



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 1 of 20

Supersedes: Substance Abuse Policy A.R.: 4053 DATED: December 22, 2020

SECTION A

GENERAL PROVISIONS

I. PURPOSE

The City of Richmond (City) is committed to establishing and maintaining a safe and healthy workplace that is free from alcohol abuse and illegal drug use for its employees and to protect the safety of its citizens by providing the highest quality of services.

II. POLICY

- The possession or consumption or being under the influence of alcohol, illegal drugs, and unauthorized use of drugs and in the workplace is prohibited. This prohibition is inclusive of all breaks and meals, without regard to whether the break/meal is taken in or outside of the workplace.
- Code of Virginia Section 40.1-27.4 effective July 1, 2021 prohibits employers from discharging, disciplining or discriminating against their employee for their lawful use of cannabis oil pursuant to a valid written certification issued by a practitioner for the treatment or to eliminate symptoms of the employee's diagnosed condition or disease. The law does not restrict the City's ability to take any adverse action for any impairment caused by the use of cannabis oil or to prohibit possession during the work hours, or require the City to commit any act that would cause the City to be in violation of federal law or that would result in the loss of a federal contract or federal funding.

Note: This law does not impact those employees and applicants who are subject to the U.S. Department of Transportation (DOT) regulations. It remains unacceptable for employees and applicants subject to the U.S. DOT regulations to use alcohol or drugs, including marijuana and cannabis oil.

- This Policy applies to applicants and all classified and unclassified employees regardless of service, position, or appointment status.
- All Department & Agency Heads shall take such steps as may be necessary to ensure employee awareness of and compliance with this policy. In addition, the Department of Human Resources (DHR) shall create and maintain an alcohol and drug awareness program for all City employees.
- In the event of conflict between federal or state law and the Policy stated herein, federal and/or state law shall prevail.
- The City retains the right to search, without employee consent, all areas and property in which it maintains either joint control with the employee or full control, including City vehicles, property and equipment.



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 2 of 20

Supersedes: Substance Abuse Policy A.R.: 4053 DATED: December 22, 2020

Note: Supervisors shall not physically search employees under any circumstances. If containers or items with beverages containing alcohol or illegal drugs are found in City vehicles or equipment, the items shall be obtained by a supervisor and security or police personnel may be contacted to conduct further investigation or physical searches.

- **Violations of the policy shall result in disciplinary action, up to and including dismissal from City service.**

A. PRE-DUTY ALCOHOL PROHIBITED CONDUCT

Employees are prohibited from using alcohol within four (4) hours prior to reporting for duty, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report to duty. If the City or its agents has actual knowledge that an employee has used alcohol within four (4) hours prior to performing duties or within the time period after the employee has been notified to report for duty, the employee will not be permitted to perform or continue to perform any duties.

Employees who are on a “normal” time period off and who are called to duty to respond to an emergency or call-back situation who have been using alcohol, are required to inform their supervisor or the management person responsible for the call-back, that they have consumed alcohol or medication containing alcohol. In such instances, the employee shall not be required to report to duty.

B. EMPLOYEE RULES OF CONDUCT

All City employees shall abide by the rules of conduct outlined in this Policy. Failure to meet these responsibilities shall be the basis for imposing discipline. An exception to this Policy is with prior approval by the Chief of Police for a police officer to have possession of or consume, as required, alcoholic beverages or narcotic substances for the purpose of conducting an investigation while performing official position duties.

An employee shall:

- not have their ability to perform job duties impaired by alcohol or any drugs, whether legal or illegal, while on duty or on call, while on City work sites in an official capacity, while acting in any official capacity representing the City, or at any time while operating City vehicles and/or equipment.
- not be under the influence of alcohol or illegal drugs under any of the circumstances described in the preceding paragraph.
- not use alcohol at all while on duty or report to work under the influence of alcohol.



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 3 of 20

Supersedes: Substance Abuse Policy A.R: 4053 DATED: December 22, 2020

- not use, possess, sell, distribute, or manufacture illegal drugs at any time, or assist another in such acts, regardless of whether on duty or off duty.
- notify their supervisor of any prescription for any narcotic, marijuana, or cannabis oil, as well as provide a note from the prescribing physician or practitioner indicating that the employee is able to perform all of their current job duties.
- submit to alcohol and drug substance detection testing when requested to do so by management pursuant to this Policy.
- provide within five (5) days of request a legally valid prescription consistent with the Controlled Substances Act (CSA) for any drug found to be in their possession.
- provide notification to management of any criminal drug-related conviction within forty eight (48) hours of the conviction.
- provide notification to management of any suspension, revocation, or other loss of commercial driver's license privileges within one (1) work day (24 hours) of the event.

