

.1 Drug Policy Defined

.11 It is the policy of the City of Tulsa that the use of illegal drugs and the abuse of legal drugs in the workplace constitutes a violation of the law and may also represent a threat to personal and public safety and property. Abuse of such substances can grossly diminish the productivity and reliability of employees there by violating the public trust. Such behavior shall not be tolerated and the City of Tulsa will administer a program to educate employees regarding the hazards of substance abuse and to eliminate such abuse.

.12 The elected officials, management, collective bargaining units and employees of the City of Tulsa have a joint interest in workplace safety, the elimination of substance abuse and the improvement of related job performance safety and efficiency.

.13 The City's program shall include efforts to rehabilitate employees suffering from substance abuse problems. Employees are strongly encouraged to seek voluntarily, pro- active assistance through the Employee Assistance program if they use illegal drugs or have an alcohol related problem. (See 109.203) However, this policy allows that a department may choose to continue the employment of an individual upon an initial occurrence of a positive drug or alcohol test which was initiated by the City and after review of the employee's total work record. Upon an employee's return to work after such a test result, any further positive drug or alcohol test shall result in the termination of the individual's employment with the City of Tulsa.

.2 Effective Date

This policy will be effective thirty (30) days after official posting and following distribution of the policy to all City employees.

.3 Authority

This policy shall be in accordance with and administered pursuant to the Standards for Workplace Drug and Alcohol Testing Act contained in Title 40 O.S. §551 et seq., 49 U.S.C. Sections 2717 and 1434 of the Federal Statutes and the Department of Transportation (D.O.T.) rules and regulations found at 40 CFR Part 121 and 40 CFR Parts 382, 391 and 392 and any amendments thereto. Drug and alcohol testing required by and conducted pursuant to federal law or regulation shall be exempt from the provisions of the Standards for Workplace Drug and Alcohol Testing Act and the rules promulgated pursuant thereto.

.4 Application

- .41 This policy shall apply to all regular full-time, part-time and temporary employees of the City of Tulsa. It shall not apply to independent contractors or employees provided by temporary agencies.
- .42 The provisions of this policy, which apply specifically to employees who are under the Department of Transportation commercial motor vehicle driver regulations, are directed at those employees who are required to hold an Oklahoma Commercial Driver's License type A, B, or C due to the requirements of their position and job duties.

.5 Pre-Placement Testing

All external applicants for City positions within classified regular or classified part-time employment or sworn Fire Department positions shall undergo drug and/or alcohol testing prior to assignment.

- .51 Job applicants shall be tested only after a conditional offer of employment is made.
- .52 Pre-employment dilute negative drug test is considered a negative test and the test will not be repeated.
- .53 If the job applicant is unable to provide the quantity of urine needed for the test, the collector shall instruct the job applicant to drink not more than 40 ounces of fluids and after a period of up to three (3) hours, again attempt to provide a complete sample using a fresh collection container. Refusal to drink fluids is not a refusal to be tested. The original insufficient specimen shall be discarded.
- .54 If the applicant is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued; and the Medical Review Officer (MRO) notified. (See PPPM 950.14 for more information regarding the MRO). At this time the MRO will perform a medical evaluation to determine if there is a legitimate medical condition that prevents production of a sufficient urine specimen. The MRO must determine if the medical condition is acute or permanent, and if permanent, whether there are clinical signs of illegal drug use. Medical conditions that would prevent the production of a suitable amount of urine must be an ascertainable physiologic condition or a medically documented pre-existing psychological disorder but will not include unsupported assertions of "situational anxiety" or dehydration.
- .55 If a legitimate acute medical explanation is found by the MRO, the test shall be cancelled. If the job applicant is covered under DOT guidelines, then an alternative drug testing methodology may be used to achieve a negative drug test. If the legitimate medical explanation is a chronic or permanent medical condition, then the MRO must determine if there is clinical evidence that the individual is an illicit drug user. If there is no clinical evidence of drug use, the MRO will report the test as negative in those individuals with chronic medical conditions. If there is no medical evidence

of a condition that prevents to production of a suitable amount of urine, then the test will be reported as a refusal to test.

