



City Manager's Approval: \_\_\_\_\_

## **THE CITY OF POMONA**

### **SAFETY POLICIES AND PROCEDURES**

## **ALCOHOL AND CONTROLLED SUBSTANCES POLICY PURSUANT TO DEPARTMENT OF TRANSPORTATION REGULATIONS**

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### **I. PURPOSE**

The purpose of this Policy is to comply with the United States Department of Transportation (DOT) regulations implementing the Federal Omnibus Transportation Employee Testing Act of 1991. Specifically, the City must comply with the regulations of the Federal Highway Administration (FHWA).

### **II. APPLICABILITY**

This Policy applies to all City employees whose job duties require them to obtain and maintain a commercial driver's license in order to operate a commercial Class A or B vehicle. This Policy also applies to those employees who voluntarily hold and maintain a commercial driver's license in order to operate a commercial Class A or B vehicle. A list of those positions is listed under Section VI.A.

### **III. POLICY**

It is the policy of the City of Pomona to meet or exceed all of the requirements of the Federal Omnibus Transportation Employee Testing Act.

### **IV. DEFINITION OF TERMS**

*"Alcohol"* – the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl and isopropyl alcohol.

*"Alcohol concentration (or content)"* – the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

*"Alcohol use"* – the consumption of any beverage, mixture or preparation including any medication containing alcohol.

*"Commercial Drivers' License (CDL)"* – a Class A or B vehicle license.

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*“Commercial Motor Vehicle”* – any vehicle weighing over 26,001 Gross Vehicle Weight Rating (GVWR); any vehicle requiring placarding under Hazardous Material regulations; or any vehicle designed to transport 16 or more passengers, including the driver.

*“Covered Employee”* – any City employee who operates a commercial motor vehicle.

*“Drugs/Controlled Substances”* – Amphetamines, Cocaine, Marijuana, Opiates (heroin, etc.), and Phencyclidine (PCP).

*Five (5) Panel Drug Test”* – the five (5) categories of drugs established by the FHWA which fall under the class of “Controlled Substances”, per this standard. These drugs are Amphetamines, Cocaine, Marijuana, Opiates and Phencyclidine.

*Medical Review Officer (MRO)”* – a licensed physician certified to review and interpret all drug tests before they are reported to the City.

*Memorandum of Understanding (MOU)”* – written Agreements of rights and responsibilities between various employee groups and the City.

*“Premises”* – buildings, property, work areas, vehicles, parking lots and any place the employee happens to be working during the course and scope of City employment during regular working hours, breaks or during any paid status.

*“Pre-Employment Physical Exam”* – a physical evaluation conducted before applicants are hired or after an offer to hire, but before performing safety-sensitive functions for the first time. Physicals may also be required when current employees transfer to a safety-sensitive position.

*Prescription Drugs”* – any drug or medication prescribed by a licensed physician for a medical condition. Use of prescribed drugs is not in direct violation of the City’s policy; however, inappropriate use of prescribed drugs use that may cause significant impairment, thus creating a safety hazard on the job, is in direct violation of this policy.

*“Reasonable Suspicion”* – a belief based on “objective facts” sufficient to lead a reasonably prudent supervisor to suspect that an employee is under the influence of drugs and/or alcohol so that the employee’s ability to perform his/her job functions is impaired, or so that the employee’s ability to perform his/her job safely is reduced.

*“Safety-Sensitive Duties”* – when an employee is require to drive one of the following vehicles:

1. A vehicle with gross combination weight of at least 26,001 pounds; inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
2. A vehicle with a gross vehicle weight rating of at least 26,001 pounds;
3. A vehicle designed to transport 16 or more passengers, including the driver; or

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4. A vehicle designed to transport those hazardous materials found in the Hazardous Materials Transportation Act.

*“Safety-Sensitive Personnel”* – employees who hold a commercial drivers’ license and who operate a commercial motor vehicle on a full-time, part-time or intermittent basis.