C. EMPLOYEE ASSISTANCE PROGRAM

An Employee Assistance Program (EAP) is available to all employees under this Policy to provide appropriate education regarding the use of alcohol and illegal drugs. In addition, the EAP will coordinate training with DHR to provide supervisors with the necessary training on performance indicators of possible drug and alcohol use for reasonable suspicion drug awareness and testing. The EAP is also available for employees to confidentially seek voluntarily assistance to obtain counseling, rehabilitation, and other assistance for drug and alcohol abuse problems.

D. EMPLOYEES IN MANAGEMENT POSITIONS

Employees serving in any management position with supervisory or lead responsibilities shall be under a duty to ensure compliance with this Policy and to set an example for other employees. Any management who knowingly violates or fails to enforce any provision of this Policy shall be subject to immediate disciplinary action, up to and including dismissal.

E. CONTRACTOR PERSONNEL

All contractors utilized by the City shall be notified of the testing and reporting regulations of this Policy.



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 4 of 20

Supersedes: Substance Abuse Policy A.R.: 4053 DATED: December 22, 2020

III. SUBSTANCE DETECTION TESTING

Substance detection testing procedures will test for the following prohibited substances which could impair an employee's ability to effectively and safely perform required position duties:

- Alcohol
- Marijuana Metabolites
- Cocaine Metabolites
- Opioids
- Phencyclidine (PCP)
- Amphetamines

All employees are subject to Reasonable Suspicion testing. Employees operating a City vehicle or certain equipment are subject to Post-Accident testing. Employees changing positions may be subject to Movement testing. After a positive substance detection test is received, eligible employees are subject to Return-to-Duty testing with placement in the Follow-up testing pool.

The following positions within the City have been identified as a “covered position” for the purpose of this Policy and shall be subject to Pre-employment and Random testing:

- Federal Motor Carrier Safety Administration (FMCSA) for commercial driving license (CDL)
- Pipeline & Hazardous Materials Safety Administration (PHMSA) for gas pipeline operations
- “City-sensitive” positions defined as:
 - the duties authorize or require the carrying of a weapon;
 - work is predominately with or around children, adults, or individuals with disabilities providing services, transportation, or access to facilities within the Departments of Justice Services, Social Services, and Parks, Recreation & Community Facilities;
 - positions within the Department of Emergency Communications performing dispatch and those who supervise employees with dispatching duties;
 - positions within the Departments of Fire, Police , and Animal Care & Control performing duties that if neglected would have a significant impact on public safety;
 - positions providing fleet management responsibilities within the Department of Social Services; and
 - positions with access to confidential and susceptible system information within the Department of Information Technology.

A. TYPES OF TESTING

1. PRE-EMPLOYMENT TESTING

When an offer for employment is accepted, the City shall require applicants who will be assigned to a “covered position” to undergo alcohol and drug substance detection testing. Any applicant who refuses to provide written authorization for release of information, refuses to take any substance detection test, who tests positive, or who engages in conduct that clearly



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 5 of 20

Supersedes: Substance Abuse Policy A.R.: 4053 DATED: December 22, 2020

obstructs the testing procedure shall be ineligible for employment or a personal services contract with the City for a period of one (1) year.

2. MOVEMENT TESTING

When a current employee transfers, is reassigned, demoted, promoted, or moved to a “covered position” substance detection testing shall be conducted. However, movement within the same testing pool without interruption of service shall not require substance detection testing.

3. RANDOM TESTING

“Covered positions” are subject to the following random substance detection testing:

- a. Random Alcohol Testing
 - “City-sensitive”
 - FMCSA
- b. Random Drug Testing
 - “City-sensitive”
 - FMCSA
 - PHMSA

The random selection procedure will be a computer-based number generator process. The percentage of persons to be tested from each of these pools will be determined as mandated by federal, state or city regulations.

Once notified for random testing, the employee will be tested at the City's Occupational Health Services (OHS) provider's testing site. With no exceptions, the employee will have a total of forty-five (45) minutes to report to the OHS testing site from the time of notification of a random alcohol detection test.