.6 Reasonable Suspicion

Drug or alcohol testing may be conducted on any City of Tulsa employee when there is a reasonable suspicion of substance abuse in the workplace.

.61 No testing under "Reasonable Suspicion" shall be initiated unless the circumstances are properly reviewed and agreed upon by at least two representatives of City management (which shall be considered to include supervisory level personnel).

.62 A written record of the observation leading to a drug or alcohol test shall be created and signed by the supervisor(s), who made such observations, within twenty-four (24) hours of the observed behavior. This record will document the conduct, appearance, and/or behaviors observed.

.63 The City Medical Section shall be the records and reporting function for all drug or alcohol related information. Supervisors shall report to City Medical any instances of testing which occurs outside of the City Medical facility or City designated test sites; or cases involving an employee's refusal to submit to testing. Supervisors shall also provide the associated written report signed by the supervisor to City Medical in either instance.

.64 Reasonable Suspicion may be based upon, among other things:

.641 Observable and articulated phenomena such as physical symptoms or manifestations of being under the influence of drugs or alcohol while at work or on duty (appearance, behavior, speech, body odors, etc.), or the direct observation of such use while at work.

.642 Reports of drug or alcohol use from reliable and credible sources, which are independently corroborated;

.643 Evidence that an individual has tampered with a drug or alcohol test during his employment with the current employer.

.644 Evidence that an employee is involved in the use, possession, sale, solicitation or transfer of drugs while on duty or while on the employer's premises or operating the employer's vehicle, machinery, or equipment.

.7 Post-Accident Testing

.71 Post-accident drug or alcohol testing may be conducted on City employees only when there has been damage to City property or an actual work related injury to an employee or third party has occurred, and there is reasonable suspicion (as defined in Section 109.6) that the accident, injury or damage was a direct result of the employee's use of drugs or alcohol (except as

noted in subsections 109.72 through 109.73).

.72 Employees subject to D.O.T. commercial motor vehicle driver regulations (see .42) who suffer a vehicle accident during operation of a commercial motor vehicle, shall be tested for alcohol and controlled substances as soon as possible after an accident if:

- (a) the accident involved the loss of human life; and/or
- (b) if the driver receives a citation under state or local law arising from the accident.

.73 If such testing cannot be administered within two hours of an accident as noted in Section .72 (a) or (b) above, the supervisor shall prepare and maintain a written record of the reasons. After eight hours such efforts to administer testing shall cease and the written record shall be forwarded to City Medical and will be made available by City Medical to the Federal Highway Administration (FHWA) upon request.

.8 Random and Scheduled Periodic Testing

Certain classifications of employees, as delineated in Section 109.84 may be required to undergo drug or alcohol tests on a random selection basis or on a scheduled periodic basis.

.81 "Random selection basis" is defined as a mechanism for selecting employees resulting in an equal probability that any employee from a group will be selected.

.82 The City may not waive the selection of any employee who has been selected under the above mechanism.

.83 Scheduled periodic basis shall mean testing conducted as a routine part of a routinely scheduled fitness for duty examination for all members of an employment classification group, approved and required to be tested by the Human Resource Director.

.84 Random and scheduled periodic testing shall be limited to those employees who:

.841 are Police or Peace Officers;

.842 have drug interdiction responsibilities;

.843 are authorized to carry firearms;

.844 are engaged in activities that directly affect the safety of others. These employees shall be defined to include but not be limited to the following classifications or groups of employees: Sworn Police

personnel, Sworn Firefighter personnel, heavy equipment operators, employees in classifications requiring a Commercial Driver's License (CDL) type A, B, or C class, employees whose duties may require them to drive on behalf of the City of Tulsa, classifications or employee groups responsible for handling drugs, explosives, or firearms.