*“Substance Abuse Professional”* – a licensed physician, licensed or certified psychologist, social worker, employee assistance professional, or an alcohol and drug abuse counselor certified by the National Association of Alcohol and Drug Abuse Counselors (NAADAC) Certification Commission. All persons listed must have specific knowledge of, and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders in order to qualify as Substance Abuse Professionals.

*“Zero Tolerance Policy”* – the policy and practice by which the City will terminate employees who violate this Policy as stated herein.

**V. RESPONSIBILITIES**

- A. Department Directors shall:
  1. Ensure that this Policy is implemented within their department.
  2. The department director has the authority to delegate any or all portions of this Policy to staff, but the department director will be held responsible for compliance.
- B. Division Managers and Supervisors shall:
  1. Implement all aspects of this Policy within their divisions/sections as applicable.
  2. Ensure that monthly random alcohol and controlled substances tests are completed.
  3. Immediately report all vehicular accidents and reasonable suspicion incidents to the Safety Officer or Risk Manager who will evaluate the need for follow up, which may include alcohol and/or controlled substances testing.
- C. Employees shall:
  1. Adhere to all aspects of this Policy.
- D. Safety Officer shall:
  1. Update and maintain this Policy.
  2. Maintain the random drug and alcohol testing program.
  3. Ensure that 25% of the random pool is tested for controlled substances and 10% of the random pool is tested for alcohol use, annually.

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**VI. PROCEDURE**

- A. Covered Employees: The identification of covered positions can be modified at any time at the discretion of the City, though the inclusion of some positions may require a “Meet and Confer or Consult” session with the affected employee Association.

The following is a list of positions in which the incumbent employee(s) must hold and maintain a commercial driver’s license for the purpose of operating a Class A or B commercial motor vehicle. Positions mandating a commercial driver’s license are followed by “Required”. Commercial driver’s licenses for positions that do not contain “Required” are discretionary and the employee may elect, at any time, not to maintain a commercial license. Regardless of the distinction between “Required” and “Discretionary”, all employees who hold a commercial license for the purpose of operating a Class A or B commercial motor vehicle for City Business are subject to the rules of this Policy unless otherwise stated.

In addition to the positions listed below, there may be positions not identified at the time this Policy was amended that are subject to the requirements stated herein. Whenever practical, this Policy shall be amended to include those positions.

1. Community Services
  - a. Parks Operations Supervisor (Required)
  - b. Facilities Custodian
  - c. Community Services Manager
  - d. Parks Maintenance Worker I/II, Mow Crews (Required)
  - e. Tree Trimmer I/II (Required)
  - f. Recreation Supervisor
2. Police
  - a. Helicopter Pilot (Required)
  - b. Sworn Police Officers who are regularly designated to operate a 5<sup>th</sup> wheel truck and mobile law enforcement trailer. Such designated employees shall sign a form acknowledging receipt of this Policy.
3. Public Works
  - a. Graffiti Removal Worker
  - b. Heavy Truck Driver (Required)
  - c. Lead Graffiti Removal Worker
  - d. Public Works Maintenance Crew Leader (Required)
  - e. Public Works Maintenance Worker I/II (Required)
  - f. Signal/Lighting Crew Chief (Required)
  - g. Signal/Lighting Technician (Required)

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h. Street Sweeper Operator (Required)

4. Utility Services

- a. Equipment Maintenance Superintendent (Required)
- b. Equipment Maintenance Supervisor (Required)
- c. Equipment Mechanic
- d. Heavy Equipment Mechanic (Required)
- e. Lead Equipment Mechanic (Required)
- f. Water Quality Control Technician I/II/III
- g. Maintenance Worker I, Solid Waste
- h. Senior Equipment Operator (Required)
- i. Solid Waste Crew Chief (Required)
- j. Solid Waste Driver (Required)
- k. Wastewater Maintenance Technician I/II/III (Required)
- l. Wastewater Collections System Supervisor (Required)
- m. Wastewater Collections System Crew Chief (Required)
- n. Water Utility Worker I/II (Required)

- B. Pre-Employment Testing: All applicants for classifications which are covered by the DOT regulations (see "Covered Employees", Section VI.A), as well as, all employees who transfer or promote to classifications which are covered, will be required to submit to pre-employment/pre-duty alcohol and controlled substances testing. Applicants who are subjected to pre-employment alcohol and controlled substances testing and who test "positive" for alcohol and/or a controlled substance (s) shall be denied employment.