4. REASONABLE SUSPICION TESTING

Reasonable suspicion testing is designed to provide the City with a tool to identify “covered positions” and all other employees affected by the use of alcohol or prohibited drugs who may pose a danger to themselves and others in their job performance. Supervisor shall follow the below-mentioned guidelines when there is reasonable suspicion that an employee is under the influence of alcohol and/or drugs.

Reasonable suspicion is a belief based on objective and clearly stated facts sufficient to lead a supervisor, exercising sound judgement, to suspect that an employee is under the influence of alcohol or drugs. By way of example, and without limitation, any of the following conditions alone, or in combination, may comprise reasonable suspicion:



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 6 of 20

Supersedes: Substance Abuse Policy A.R.: 4053 DATED: December 22, 2020

- Unexplained inability to perform normal job functions;
- Slurred speech;
- Smell of alcohol on breath/body;
- Any unusual lack of physical coordination or loss of equilibrium;
- Unexplained hyperactivity or depression and withdrawal;
- Unexplained inability to think or reason at the employee's normal levels;
- Bizarre behavior;
- Possession of alcohol, or the presence of alcohol or alcohol containers in an area subject to the employee's control;
- On-duty use of alcohol, either during work time or on City of Richmond premises;
- Information obtained from a reliable person with personal knowledge.

Two supervisors, one of whom has received at least 120 minutes of EAP training on the specific indicators and symptoms of alcohol and drug misuse/abuse, must make the determination as to whether there are grounds for reasonable suspicion testing. If it is determined by both parties that reasonable suspicion exists the following shall be promptly followed for the employee to receive both alcohol and substance detection testing:

- Both supervisors shall document in writing the facts constituting reasonable suspicion that would lead to believe the employee is under the influence of alcohol and/or drugs.
- The supervisor shall either transport or arrange to have the employee transported to the City's designated OHS provider to conduct the necessary tests. In no case, shall the employee be allowed to drive or report to the OHS provider alone.

5. POST-ACCIDENT TESTING

“Covered positions” and all other employees shall be tested for drugs and alcohol immediately after a motor vehicle accident that occurred while they were operating a city vehicle or certain equipment.

An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the supervisor or Department representative of their location if they leave the scene of the accident prior to submission to such test, shall be deemed by the City to have refused to submit to testing.

6. RETURN-TO-DUTY TESTING

After certain positive test results have been received, applicable employees shall undergo alcohol or drug testing and assessment before returning-to-duty. The return-to-duty testing and assessment processes may be observed or face-to-face as deemed by the EAP professional or U.S. DOT-Certified Substance Abuse Professional (SAP).



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 7 of 20

Supersedes: Substance Abuse Policy A.R.: 4053 DATED: December 22, 2020

If the EAP professional or U.S. DOT-Certified SAP makes a determination that some form of evaluation, rehabilitation program, training, or treatment is required, the employee must comply in order to be considered eligible to return-to-duty. The employee may be eligible for Family Medical Leave if they are in an alcohol and/or drug abuse rehabilitation program. When the employee exhausts all available leave time, the period of time in rehabilitation will be recorded as Leave without Pay (LWOP). If there is unsuccessful completion of the prescribed plan, the employee shall be placed on LWOP to proceed with the disciplinary process. Covered employees subject to the SAP return to duty process pursuant to the DOT regulations are responsible for the cost and completion of the process.

After returning-to-duty, the employee shall be subject to at least six (6) unannounced alcohol or drug follow-up tests during the first twelve (12) months. Employees placed in the follow-up testing pool will be randomly tested by the City in addition to any and all other test pools in which they may be included.

B. MULTIPLE MODALS

In several cases, employees may be responsible for performing different modal functions. For example, an employee may have duties covered under both the U.S. DOT FMCSA and PHMSA guidelines. When these cases arise, the substance detection testing pool will be determined based on the duties that are performed more than 50 percent of the time.

C. PAY STATUS DURING SUBSTANCE DETECTION PROCEDURES

Employees shall remain in pay status and no leave time charged, when sent for substance detection testing, awaiting tests to be conducted by the medical provider, or are being searched. Applicants shall not be compensated during the pre-employment testing processes.

D. CHALLENGES OF TEST RESULTS

For alcohol testing, the second test serves as the confirmation test to determine the alcohol concentration. Accordingly, an applicant or employee shall not have the ability to challenge the alcohol test results.

