (DOT) regulates the percentage of covered employees who are to be randomly tested for *drugs* and *alcohol* per calendar year.
 2. Employees in other “safety sensitive” positions (as defined in section I-O of this policy) are tested at a minimum of the rate as employees falling under DOT.
- Q. *Reasonable suspicion* is a suspicion based on some objective fact derived from the surrounding circumstances to lead a reasonable person to suspect that an employee may be under the influence of *alcohol* or prohibited substances while on duty.
- R. *Safety-sensitive position* is a job where an employee's use of *drugs* or *alcohol* could create a threat to safety whereby the employee's ability to perform assigned duties is *impaired* and the performance of those duties in such mental or physical condition creates or could create a safety hazard that has caused or could cause injury or harm to the employee or other employees or citizens or damage to property.

Examples of “*safety-sensitive*” positions may include, but are not limited to:

- a. positions involving the use of a vehicle and/or motorized equipment, such as cars, trucks of any size, tractors, mowers, trimmers, trash compactors, saws, and drills as an incidental (10% of time or yearly average of 8 hours per pay period) or as a primary duty (more than 50% of time)
- b. positions using a deadly weapon
- c. positions with access to controlled substances and/or hazardous materials/chemicals as defined by the Texas Department of Health
- d. positions falling under the Department of Transportation rules and regulations
- e. fire civil service personnel,
- f. parks leisure services positions involving regular contact with children or elderly adults, or
- g. designated field personnel in water/wastewater utilities, electric utility, streets, traffic, solid waste, and parks maintenance.

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- S. *Substituted* test results occur when the creatinine concentration of the urine sample is less than or equal to 5 mg/dL and the specific gravity of the urine sample is less than or equal to 1.001 or greater than or equal to 1.020 on both the initial and confirmatory creatinine and specific gravity tests. These results suggest that the donor has altered the specimen to avoid detection of drug use.
- T. *Unsuitable for testing* test results occur when unidentified adulterants or endogenous products are detected in the donor's urine and interfere with any of the testing process.
- U. *Vehicular Accident* is defined as an event where any damage occurs to a vehicle, motor-driven equipment, or other property, or where an injury occurs to any person, due to the operation (use of or failure to use steering, braking, acceleration, and/or operational systems) of a vehicle or motor-driven equipment by an employee. However, this does not include normal wear and tear or incidents that the operator had no control over (such as flying debris that cannot be avoided) as determined by the supervisor.
- V. *Work Hours* includes any time an employee is performing work for the City.
- II. Prohibited Items. The manufacture, use, possession, sale, distribution, consumption, or transportation of any of the following substances by employees while on *City property*, conducting City business, or performing job duties and responsibilities is prohibited. These violations will result in notification of appropriate law enforcement personnel, *reasonable suspicion drug*, and/or *alcohol testing*, and will result in disciplinary action, up to and including dismissal.
- A. *Drugs* (as defined in section I-G of this policy)
- B. *Alcoholic* beverages or other *intoxicating substances* (as defined in sections I-B and I-K of this policy) —however, an employee may possess, consume, or transport alcoholic beverages while off duty (in compliance with section I-E of this policy) unless local or state law otherwise prohibits the possession or consumption of alcoholic beverages.
- C. *Drug paraphernalia* (as defined in section I-N of this policy).

Prohibited items do not include the possession or transportation of any substance or item by Police Department personnel in fulfillment of legitimate law enforcement activities, nor is this description intended to infringe upon or impede any lawful law enforcement function associated with the investigation of criminal offenses under the Federal or State Controlled Substances Act, or ordinances of the City of Denton.

- III. Prescriptions and Over-The-Counter Medications. Prescriptions and over-the-counter medications are prohibited except when all of the following conditions are met:
- A. The prescription *drugs* are prescribed by a physician licensed to practice medicine in the United States or its territories for the person in possession of the *drugs*;

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- B. The prescription has been filled by a registered/licensed pharmacist within the last twelve (12) months for the person possessing the *drug* or medication;
- C. The *drugs* or medications are ingested or administered only in the prescribed or recommended therapeutic dosages;
- D. The employee or applicant must be able to produce evidence of a valid prescription to a medical review officer as requested, and
- E. The employee taking the *drug* or medication has informed his or her supervisor that he or she is taking a medication that could impair his or her ability to perform his or her job duties, including but not limited to the operation of vehicles or motorized equipment.