- .845 work in direct contact with inmates in the custody of the Department of Corrections;
- .846 work in direct contact with juvenile delinquents or children who are in need of supervision in the custody of the Department of Human Services.
- .85 Upon initiation of this policy those employees subject to drug and alcohol testing as a commercial motor vehicle driver under D.O.T. regulations (see .42) shall be tested at the following minimal test rates per those regulations:
 - (a) the initial minimum yearly percentage rate for random alcohol testing shall be twenty-five percent (25%) of all drivers;
 - (b) the initial minimum yearly percentage rate for random controlled substances testing shall be fifty percent (50%) of the average number of drivers;
 - (c) these yearly percentage standards shall be subject to change by, and shall be based upon, the current D.O.T. regulations.
- .86 Other City employees shall be tested at a frequency rate determined by the City and as determined appropriate in view of program administrative considerations, state law or other legal requirements.
- .87 Every employee who is selected for random drug or alcohol testing shall proceed to the test site immediately upon notification, unless the employee is performing a safety sensitive function at the time of notification which will not reasonably allow his/her replacement. In such cases, the supervisor shall ensure the employee proceeds to the testing site as soon as reasonably possible.

.9 Post-Rehabilitation Testing

- .91 The City may require an employee to undergo drug or alcohol tests without prior notice for a period of two (2) years after the employee's return to work following a confirmed positive test or following participation in a drug or alcohol dependency program under a City benefit plan or attend at the request of the City of Tulsa.
- .92 Post-rehabilitation testing shall be conducted in addition to any other testing the employee is subject to under this policy.

.10 Substances For Which Tests May Be Given (Includes the related metabolites)

- .101 Ethyl Alcohol or Ethanol (beer, liquor, etc.)
- .102 Cannabinoids or Marijuana (pot, weed, grass)
- .103 Cocaine (including crack)
- .104 Amphetamines (including speed)
- .105 Opiates (including morphine, codeine, dilaudid, percodan)
- .106 Phencyclidine (including angel dust, PCP)
- .107 Threshold reporting levels shall be those established and maintained by the Federal Department of Transportation and as utilized by the National Institute for Drug Abuse (NIDA). Any positive levels below those established reporting levels shall not be reported to the City Medical Review Officer by the testing laboratory.

.11 Drug or Alcohol Testing Methods and Documentation

Collection, storage, transportation, and testing procedures shall be conducted in accordance with rules established by the Oklahoma State Board of Health and applicable Federal Statutes and regulations including the following:

- .111 Testing facilities shall meet the qualifications and standards of and be licensed by the State Department of Health.
- .112 Samples shall be collected only by those persons “deemed qualified” by the State Board of Health and appropriate labeling of samples shall occur so as to reasonably preclude the probability of erroneous identification of test results.
- .113 Body component samples that are appropriate for drug and alcohol testing shall be collected with due regard to the privacy of the individual being tested. In no case shall the City’s representative directly observe collection of a urine sample.
- .114 A written record of the chain of custody of the sample shall be maintained until the sample is no longer required.
- .115 An applicant or employee shall be given the opportunity to provide notification of any information which he/she considers relevant to the test, including currently or recently used drugs or other relevant information.
- .116 Reporting levels utilized for identification of positive substance abuse results shall be those levels established by the Federal Department of

Transportation.

- .117 An employee who is found to have a positive drug test may designate an appropriate testing facility to which the split sample shall be sent for repeat testing. Such a testing facility must also meet the standards of this section.

.12 Costs

The City is responsible for all costs associated with drug or alcohol testing.

- .121 If an employee requests a retest of the split specimen to challenge the findings of a confirmed positive test the employee is responsible for the cost of the test. However, the City is responsible for arranging the test and, if the retest is positive, will require reimbursement from the employee, but cannot make payment a condition of doing the re-test.
- .122 Any test of a current employee must be performed during or immediately after the employee's scheduled work period and is deemed as compensable work time as applicable under the Fair Labor Standards Act.

.13 Refusal to Undergo Testing; Tampering with Sample

Employees refusing to undergo testing according to the terms of this policy shall be subject to disciplinary action up to and including termination. Employees found supplying or attempting to supply an altered sample or a substitute sample, not their own, by whatever means, shall be subject to disciplinary action up to and including termination.