Applicants and employees who test positive for a prohibited drug may challenge the test results by notifying the designated DHR staff in writing within seventy-two (72) hours of receiving the test results. The original sample will then be retested by a laboratory other than that of the City's medical service provider. The laboratory selected must be one of those certified laboratories maintained on the list of the OHS provider. If the employee requests a retest, the employee shall pay the costs of the retest.

Any person who is taking a drug legitimately or under supervision as part of a court-approved or court-supervised drug rehabilitation program shall not be deemed to have violated this Policy because of a positive test result, provided they can show a current valid prescription or court order for that drug(s).



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 8 of 20

Supersedes: Substance Abuse Policy A.R.: 4053 DATED: December 22, 2020

E. RECORDKEEPING

The City will make every effort to keep the results of drug and alcohol tests confidential. Employees should be advised, however, that test results may be used in arbitration, administrative hearings, grievances, and/or otherwise required by law or court order. Also, results will be sent to federal agencies as required by federal law. If the employee is referred to a treatment facility for evaluation, the test results will be made available to the employee's counselor.

IV. CONSEQUENCES AND DISCIPLINARY ACTIONS

A. REFUSAL TO SUBMIT TO ALCOHOL & DRUG TESTS

An applicant or employee refusing to submit to an alcohol or drug substance detection test shall be deemed "not qualified" for employment or duty. Employees refusing testing shall not be forced to have a test administered, but be reminded that a refusal constitutes insubordination and is a violation of this Policy and shall result in dismissal.

The following shall be deemed to have "refused" to take a substance detection test:

- a. Failure to appear for any test within the prescribed forty-five (45) minute time after being requested and notified to do so.
- b. Failure to remain at the testing site until the testing process is complete.
- c. Failure to provide a sufficient urine specimen or blood alcohol sample and the Medical Review Officer (MRO) has determined through a required medical evaluation, that there is no medical explanation for the failure.
- d. Failure to cooperate with any part of the testing process; or, engages in conduct that clearly obstructs the testing procedure.
- e. Failure to complete required return-to-duty testing or prescribe plans provided by the EAP profession or U.S. DOT Certified SAP.
- f. Providing a urine specimen that is someone else's.
- g. Failure or decline to take a second test as directed by the employer or MRO in accordance with the collection procedures.
- h. Is reported by the MRO as having a verified adulterated or substituted test result for drugs.
- i. Failure to provide a legally valid prescription to the MRO shall give rise to a presumption that the applicant or employee did not legally possess or use the drug.



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 9 of 20

Supersedes: Substance Abuse Policy A.R.: 4053 DATED: December 22, 2020

B. POSITIVE TEST RESULTS

Upon request of the MRO, a valid prescription or court order for that drug must be presented within twenty-four (24) hours of said request. Once the MRO makes a determination that there is no legally valid prescription for a confirmed positive test result consistent with the CSA and U.S. DOT, the test shall be reported as positive. If the MRO determines there is a legally valid prescription consistent with the CSA for a confirmed positive test result, the MRO shall report the test as negative.

Alcohol testing procedures will determine whether an employee may have a prohibited concentration of alcohol in a breath specimen. An employee shall be prohibited from reporting for duty or remaining on duty while having an alcohol concentration of 0.02 or greater. If a City representative has actual knowledge that an employee has an alcohol concentration of 0.02 or greater, the employee shall not be permitted to perform or continue to perform position duties.

After any positive substance detection test result is received from the MRO, all employees shall be immediately removed from duty and placed on LWOP.

When applicable, the time served in the LWOP status shall be applied toward the suspension and the employee shall be placed in a follow-up random testing pool for 12 months. For FMCSA and PHMSA positions, the department may determine non-safety sensitive functions the individual can perform if available after the suspension has been served and before released to return to work to resume performing those safety-sensitive functions.