The City, at all times, reserves the right to have a designated City physician determine if a prescription *drug* or medication produces hazardous effects and may restrict the job duties performed while using any *drug* or medication accordingly.

IV. Conferences

Employees attending training and conferences may participate in social functions associated with the conference. This may include the consumption of *alcohol*, so long as the employee is not wearing a City of Denton uniform or any other article of clothing furnished by the City to employees with an approved City of Denton logo(s) or name and the employee's conduct does not reflect adversely upon the City. Employees who consume *alcohol* at these functions shall follow the law and exercise caution in driving personal vehicles and shall not operate a City-owned, City-leased, or City-rented vehicle.

V. *Emergency Call-Back*

Employees subject to continuous *emergency call-back* are required to declare to their supervisors the use of *alcohol* or *drugs* including prescribed medication that might affect their ability to perform under an emergency. The supervisor shall determine if the employee is fit to work and in what capacity.

VI. *On-Call*

Because employees with *on-call* status are potentially required to be actively working, an "*on call*" employee is prohibited from consuming *alcoholic* beverages or using *drugs* that may impair his or her performance. If an employee is taking prescription medication that may impair his or her performance when called back to work, he or she should notify his or her supervisor. The supervisor shall determine if the employee is fit to work and in what capacity.

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VII. Use of Substances Outside of *Work Hours*

An employee shall not use or possess *drugs* or *alcohol* outside of *work hours* on *City property* as defined by section I-E, including during any lunch or rest breaks that may be given in which the employee is required to return to work immediately following. An employee shall not use *alcohol* or *drugs* before or after *work hours* while wearing a City of Denton uniform or any other article of clothing furnished by the City to employees with an approved City of Denton logo(s) or name.

VIII. Notice of Testing Policy

The Human Resources Department shall provide informed and/or written notice of its *drug* and *alcohol testing* policy to all job applicants and employees. The notice shall contain the following information:

- the need for *drug* and *alcohol testing*;
- circumstances under which testing may be required;
- the procedure for confirming an initial positive *drug* and/or *alcohol* test result;
- consequences of a confirmed positive test result;
- consequences of refusing to undergo a *drug* and/or *alcohol* test;
- the appeal procedures available for a positive test result; and
- the availability of *drug* abuse counseling and referral services.

Applicants will be notified of the City's policy to conduct *drug testing* as part of the employment process. When an applicant reports to a testing site for testing, he or she shall first present valid picture identification, such as issued by the Department of Public Safety or a passport to the tester.

IX. Consent

Before a *drug* or *alcohol* test is administered, the employee or job applicant will be required to sign a consent form authorizing the test and permitting release of test results to those City officials with a need to know or as required by law, except those exempt pursuant to DOT regulations 49 Part CFR 40.27. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the City's *drug testing* policy. **By continuing employment with the City of Denton, employees have consented to the adoption of this policy and testing program.**

A. Refusal to Test

1. Applicants: A job applicant who refuses to consent to a *drug test* will be denied employment with the City.
2. Employees: An employee who refuses to consent to a *drug* and/or *alcohol* test will be subject to dismissal.

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The consent form shall not be altered or changed by the applicant or employee. Altering or refusing to sign the consent form shall be considered a refusal to consent to the *drug* and/or *alcohol* test.

B. Complaints or Grievances

Any complaints or grievances about the testing procedure are to be made by the employee through his/her normal chain of command pursuant to the City of Denton Problem Solving Policy 115.02. Those conducting the testing shall not be harassed or abused either verbally or physically during any *drug* or *alcohol testing* procedure. Any conduct that is perceived by the testing personnel as harassing or verbally or physically abusing will be deemed as failing to cooperate fully with the collection of breath, saliva, and/or urine samples and shall be considered as insubordination and thus subject to disciplinary action up to and including dismissal.

X. Types of Testing

A. Pre-Employment (Job Applicant Testing)

Upon a conditional offer of employment, all applicants are required to pass a *drug* screen prior to his or her final appointment. An applicant will be notified of *drug testing* at the time of application and will be allowed the opportunity to withdraw his or her application anytime upon request.