Current employees who submit to an alcohol and/or controlled substances test because they have applied for a transfer or promotion into a classification with such requirement and who test "positive" for alcohol and/or a controlled substance (s) will be denied the position and may be subject to disciplinary action up to and including termination.

The City shall, pursuant to the applicant's written authorization (Attachment D), inquire about the following information on a driver from the driver's previous employers (except for current City employees who have been employed by the City for at least two (2) years), during the two (2) years preceding the date of application:

- 1. Alcohol tests with a result of 0.04% alcohol concentration or greater;
- 2. Verified positive controlled substances test results; and,
- 3. Refusals to be tested.

The information must be obtained and reviewed by the Safety Officer or Risk Manager prior to extending any offer of employment.

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- C. Post-Accident Testing: As soon as practical following an occurrence/accident involving a commercial motor vehicle operated on a public road, the City shall test each surviving driver for alcohol and controlled substances who:
1. Was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or,
  2. Received a citation under State or local law for a moving violation arising from the accident, if the accident involved:
    - a. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or,
    - b. One (1) or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
  3. Post-accident alcohol and controlled substances testing will be conducted on employees following an accident where the employee's performance cannot be discounted as a contributing factor. Not only will the operator of the vehicle be tested, but so will any other covered employee whose performance may have contributed to the accident, such as an equipment mechanic who performed work on the vehicle. The City's Safety Officer or Risk Manager shall be notified immediately of such accidents and will advise the applicable supervisor(s) of the proper procedures for post-accident testing. The decision whether or not to test the employee will be left to the discretion of the Safety Officer or Risk Manager; the presumption is to test. The only reason an employee will not be tested following an accident is if a determination is made that the employee's performance could not have been a contributing factor. If a fatality occurs, the employee will be tested regardless of whether his/her performance may or may not have been a contributing factor.
  4. If an alcohol test required by this section is not administered within two (2) hours following an accident, the supervisor shall prepare and maintain a record stating the reason(s) the test was not promptly administered. If an alcohol test required by this section is not administered within eight (8) hours following the accident, the supervisor shall cease attempts to administer an alcohol test and shall prepare and maintain the same record.
  5. If a test for controlled substances required by this section is not administered within 32 hours following the accident, the supervisor shall cease attempts to administer a controlled substances test and prepare and maintain a record stating the reasons that the test was not promptly administered.

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6. A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the City to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident; to prohibit a driver from leaving the scene of an accident for the period of time necessary to obtain assistance in responding to the accident; or to obtain necessary emergency medical care.
  7. A covered employee, who is subjected to post-accident alcohol and/or controlled substances testing and who tests positive for alcohol and/or a controlled substance under the guidelines of this Policy, shall be terminated.
- D. Random Testing: Covered employees' names are placed into the City's random drug and alcohol program management software. The City's Safety Officer will run a monthly report of random testing candidates and will generate the applicable notices to be sent to the respective supervisors. The supervisors shall ensure that the random alcohol and controlled substances tests conducted under this section are unannounced.
1. A covered employee, who is subjected to a random alcohol and/or controlled substances test and who tests positive for alcohol and/or a controlled substance(s) under this Policy, shall be terminated.
  2. The City will subject at least 10% of the total number of covered employees to random alcohol testing per year, and at least 25% of the total number of covered employees to random controlled substances testing per year; however, the Federal Highway Administration may decide to increase or decrease the Safety Rules minimum annual percentage rates based on the reported violation rate for the industry.
- E. Reasonable Suspicion Testing: Covered employees are also required to submit to an alcohol and/or controlled substances test when a trained supervisor has "reasonable suspicion" to believe that the employee is under the influence of alcohol or a controlled substance.