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 **Page 10 of 20**

Supersedes: Substance Abuse Policy **A.R.: 4053 DATED:** December 22, 2020

CHART A

POSITIVE ALCOHOL & DRUG TESTING RESULTS		
Status	Consequence or Disciplinary Action	Employment Eligibility
Pre-employment	Ineligible for Employment or Dismissal	Barred from employment with the City, participation in a personal services agreement, or employment with a direct coverage contractor for a period of one (1) year from the date of the test results.
Probationary		
Refusal to Submit to any Substance Detection Testing		
Dismissal after the applicable below positive testing results		
Police Alcohol Testing Results		
Offense	Level	Disciplinary Action(s)
1st	0.02 and above	Dismissal
Fire, FMCSA, PHMSA, “City-Sensitive”, & All Other Employees Alcohol Testing Results		
Offense	Level	Disciplinary Action(s)
1st	0.02 and less than 0.04	1 week (40 hours) suspension; Mandatory DOT SAP Referral; Return-to-duty and follow-up testing
1st	0.04 and above	2 week (80 hours) suspension; Mandatory DOT SAP or EAP Referral; Return-to-duty and follow-up testing
2nd	0.02 and above	Dismissal
Police & Fire Drug Testing Results		
Offense	Level	Disciplinary Action(s)
1st	N/A	Dismissal
FMCSA, PHMSA, “City-Sensitive”, & All Other Employees Drug Testing Results		
Offense	Level	Disciplinary Action(s)
1st	N/A	2 week (80 hours) suspension; Mandatory DOT SAP or EAP referral; Return-to-duty and follow-up testing
2nd	N/A	Dismissal



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 11 of 20

Supersedes: Substance Abuse Policy A.R: 4053 DATED: December 22, 2020

CHART B

SUBSTANCE DETECTION TYPES FOR THOSE NOT IN A “COVERED POSITION”	
Pre-employment	Not subject to pre-employment testing
Movement	May be subject to movement testing when changing to a “covered position.” If applicable, see CHART A for disciplinary actions.
Random	Not subject to random testing
Reasonable Suspicion	See CHART A for disciplinary actions
Post-Accident	See CHART A for disciplinary actions
Return-to-Duty	See CHART A for disciplinary actions

Note: Code of Virginia Section 40.1-27.4 effective July 1, 2021 prohibits employers from discharging, disciplining or discriminating against their employee for their lawful use of cannabis oil pursuant to a valid written certification issued by a practitioner for the treatment or to eliminate symptoms of the employee’s diagnosed condition or disease. The law does not restrict the City’s ability to take any adverse action for any impairment caused by the use of cannabis oil or to prohibit possession during the work hours, or require the City to commit any act that would cause the City to be in violation of federal law or that would result in the loss of a federal contract or federal funding.

Note: This law does not impact those employees and applicants who are subject to the U.S. Department of Transportation (DOT) regulations. It remains unacceptable for employees and applicants subject to the U.S. DOT regulations to use alcohol or drugs, including marijuana and cannabis oil.

Note: The mandatory DOT SAP referral based on the applicable offense is required for FMCSA and PHMSA positions. The mandatory EAP referral based on the applicable offense is required for “City-Sensitive” positions.

C. RESIGNATION

If an employee attempts to resign/retire at any time during the testing process or disciplinary processes for a positive substance detection test, the Appointing Authority or designee, in consultation with the Director of Human Resources, may accept or reject the resignation/retirement submission.

If the request to resign/retire is rejected, the Appointing Authority or designee shall notify the employee in writing that a violation of this Policy is carried as a dismissal with appropriate re-employment bar.

If the request to resign/retire is accepted, the re-employment bar as mentioned above shall still be applicable and in effect.



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 12 of 20

Supersedes: Substance Abuse Policy A.R.: 4053 DATED: December 22, 2020

SECTION B

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA) COVERED EMPLOYEES

This section provides additional requirements and information for employees who are required to maintain a CDL to perform any portion of their duties under Regulations administered by the FMCSA, U.S. Department of Transportation.

I. PRE-EMPLOYMENT DRIVER SAFETY PERFORMANCE HISTORY CHECKS

A. Required Pre-Employment Driver Safety Performance History Check:

Designated DHR staff shall make the following investigations and inquiries with respect to each driver it employs, other than a person who has been a regularly employed driver of the motor carrier for a continuous period which began before January 1, 1971:

1. An inquiry, within thirty (30) days of the date the driver's employment begins, to each State where the driver held or holds a motor vehicle operator's license or permit during the preceding three (3) years to obtain that driver's motor vehicle record.
2. An investigation of the driver's safety performance history with the Department of Transportation-regulated employers during the preceding three (3) years.