B. Reasonable Suspicion

The decision to conduct *reasonable suspicion alcohol and drug testing* will be determined on a case-by-case basis. Note: With *reasonable suspicion*, an *alcohol* test will be conducted first. If the *alcohol* test is negative, then the employee will be subject to a *drug test*.

1. Criteria which may be used by appropriately trained management and supervisory personnel to determine if a test for an employee is necessary include, but are not limited to, the following:
 - a. Observed *alcohol* or *drug* use during working hours;
 - b. Apparent physical state of intoxication or *drug* induced impairment of motor function;
 - c. Incoherent or irrational mental state;
 - d. Marked changes in personal behavior or attitude not attributable to other factors;

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- e. Deteriorating work performance, attendance, or tardiness problems not attributable to other factors;
 - f. Information received from appropriately trained sources in determining *reasonable suspicion* that indicates the employee has been involved in *alcohol* or *drug* use;
 - g. Other employee actions or conduct that leads to a suspicion of *drug* or *alcohol* use such as presence of physical symptoms that may include glassy or blood-shot eyes, *alcohol* beverage odor on breath, slurred speech, poor coordination or reflexes, unsteady gait, mood changes (including inappropriate gaiety or lethargic behavior), unpredictable responses to ordinary requests, etc. which leads managers and supervisors to believe that the employee is under the influence of *alcohol* or *drugs*, suffers from substance abuse or is in violation of City or departmental rules, regulations, or procedures concerning the use of such substances;
 - h. Any violation of the City of Denton's *Drug Free Work Place Policy* (108.11).
2. Supervisory Procedures in the Event of *Reasonable Suspicion*
- a. A supervisor or trained personnel (in compliance with section XV of this policy) may require an employee to undergo *alcohol* and *drug testing* if he/she has *reasonable suspicion* that the employee is under the influence of *alcohol* and/or *drugs* during *work hours* as described above. Supervisors are required to complete an "Observation Checklist" if they have received training (in compliance with XV of this policy), which can be found on the City's Intranet site, to list the symptoms or observations that formed the basis for their determination that *reasonable suspicion* existed to warrant the testing of an employee. This documentation shall be forwarded to the Human Resources Department. If a supervisor has not been trained, he/she should contact Human Resources or someone in their chain of command. The facts underlying the determination of *reasonable suspicion* should be disclosed to the employee at the time the supervisor requires the employee to undergo reasonable suspicion *alcohol* and *drug* testing.
 - b. If an employee refuses to consent to a *reasonable suspicion* test, he/she should be escorted to the Human Resources department if during normal *work hours*. If after normal *work hours*, he/she should be escorted home by appropriate supervisory personnel or another City employee with departmental authority and placed on administrative leave with pay until contacted by his or her supervisor. In the rare instances when a supervisor or another City employee with departmental authority is unable to escort the employee home, the supervisor may make arrangements for a reasonable party to pick-up the employee from the worksite.

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- c. Once *the supervisor has established reasonable suspicion*, an employee must submit to an *alcohol* and *drug* screen immediately upon request. An *alcohol* test will be conducted first. If the *alcohol* test is negative or the results are at a *detectable level* below .039, then the employee will be subject to a *drug test*. The employee's supervisor shall give the employee a direct order, as a condition of employment, to submit to an *alcohol* and *drug* screen with the warning that refusal to comply will result in dismissal. (For results that are not negative or are .039 or above, refer to section XI. B. of this policy.)
- d. The employee shall be further instructed to cooperate throughout the *alcohol* and *drug* screening procedure, including following all directions received from trained personnel at the *alcohol* and *drug* screening collection site. **The employee, in no case, shall be permitted to continue working or remain unattended while screening approval or arrangements are being effected. The employee will be placed on administrative leave with pay pending results of the test.**
- e. The department supervisor shall immediately, if during normal weekday office hours (7 a.m. to 5 p.m., Monday through Friday), notify the Director of Human Resources or designated representative in the Human Resources Department to arrange for the *alcohol* and *drug* screening. If after normal weekday office hours, the supervisor should notify Human Resources the next business day. **If the necessity to arrange for an *alcohol* and *drug* screening occurs, the supervisor or another City employee with departmental authority must escort the employee to the designated *drug* screening collection site. The employee shall never be permitted to operate a vehicle or motorized equipment.**
- f. Supervisory personnel and appropriate medical personnel shall take the necessary actions to prevent the employee's alteration or falsification of the *alcohol* and *drug* screen procedure. An appropriate chain of custody procedure will be followed at the collection site to ensure the accuracy and integrity of the testing procedure and test results.
- g. **The employee should not return to work in any capacity until results are confirmed negative.**
- h. If the results are "non-negative," the employee needs to be escorted home by appropriate supervisory personnel or another City employee with departmental authority and placed on administrative leave without pay. **In the rare instances when a supervisor or other City employee with departmental authority is unable to escort the employee home, the supervisor may make arrangements for a reasonable party to pick-up the employee from the worksite.**