.14 Medical Review Officer

The City shall employ and/or contract a Medical Review Officer qualified by the State Board of Health.

- .141 The Medical Review Officer shall receive test results from the testing facility and evaluate those results in conjunction with the subject employee and/or applicant.
- .142 Upon receiving a confirmed positive test result the Medical Review Officer shall contact the applicant or employee prior to notification of City officials. The applicant or employee shall be given the opportunity to explain the test results.

.15 Confidentiality

The City shall comply with all provisions of the Workplace Drug and Alcohol Testing Act including confidentiality and shall treat all tests and all information related to such tests, including interviews, memoranda, reports, and statements as confidential.

- .151 All records relating to drug testing shall be kept separate from personnel records.
- .152 Such records may not be used in any criminal proceeding or civil or administrative action except in actions taken by the City or otherwise involving the subject employee and the City, unless there is a valid court order authorizing the release of such records.
- .153 Records shall be the property of the City of Tulsa and will be made available to the affected applicant or employee for inspection and copying upon request.
- .154 Records may not be released to any person other than the applicant or employee without the applicant or employee's expressed written permission, or if otherwise required by law.
- .155 Employees within supervisory or management positions shall be responsible for compliance with this policy. They shall also ensure employees seeking treatment or within rehabilitation processes are treated fairly and appropriately as concerns their job rights and job security. Additionally, supervisors and managers shall ensure that all reasonable efforts are made to allow for confidential handling of diagnosis and treatment of employees with substance abuse problems.

.16 Disciplinary Action

The City of Tulsa recognizes that substance abuse is treatable and that appropriate responses to these problems include education, treatment and rehabilitation. The City shall not take disciplinary action against an employee who tests positive for drugs or alcohol unless the test is confirmed by a second test performed on the same sample using one of the methods prescribed by the Oklahoma Standards for Workplace Drug and Alcohol Testing Act. However, this shall not preclude the use of paid administrative leave in cases involving reasonable suspicion and/or at the discretion of the supervisor.

- .161 Normally, a non-probationary employee with a previously satisfactory work record will be given one (and only one) opportunity to continue employment after an initial occurrence of a positive drug or alcohol test where such testing was required by the City. In such cases no direct disciplinary action shall normally be affected due to the test results unless the test arose under reasonable suspicion criteria. However, some period of leave without pay may occur prior to the employee being allowed to return to work dependent upon the employee's leave accruals and per .163 below. Such an attempt to allow for rehabilitation of an employee is believed to be an appropriate course of action to meet the City's obligation to both our employees and to the citizens.
- .162 If an employee tests positive for drugs or alcohol, said employee may be suspended, demoted, or terminated following a pre-action or pre-

termination hearing. In addition to the alleged offense, the appropriate course of action shall be determined based on the employee's total work record including but not limited to any prior drug or alcohol problems. Continued employment, if offered, shall be contingent upon the employee agreeing in writing to undergo random or periodic drug and/or alcohol post-rehabilitation testing for two (2) years and satisfactory participation in the Employment Assistance Program.

- .164 Employees who have had a positive drug or alcohol test shall not be allowed to return to work until they can provide a verified negative "return to work" drug or alcohol test (as applicable), performed at the City of Tulsa's Medical testing site. Available vacation, compensatory or sick leave accruals may be utilized by the employees in such situations.
- .165 Grievances arising from implementation and operation of this drug testing policy will be handled through the City of Tulsa Personnel Policies and Procedures grievance procedure unless superseded by a collective bargaining agreement.

.17 Testing Procedure

When a drug or alcohol test is deemed appropriate under this policy the employee's exempt supervisor shall transport or arrange for the employee to be transported to the Medical Section or the City designated testing facility for testing. If the Medical Section is closed, the employee shall be transported to the City designated after hours testing facility (see Appendix 109C for location and instructions).