B. Required Drug & Alcohol History Check from previous DOT-Regulated Employers

As of January 6, 2023, employers subject to CFR 382.701(a) must use the FMCSA DOT Drug and Alcohol Clearinghouse to comply with the requirements related to this section with respect to FMCSA-regulated employers

With written authorization, designated DHR staff must investigate the information listed below from all previous DOT-regulated employers for whom the individual performed a safety-sensitive function that required alcohol and controlled substance abuse testing within the previous three (3) years from the date of the employment application:

Whether, within the previous three (3) years, the driver has violated the alcohol and controlled substances prohibitions under 49 CFR, Part 40 or Subpart B of Part 382, including:

- i. An alcohol test with a result of 0.04 or higher alcohol concentration;
- ii. A controlled substance test result of positive, adulterated, or substituted;
- iii. A refusal to submit to a random, post-accident, reasonable suspicion, or follow-up alcohol or controlled substances test;
- iv. Alcohol use while performing or within 4 hours of performing safety-sensitive functions;
- v. Alcohol use after an accident in violation of CFR 382.213;



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 13 of 20

Supersedes: Substance Abuse Policy A.R: 4053 DATED: December 22, 2020

- vi. Controlled substances while on duty, except as allowed under CFR 382.213.

This verification must also include:

- a. If this person violated a DOT drug and/or alcohol prohibition, did they fail to begin or complete a rehabilitation program prescribed by a SAP. If rehabilitation was required and it is not known that the individual began or completed such a program.
- b. If this person successfully completes a SAP's rehabilitation program and remained in the previous employer's employ but subsequently had an alcohol test result of 0.04 or greater, or a verified positive test, or a refusal to be tested.

II. POST-ACCIDENT TESTING

It is the applicable employee's immediate supervisor's responsibility to ensure that the provisions of post-accident testing are followed. As soon as possible following an accident involving a commercial motor vehicle, the City shall test the employee driver for alcohol when either:

- The accident involved a human fatality and a citation is issued to the commercial motor vehicle (CMV) driver; or
- Human Fatality and no citation issued to CMV driver; or
- Bodily injury with immediate medical treatment away from the scene and a citation is issued to the CMV driver; or
- Disabling damage to any motor vehicle requiring tow away and a citation issued to the CMV driver

Each employee shall be required to submit to an alcohol test within two (2) hours of the accident. If a test is not administered within eight (8) hours following the accident, the City shall cease all attempts to conduct an alcohol test and shall prepare and maintain on file written documentation indicating why the alcohol test was not conducted. A copy of all such determinations shall be forwarded to the designated DHR staff and, upon request, made available to FMCSA officials.

The employee must remain available for drug testing until the drug test has been conducted. If however an employee is injured, unconscious, or otherwise unable to grant consent to the drug test, all reasonable steps must be taken to obtain a urine sample. The City or its agents may decide not to test under this paragraph; however, such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident, or that because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 14 of 20

Supersedes: Substance Abuse Policy A.R.: 4053 DATED: December 22, 2020

SECTION C

PIPELINE & HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA) COVERED EMPLOYEES

This section of this Policy provides additional requirements and information for those employees who work in the gas utility and are covered by regulations under the PHMSA office of the U. S. DOT.

I. REQUIRED DRUG & ALCOHOL HISTORY CHECK FROM PREVIOUS DOT REGULATED EMPLOYERS:

Designated DHR staff must investigate the information listed below from all previous DOT-regulated employers for whom the individual performed a safety-sensitive function that required alcohol and controlled substance abuse testing within the previous two (2) years from the date of the employment application:

Whether, within the previous two (2) years, the driver has violated the alcohol and controlled substances prohibitions including:

- i. An alcohol test with a result of 0.04 or higher alcohol concentration;
- ii. A controlled substance test result of positive, adulterated, or substituted;
- iii. Alcohol use while performing or within four (4) hours of performing safety-sensitive functions;
- iv. Alcohol use after an accident;
- v. Controlled substances while on duty, except as allowed

This verification must also include:

- a. If this person violated a DOT drug and/or alcohol prohibition, did they fail to begin or complete a rehabilitation program prescribed by a SAP. If rehabilitation was required and it is not known that the individual began or completed such a program.
- b. If this person successfully completes a SAP's rehabilitation program and remained in the previous employer's employ but subsequently had an alcohol test result of 0.04 or greater, or a verified positive test, or a refusal to be tested.

II. POST-ACCIDENT TESTING

A. Alcohol Testing

- The City will promptly determine and test each covered employee for alcohol if that employee's performance contributed to an accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer an alcohol test shall be based on the respective supervisor's determination, using the best available information at



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 15 of 20

Supersedes: Substance Abuse Policy A.R.: 4053 DATED: December 22, 2020

the time of the determination that the employee's performance could not have contributed to the accident.