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C. Post Accident

Vehicular Accidents (includes City vehicles and motorized equipment as well as leased vehicles, personal vehicles, rental vehicles, or borrowed vehicles if being operated to conduct City business):

1. An employee should ALWAYS be tested for *DRUGS* if any one or more of the following conditions apply:
 - a. there has been a death to a citizen or another employee during work hours due to a *vehicular accident*;
 - b. there has been a vehicular accident from which injury to an employee or citizen has occurred during work hours that requires immediate treatment at a doctor's office or hospital;
 - c. there has been any damage to City and/or citizen property during work hours due to a vehicular accident (exceptions include employee's vehicle being hit from behind while legally stopped); or
 - d. there has been a vehicular accident on a public street during work hours and the police officer issues a citation to the employee.
2. An employee should ALWAYS be tested for *ALCOHOL* if any one or more of the following conditions apply:
 - a. there is *reasonable suspicion* as determined by an appropriately trained supervisor; or
 - b. an employee has a commercial driver's license and is required to use the license to perform his/her job duties and has an accident while using his/her commercial driver's license that involves one or more of the following:
 - i. a human fatality;
 - ii. a bodily injury which requires immediate medical treatment away from the scene AND a citation is issued to the employee (a DOT test is not required if a citation is not issued); or
 - iii. there has been disabling damage to any motor vehicle requiring tow away AND a citation is issued to the employee (a DOT test is not required if a citation is not issued).

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3. A *drug test* must be conducted along with ANY post-accident *alcohol test* unless the *alcohol test* results are .04 or greater.
4. **Under no circumstances should a post-accident test be waived if any of the above criteria are met.**
 - a. If required, an *alcohol test* should be conducted immediately (if there are no incapacitating injuries). If an *alcohol test* is not conducted within two (2) hours after the accident, a memo should be written as to why an *alcohol test* was not conducted within that time frame. This memo should be forwarded to the Human Resources department to be filed. All attempts to test should cease if it has been longer than eight (8) hours.
 - b. A *drug test* should be conducted immediately (if there are no incapacitating injuries). If a *drug test* is not conducted within two (2) hours, a memo should be written as to why a *drug test* was not conducted within that time frame. This memo should be forwarded to the Human Resources Department to be filed. All attempts to test should cease if it has been longer than thirty-two (32) hours.
5. It is the employee's responsibility to contact his or her supervisor immediately, unless incapacitated, after an accident has occurred so that appropriate action can be taken. Failure to report an accident will result in disciplinary action, up to and including dismissal.
6. Oral fluid testing may be conducted for post-accident drug tests. Employees with negative test results may return to work. Section XI.A. will apply for employees with "non-negative" test results and employees required to take a drug test under the DOT guidelines.
7. If oral fluid collection cannot be taken on-site, the employee shall be escorted to the *alcohol* and/or *drug* screening collection site by appropriate supervisory personnel or other City employee with departmental authority. **The employee shall not be permitted to operate a vehicle or motorized equipment.**
8. Employees who are tested as a result of a non-DOT accident may return to work and assigned duties as long as the result(s) of the drug and/or alcohol test (where applicable) is/are confirmed negative.

Employees who are tested as a result of a DOT accident will be escorted to the testing facility for an alcohol test and a split specimen urine drug screen. In this instance, the employee may return to work and assigned duties as long as the initial result(s) of the alcohol and/or drug test is/are confirmed negative.