- .171 Employees must present a picture I.D. (Oklahoma Driver's License or City I.D., etc.) or be accompanied by an exempt supervisor who can provide identification witness as the City's representative to the Medical testing personnel representative prior to testing and as required by NIDA procedures.
- .172 The exempt supervisor shall make a reasonable effort to ensure that the employee is safely transported to their place of residence after any drug or alcohol testing is completed under criteria of reasonable suspicion in 109.6.

.18 Policy Posting Procedures

Each department shall post a copy of this policy in a prominent employee access and/or applicant access area. Each employee and each applicant shall be provided a copy of this policy upon receipt of a conditional offer of employment.

.19 Employee Assistance Program (E.A.P.)

- .191 The City of Tulsa shall maintain either an in-house or contractual "Employee Assistance Program." The E.A.P. provided by the City, shall at a minimum, provide drug and alcohol dependency evaluation and referral services for substance abuse counseling, treatment or rehabilitation.

- .192 The City shall establish and utilize an E.A.P. Committee which shall review, on a yearly basis, the existing E.A.P. service provisions, employee usage, statistics, etc., and recommend to the Mayor noted improvement opportunities or recognized needs for program changes. Each of the collective bargaining units shall be invited to provide a voting representative to said Committee, which shall consist of no more than seven voting members.
- .193 Employees who (1) voluntarily come forward at least twenty-four (24) hours prior to any notification of required drug or alcohol testing, and (2) admit to alcohol or drug problems, and (3) initiate E.A.P. rehabilitation through the City's E.A.P. shall not be considered to have suffered a violation of this policy or be subject to discipline under section 109.16. However, those employees in safety sensitive positions may be assigned to non-safety sensitive positions until a verified negative drug or alcohol test can be obtained from an appropriate testing facility per 109.11. Additionally, the employee may be required to enter into a signed agreement for continued required drug or alcohol testing and E.A.P. compliance as provided under 109.9 and 109.164 if a problem is determined to exist.

.20 Penalties and Remedies

Employees are hereby advised that there are certain criminal sanctions and civil remedies for violation of Oklahoma's Standards for Workplace Drug and Alcohol Testing Act contained in Title 40 O.S. §551 et seq. The City of Tulsa's implementation of drug testing programs shall not diminish the rights of individual employees under state or federal statutes as relate to drug testing.

.21 Prohibitions

- .211 No employee shall report for duty within four hours after using alcohol or remain on duty while having an alcohol concentration of 0.04 or greater, and no supervisor shall permit any employee to perform any work duties if the supervisor is aware the employee has an alcohol concentration of 0.04 or greater. No employee shall be on duty or operate a City vehicle or perform job duties while in possession of alcohol nor use alcohol during such duty time.
- .212 No employee shall report for duty, drive a City owned vehicle, operate heavy equipment or machinery, or remain on duty when the employee uses any controlled substance, except when the use is pursuant to the instructions of a physician and/or when the physician has advised an employee the substance will not adversely affect the employee's ability to drive a vehicle if such duties are required. No supervisor having knowledge that an employee has used a controlled substance shall permit an employee to be on duty or drive/operate any City equipment or vehicle.
- .213 No employee required to take a post accident alcohol test shall use alcohol

for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

.22 Medical Marijuana

- .221 The City of Tulsa will not discriminate or take adverse actions against an applicant or employee based on a person's status as a medical marijuana licensee or based solely on such an individual's positive test for marijuana or its metabolites, unless the marijuana was consumed/ingested on City property or the employee was impaired by the marijuana use.

Notwithstanding, Federal law and regulations may preempt some employee protections from Title 63 O.S. § 420A et seq. Some employees are also governed by terms of their respective collective bargaining agreements with the City of Tulsa, Tulsa Fire Department Administrative Operating Procedures, and/or Tulsa Police Department Rules and Regulations previously established.

- .222 The following provisions apply to all City employees, regardless of an individual's medical marijuana licensee status:

- (a) Employees may not report to work, or be on duty, while impaired by the use of medical marijuana.
- (b) While on duty, employees may not possess, use, consume or provide marijuana to another.
- (c) While on City property, including contracted parking facilities, or while driving City vehicles, employees may not possess, use, consume, or provide marijuana to another.