- Each employee shall be required to submit to an alcohol test within two (2) hours of the accident. If a test is not administered within eight (8) hours following the accident, the City shall cease all attempts to conduct an alcohol test and shall prepare and maintain on file written documentation indicating why the alcohol test was not conducted. A copy of all such determinations shall be forwarded to the designated HR staff and, upon request, made available to PHMSA officials.

B. Drug Testing:

- Any employee who is involved in an accident while on duty or whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident shall be tested for drugs as soon as possible, but not later than thirty-two (32) hours after the accident. In addition, all steps shall be taken by supervisors to follow the procedures established in the "Reasonable Suspicion Testing" paragraph of this Policy.
- If an employee is injured, unconscious, or otherwise unable to grant consent to the drug test, all reasonable steps must be taken to obtain a urine sample. The City or its agents may decide not to test; however, such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.
- The refusal of an employee to submit to a post-accident test as soon as possible, but not later than thirty-two (32) hours of such a request, shall be a violation of the City's Substance Abuse Policy.



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 16 of 20

Supersedes: Substance Abuse Policy A.R: 4053 DATED: December 22, 2020

SECTION D

COVERAGE FOR ALL REMAINING CITY GROUPS

This section of this Policy provides additional requirements and information for employees who are in a "City-sensitive" position and for all other remaining employees not listed in sections B and C of this Policy.

POST-ACCIDENT TESTING

(a) Motor Vehicle Accident:

As soon as possible following a motor vehicle accident, the City shall test the employee driver for alcohol when either:

- the accident involved a fatality; or
- the employee driver receives (or is expected to receive) a citation within eight (8) hours under state or local law for a moving violation arising from the accident; or
- bodily injury with immediate medical treatment away from the scene and a citation is issued to the driver; or
- one of more of the motor vehicles incurred disabling damage as a result of the accident requiring a motor vehicle to be transported away from the scene; or
- total property damage exceeds (or is expected to exceed) \$10,000; or
- at the time of the accident, it is determined by any supervisor in the employee's supervisory chain of command or safety officer to have been preventable and/or is a result of the employee/operator's negligence, poor judgment, or failure to follow standard operating norms.

(b) Motorized Equipment Accident:

If at the time of the accident, it is determined to have been preventable and/or the result of the employee/operator's negligence, poor judgment or failure to follow standard operating norms, the City shall promptly test each employee who is involved in a motorized equipment accident while on duty if that employee's performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident.

(c) It is the responsibility of the applicable employee's supervisor or supervisory chain of command to ensure that the provisions of post-accident testing are followed.

(d) The decision not to administer an alcohol test shall be based on the respective supervisor's determination, using the best available information at the time of the determination.

(e) Each employee covered by this Part shall be required to submit to an alcohol test within forty-five (45) minutes after having been requested and notified to do so by the supervisor. If a test is not administered within two (2) hours following the accident, the City shall prepare and maintain on file a record stating the reasons the test was not properly administered. If a test is not administered



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 17 of 20

Supersedes: Substance Abuse Policy A.R.: 4053 DATED: December 22, 2020

within eight (8) hours following the accident, the City shall cease all attempts to conduct an alcohol test and the supervisor shall prepare and maintain on file written documentation indicating why the alcohol test was not conducted. A copy of all such determinations shall be forwarded to the designated DHR staff.

- (f) All reasonable steps will be taken to obtain an evidential urine drug sample and blood alcohol test from the employee after an accident. However, if the employee is unable to give an evidential breath sample, a urine or blood sample test may be performed for employees covered by Section D. If the employee is conscious and able to give one of the tests described in this section (in the opinion of a medical professional) and refuses to be tested, that employee shall be immediately removed from duty. The refusal of an employee to submit to a post-accident test within forty-five (45) minutes of such a request shall constitute insubordination and shall be the basis for the imposition of discipline.
- (g) Under no circumstances shall a supervisor cause a breath, blood, or urine sample to be taken from an unconscious employee.
- (h) The City may require a covered employee to submit to drug follow-up testing when the City's EAP substance abuse professional has reason to suspect drug involvement.