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If the result(s) is/are “non-negative,” the employee needs to be escorted home by appropriate supervisory personnel or another City employee with departmental authority and will not be able to return to work until the results are confirmed negative. **In the rare instances when a supervisor or another City employee with departmental authority is unable to escort the employee home, the supervisor may make arrangements for a reasonable party to pick-up the employee from the worksite.**

D. On-the-Job Injuries

1. If there is a *reasonable suspicion* that the employee is under the influence of *alcohol* and/or *drugs* during *work hours* and that *drugs* or *alcohol* contributed to the injury, then a supervisor or trained personnel may require an employee, in compliance with sections X.B. and XV of this policy, to undergo *alcohol* and *drug testing*.
2. It is the employee's responsibility to contact his or her supervisor immediately, unless incapacitated, after an injury has occurred so that appropriate action can be taken. Failure to report an injury will result in disciplinary action, up to and including dismissal.

The Director of Human Resources or designated representative of the Human Resources Department shall be responsible for notifying the Department Head or designee of the *alcohol* and/or *drug* screening results as soon as this information is available. When requested, copies of the laboratory report reflecting the *alcohol* and *drug* screening results shall be transmitted to the aforementioned officials when the report is available.

E. Employees Transferring to Other Jobs within the City

Any employee moving from a “non-safety” sensitive position to a “*safety-sensitive*” position or moving from a “*safety-sensitive*” position (as defined by the City) to a DOT “*safety-sensitive*” position (as defined by the Department of Transportation) will be required to pass a *drug* screen as a condition of final appointment.

Questions concerning whether a specific position is deemed *safety-sensitive* should be addressed to the Human Resources Department.

F. Random Testing

1. Federally Regulated *Random testing*

In response to the DOT 49 CFR regulations, employees who are in positions that require the use of a commercial driver's license (CDL) are subject to random *drug* and

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alcohol testing according to federal regulations and guidelines.

2. *Random testing* per City of Denton Policy

Employees in positions that are considered *safety-sensitive positions* (as defined by section I-R of this policy) are subject to random *drug* and *alcohol testing*. Questions concerning whether a specific position is deemed safety sensitive should be addressed to the Human Resources Department.

Employees who are tested under *random testing* may return to work and assigned duties pending confirmed results of the test. If the results are confirmed negative, no further action is taken. If the results are “non-negative,” the employee needs to be escorted home by appropriate supervisory personnel or another City employee with departmental authority and will not be able to return to work until the results are confirmed negative. **In the rare instances when a supervisor or another City employee with departmental authority is unable to escort the employee home, the supervisor may make arrangements for a reasonable party to pick-up the employee from the worksite.**

G. Follow-up Testing

In the event an employee self refers in accordance with section XII or appeals a termination in accordance with section XI.C.2, the employee may be subject to follow-up testing.

Follow-up tests are unannounced. Follow-up tests will be conducted in accordance with the recommendation of the Substance Abuse Professional. However, for DOT employees at least six (6) tests must be conducted in the first 12 months after the employee returns to duty. Follow-up testing may be extended for up to 60 months following return to duty.

XI. Confirmation of Test Results

A. Confirmed Positive Results of *Drug* Screen

In the event an oral fluid *drug test* is conducted and the results are non-negative or for DOT tests, the employee will be escorted by the supervisor or another City employee with departmental authority to the *drug* screening collection site for a urine *drug test*. For all *drug testing*, if the initial *urine drug test* is non-negative, a second test of the same sample will be performed to confirm results. The results of a positive *urine drug test* shall not be released until the results are confirmed through GC/MS testing and MRO review.

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1. *Drugs tested and cut off levels*

<u>List of Drugs Tested For</u>	<u>Also Known As</u>	<i>Cut-off Levels</i>	
		<u>Urine</u>	<u>Oral Fluid</u>
*Amphetamines	Speed, Uppers, etc.	500 ng/ml	50 ng/ml
*Methamphetamines	Meth, Ice, Crank, etc.	(incl. in Amph)	50 ng/ml
*Opiates	Heroin, Opium, etc.	2,000 ng/ml	40 ng/ml
*Cannabinoids	Marijuana, Hashish, etc.	50 ng/ml	12 ng/ml
*Cocaine	Coke, Crack, etc.	150 ng/ml	20 ng/ml
*Phencyclidine	Angel, Dust, Hog, etc.	25 ng/ml	10 ng/ml

The City also reserves the right to test for:

<u>List of Drugs Tested For</u>	<u>Common References</u>	<i>Cut-off Levels</i>	
		<u>Urine</u>	<u>Oral Fluid</u>
Synthetic Cannabinoids	K2, Spice, etc.	N/A	N/A

* Detection limit in a given specimen will vary within the listed range and will depend on which class members and/or metabolites are present.