The observation must be based on *short-term* indicators, such as blurry eyes, slurred speech, detected alcohol on the breath, etc. The supervisor may not rely on long-term signs, such as absenteeism or tardiness to support the need for a reasonable suspicion test. The witness or witnesses must directly observe the behavior. Hearsay or second-hand information is not sufficient cause to require an employee to submit to an alcohol and/or controlled substances test. The determination that reasonable suspicion exists must be specific, objective and contemporaneous facts concerning the behavior, appearance, speech or body odors of the employee.

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1. The suspected conduct shall be verified by at least one (1) supervisor. Said supervisor shall have received a copy of this Policy and shall adhere to the guidelines for making a determination of reasonable suspicion. The Observed Behavior/Reasonable Suspicion Record (Attachment A) shall be used to document reasonable suspicion.
  2. Once a reasonable suspicion determination is made, it is the responsibility of the employee's supervisor to ensure that the employee under suspicion is evaluated and when necessary, transported to a specimen collection site to provide a urine/breath sample. *Testing Procedures Criteria* (Attachment B) shall be followed once this determination is made.
  3. Any driver tested for reasonable suspicion shall be denied commercial motor vehicle driving privileges until the test results are received from the City's Medical Review officer (MRO).
  4. The reasonable suspicion test shall be administered immediately, and in no case will a test be administered more than eight (8) hours following the observation.
  5. To ensure that supervisors are trained to make reasonable suspicion determinations, supervisors vested with the authority to demand a reasonable suspicion test shall attend at least 60 minutes of training on alcohol misuse and at least 60 minutes of training on controlled substances use. The training shall cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances. Refresher training shall be conducted bi-annually.
  6. A covered employee, who is subjected to reasonable testing and who tests "positive" for alcohol and/or a controlled substance under the guidelines of this Policy, shall be terminated.
- F. **Prohibitions:** In addition to adopting a Zero Tolerance Policy for the DOT testing listed in Sections VLB through VLE, the City has also adopted a Zero Tolerance Policy (termination of employment) for violating any of the prohibitions listed below. Although covered employees may not be under the influence or in possession of controlled substances or alcohol during working hours, the regulations of the FHWA prohibit certain conduct (listed below) while performing, and prior to performing, safety-sensitive functions:
1. Reporting for duty or remaining on duty requiring the performance of safety-sensitive function while having an alcohol concentration level of 0.04% or greater;



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2. Performing a safety-sensitive function within four (4) hours of using alcohol;
  3. Being on duty or operating a vehicle described herein while possessing alcohol;
  4. Using alcohol while performing a safety-sensitive function;
  5. Reporting for duty or remaining on duty requiring the performance of safety-sensitive functions when the employee used any controlled substances, except if the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a vehicle;
  6. Reporting for duty or remaining on duty requiring the performance of safety-sensitive functions if the employee tests positive for controlled substances;
  7. Refusing to submit to any alcohol or controlled substances test required by this Policy;
  8. Consuming alcohol during the eight (8) hours immediately following an accident, unless the employee has been informed that his/her action(s) have been discounted as a contributing factor, or if the employee has been test.
- G. Consequences for Employees Found to have Alcohol Concentration Levels of 0.02% or Greater but less than 0.04%: An employee whose alcohol test indicates an alcohol concentration level between 0.02% and 0.04% will be removed from his or her safety-sensitive position for at least eight (8) hours.

The employee may not be disciplined based solely on test results showing an alcohol concentration of less than 0.04%; however, this does not preclude the supervisor from imposing disciplinary action, up to and including termination, if the test result is combined with some other violation or act (i.e. vehicular accident, property damage or inappropriate behavior/conduct).

Before the employee may be returned to his/her safety-sensitive position, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02%.