III. DEFINITIONS

The following words and terms, when used in conjunction with the City's Substance Abuse Policy, shall have the following meaning:

Accident (PHMSA) - an incident reportable under Part 191 involving gas pipeline facilities or Liquefied Natural Gas (LNG) facilities or an accident reportable under Part 195 involving hazardous liquid pipeline facilities as follows:

- 191.3 - An accident on a gas pipeline or LNG facility is defined as an "incident," as follows:
 - an event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG facility and:
 - (a) a death or personal injury necessitating inpatient hospitalization; or
 - (b) estimated property damage, including cost of gas lost, to the operator or others, or both, of \$50,000 or more.
 - an event that results in an emergency shutdown of an LNG facility.
 - an event that is significant in the judgment of the operator.
- 195.50 - An accident report is required for each failure in a pipeline system in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following:
 - explosion or fire not intentionally set by the operator.
 - loss of 50 or more barrels of hazardous liquid or carbon dioxide.
 - escape to atmosphere of more than five barrels a day of highly volatile liquids.
 - death of any person.



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 18 of 20

Supersedes: Substance Abuse Policy A.R.: 4053 DATED: December 22, 2020

- bodily harm to any person resulting in one or more of the following:
 - (a) loss of consciousness.
 - (b) necessity to carry the person from the scene.
 - (c) necessity for medical treatment.
 - (d) disability which prevents the discharge of normal duties or the pursuit of normal activities beyond the day of the accident.
- Estimated damage to the property of the operator or others, or both exceeding \$50,000.

Commercial Driver's License (CDL) - a license issued by a government agency that allows an individual to operate a commercial motor vehicle.

Commercial Motor Vehicle (CMV) - a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross weight rating of more than 10,000 pounds; or
- has a gross weight rating of 26,001 or more pounds; or
- is designed to transport 16 or more passengers, including the driver; or
- is of any size and is used in the transportation of hazardous materials requiring placards.

Covered Employee (PHMSA) - any person who performs on a pipeline or LNG facility in an operating, maintenance, or emergency response function regulated by Parts 192, 193, or 195. As applied in the regulations, "employee" and "applicant for employment" have the same meaning for the purpose of these requirements. Covered employee and "individual" or "individual to be tested" have the same meaning for the purposes of the alcohol regulations. Clerical, truck driving, accounting, or other job functions not covered by Parts 192, 193, and 195 are not subject to the regulations. Such persons may be employed directly by the City, or by a contractor engaged by the City.

Covered Function (safety-sensitive FMCSA function) - any of the following on-duty functions:

- All time at a carrier or shipper plant, terminal, facility, or other property waiting to be dispatched, unless the driver has been relieved from duty by the City; or
- All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations, or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time; or
- All time spent at the driving controls of a commercial motor vehicle; or
- All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in a sleeper berth); or
- All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; or
- All time spent performing the driver requirements associated with an accident; or
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle.



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 19 of 20

Supersedes: Substance Abuse Policy A.R.: 4053 DATED: December 22, 2020

Covered Function (safety-sensitive PHMSA function) - an operation, maintenance, or emergency response function that is performed on a pipeline or LNG facility and the function is regulated by parts 192, 193, or 195.

Driver (FMCSA) - any person who operates a commercial motor vehicle. For the purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle.

Medical Review Officer MRO - the licensed physician, either a Doctor of Medicine, or a Doctor of Osteopathy, responsible for receiving laboratory results generated by the City's drug-testing program who has knowledge of substance abuse disorders, including the medical effects of prescription drugs and the pharmacology and toxicology of illicit drugs, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his medical history and other relevant biomedical information.

Performing a Covered Function - an employee is considered to be performing a covered function (safety-sensitive function) during any period in which they are actually performing, ready to perform, or immediately available to perform such covered functions.

U.S. Department of Transportation-Certified Substance Abuse Professional (SAP) – For FMCSA and PHMSA-covered employees, trained knowledgeable individual designated by the U.S. Department of Transportation who is charged with the evaluation, assessment, referral for training/rehabilitation, return-to-duty release, and follow-up testing schedule of those employees who have had a positive drug and/or alcohol test.



Administrative Regulations

Office of the Mayor

Title: SUBSTANCE ABUSE POLICY

A.R.: 4053 Effective Date: July 1, 2021 Page 20 of 20

Supersedes: Substance Abuse Policy A.R.: 4053 DATED: December 22, 2020

IV. REGULATION UPDATE

The Department of Human Resources shall be responsible for modification to this Policy.

RECOMMEND APPROVAL:

CHIEF ADMINISTRATIVE OFFICER/DESIGNEE

APPROVED:

MAYOR