* Detection limits have also been set by HHS.

However, nothing contained in the above cut off levels shall conflict with standards promulgated by the Department of Transportation (DOT).

The City reserves the right to modify the *drugs* to be tested given the circumstances of the reasonable suspicion test, unless it conflicts with DOT rules and regulations. In the case of a conflict, the City reserves the right to test for other substances under its non-DOT testing guidelines, if applicable.

2. Retest of original sample

An employee or applicant who does not pass the *drug test* may request a retest of the original sample within three (3) business days of his or her receipt of the *drug test* results at his/her expense. The employee or applicant may request retesting by the same laboratory or by a second laboratory that is certified to perform *drug tests* by the HHS (Department of Health and Human Services) under the National Laboratory Certification Program (NLCP). The originating laboratory must follow the external chain-of-custody procedure outlined in the HHS mandatory guidelines for federal workplace *drug testing* programs when transferring the sample. If the two tests have conflicting results, a third test will be run at a different, approved lab and funded by the City. The result of the third test will be binding.

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Any employee requesting a retest of the original sample will be required to use any accrued vacation time pending the results of the test. If the employee has no accrued vacation time, the employee will be placed on administrative leave without pay. If the final test is confirmed negative, the employee will be reimbursed for vacation time used or the time placed on administrative leave without pay and the cost of the second test.

3. Procedure for Insufficient Amount of Urine

- a. If an employee or applicant is unable to give a sufficient sample as defined by DOT, he/she will follow DOT guidelines for insufficient amount of urine for a *drug test* (49 CFR Part 40.193) – These guidelines allow the individual to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a sufficient urine specimen, whichever occurs first. If the applicant/employee refuses to make the attempt to provide a new urine specimen or leaves the collection site before the collection process is complete, the collection process will be discontinued. This will be considered a refusal to test (as defined in section IX-A of this policy).
- b. If the applicant/employee has not provided a sufficient amount of urine after following the DOT guidelines above, the City's Designated Employer Representative (DER) will direct the applicant/employee to obtain, within five days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen. (Note: Employees will be placed on administrative leave with pay until the evaluation is provided to Human Resources or five days whichever comes first.)
If accepted by the MRO, the test will be cancelled. If not accepted by the MRO, the test will be considered a refusal to test (as defined in section IX-A of this policy).

4. Procedures for Dilute, *Unsuitable*, *Substituted*, or *Adulterated Drug test* Results

If the initial *drug* screen is reported as a *negative dilute*, no further action will be required UNLESS the creatinine concentration of the specimen was equal to or greater than 2mg/dL, but less than or equal to 5 mg/dL.

Under these circumstances, a job applicant or employee will be required to provide a new sample immediately under direct observation (direct observation means a trained lab technician will visually observe the production of the urine specimen). The result of the second test will be the test of record.

- a. If the initial *drug* screen is reported as a *positive dilute*, this will be considered a refusal to test (as defined in section IX-A).
- b. If the initial *drug* screen is reported as *unsuitable* or *rejected for testing*, the

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employee or job applicant must provide a new sample under direct observation as soon as possible.

- c. If the initial *drug* screen is reported as *substituted* or *adulterated*, this will be considered a refusal to test (as defined in section IX-A).

B. Detectable levels and Confirmed Positive Results of Alcohol

If the initial *alcohol test* is above .000, a second test will be performed to confirm results. The results of a positive *alcohol test* shall not be released until results are confirmed.