**VII. PROCEDURES TO BE USED FOR DETECTION OF DRUGS AND ALCOHOL**

- A. Alcohol Testing: Alcohol testing shall be conducted by using an Evidential Breath Testing Device (EBT) approved by the National Traffic Safety Administration or by a urine test.

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If an EBT test is used, a screening test shall be conducted first. If the result is an alcohol concentration level of less than 0.02%, the test will be considered a “negative” test. If the alcohol concentration level is 0.02% or more, a second confirmation test shall be conducted. If a urine test is conducted and “tests positive”, a confirmation test shall be conducted.

The procedures to be utilized by the medical clinic for collection and testing of the specimen are attached hereto as Attachment B.

- B. Controlled Substances Testing: Controlled substances testing shall be conducted pursuant to the procedures set forth in Attachment B and as indicated below:
1. The urine specimen shall be split into two bottles labeled as “primary” and “split” specimen; both bottles shall be sent to the lab. If the urinalysis of the “primary” specimen “tests positive” for the presence of a controlled substance, the employee has 72 hours to request that the “split” specimen be analyzed by a different certified lab;
  2. The urine sample shall be tested for the following controlled substances: Marijuana, Cocaine, Opiates, Amphetamines and Phencyclidine;
  3. If the test is “positive” for one (1) or more of the controlled substances as defined, a confirmation test shall be performed using gas chromatography/mass spectrometry analysis;
  4. All controlled substance test results shall be reviewed and interpreted by the MRO, before they are reported to the employee and then to the City;
  5. With all “positive” controlled substances tests, the MRO shall attempt to contact the employee (as confidentially as possible) to determine if the employee can provide an alternative medical explanation for the “positive” test result. If document is provided and the MRO determines that there was a legitimate medical use for the prohibited controlled substance, the test result may be reported by the MRO to the City as “negative”.
- C. Refusal to Submit to an Alcohol and/or Controlled Substances Test: A covered employee who refuses to submit to any required alcohol and/or controlled substances test shall be terminated.
- D. Information Concerning the Effects of Alcohol and Controlled Substances: Attached to this Policy as “Fact Sheets” (Attachment C) addressing the effects of alcohol and the various controlled substances which are tested pursuant to this Policy.

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- E. Custodian of Records: All employee records required for retention by the City will be retained by the Human Resources Department. The custodian of records will be the Safety Officer. The following records will be retained for the period stated:
1. Retention period of five (5) years:
    - a. Alcohol tests indicating an alcohol concentration of 0.02% or greater;
    - b. Verified "positive" controlled substances test results;
    - c. Refusals to submit to required alcohol or controlled substances tests;
    - d. Substance Abuse Program evaluations and referrals;
    - e. Driver evaluations and referrals;
    - f. Records related to the administration of the alcohol and controlled substances testing program; and,
    - g. A copy of each annual calendar year random alcohol/controlled substances testing summary.
  2. Retention period of two (2) years:
    - a. Records related to the alcohol and controlled substances collection process.
  3. Retention period of one (1) year:
    - a. "Negative" and cancelled controlled substances tests and alcohol tests with a concentration of less than 0.02%.
  4. Variable retention:
    - a. Records related to the education and training of supervisors and drivers shall be maintained by the City while the individual performs the functions which require the training and for two (2) years after ceasing to perform those functions.

**VIII. CONFIDENTIALITY**

Confidentiality will be maintained to the highest degree possible in the administration of this Policy so as to protect the privacy of the individual involved. Laboratory reports and test results shall not appear in any employee's personnel file. Information of this nature will be contained in a separate confidential medical folder that will be kept exclusively under the control of the Human Resources Department. Reports or test results may be disclosed to City management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient content, may also occur when: (1) the information is compelled by law or by judicial or administrative process; (2) the information has been placed at-issue in a formal dispute between the City and employee; (3) the information is to be used in administering an employee benefit plan, and/or (4) the information is needed by medical personnel for diagnosis or treatment of the patient who is unable to authorize disclosure.

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**IX. ACTION**

This Policy is effective this date.