1. If an employee's confirmed test result is between .001 and .019, he/she will be removed immediately from his/her *safety-sensitive position* until there is no *detectable level* of *alcohol* in his/her system and will be subject to discipline, up to and including dismissal.
2. If an employee's confirmed test result is between .02 and .039, he/she will be removed immediately from his/her *safety-sensitive position* for a minimum of twenty-four (24) hours and be subject to discipline, up to and including dismissal.
3. If an employee's confirmed Blood *Alcohol Content* test result is .04 or greater, he/she will be dismissed from employment unless appealed and overturned.

C. Consequences of a Confirmed Positive Test Result

1. Applicants: A job applicant will be denied employment with the City if his or her initial positive test results have been confirmed. Applicants who are denied employment due to a positive *drug test* result must wait two years before applying for another position with the City.
2. Employees: If an employee's "non-negative" test result has been confirmed positive, the employee will be dismissed. However, the employee will be allowed to appeal his/her dismissal from employment. The appeal must be submitted in writing to the Human Resources Director within 10 business days of the dismissal. The appeal should include a thorough explanation as to why the employee feels he/she should not be dismissed. Upon request of an appeal, the employee will be required to meet with a Substance Abuse Professional (SAP) through the City's Employee Assistance Program (EAP). The employee must meet with the SAP within three (3) business days of appealing the dismissal. If this timeframe cannot be met due to the SAP's schedule, the employee must notify the Human Resources Director or designated representative prior to the expiration of the three (3) business days.

After the employee meets with the SAP, any report provided by the SAP will be sent to the City's Human Resources Department. A panel consisting of the City Manager, an Assistant City Manager, and the Human Resources Director or alternate member at the

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discretion of the City Manager will meet to review the appeal and any report sent by the SAP. If the panel overturns the dismissal, the employee may be required to complete any recommendations of the SAP. If an employee is dismissed because of a positive test result, he/she must wait two years before applying for another position with the City.

XII. EAP Self-Referral

Except for all civil service and non civil service positions in the police department and divisions of the police department, disciplinary action may not be taken against employees who voluntarily identify themselves as having a *drug* or *alcohol* problem and obtain counseling and rehabilitation through the City's Employee Assistance Program. However, employees are responsible for violation of policies and procedures and for performing job duties and responsibilities at an acceptable level. Disciplinary action may be imposed for an employee who violates policies and procedures or fails to properly perform job duties and responsibilities both prior to and after the self-referral. **An employee may not make a self-referral in order to avoid a potential *drug* or *alcohol* test or disciplinary action.** An employee may only self-refer once. Employees will be required to enter into an agreement with the City, which will include participation in a follow-up testing program.

XIII. Confidentiality of Test Results

All information from an employee's or job applicant's *drug* and *alcohol* screen shall be disclosed only to those with a need to know of test results, including but not limited to the City Manager, City Attorney, Human Resource Director or Designated Employer Representative, Risk Manager, Department Head, and/or Supervisor. The City and its agents may communicate test results among themselves for official purposes both orally and in writing, and at a judicial or administrative proceeding, including applicable state or federal agencies. Disclosure of test results to any other person, agency, or organization is prohibited to persons not eligible to receive the test results under any applicable law. The results of a positive *drug test* shall not be released until the results are confirmed.

XIV. Laboratory Testing Requirements

All *drug* and *alcohol testing* of employees and applicants shall be conducted at facilities or laboratories selected by the City (with the exception of a retest as outlined in section XI). To be considered as a testing site, a facility or laboratory must submit in writing a description of the procedures that will be used to maintain test samples. Factors to be considered by the City in selecting a testing facility include:

- A. Testing procedures that ensure privacy to employees and job applicants consistent with the prevention of tampering;
- B. Methods of analysis which ensure reliable test results, including the use of gas chromatography/mass spectrometry to confirm positive test results;

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- C. Chain-of-custody procedures which ensure proper identification, labeling, and handling of test samples; and
- D. Retention and storage procedures that ensure reliable results of confirmatory tests of original samples.

XV. Education and Training

The City shall train supervisory personnel on the physical, behavioral, and performance indicators of probable *drug* use and *alcohol* misuse. The City shall also provide information to employees covered under the DOT on the effects and consequences of prohibited *drug* use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited *drug* use.

XVI. Employment At-Will

Like all other City of Denton policies, this policy does not alter the employment at-will relationship. This provision shall not be construed as creating contractual rights or as establishing a “just cause” disciplinary or dismissal standard.