

## **CHAPTER 7**

### **Drug and Alcohol Policy**

#### **A. Provisions Covered by the Rules**

These policies and procedures will apply to all classified positions in all departments of the City of Avondale and to such positions in the exempt and temporary service as may be provided herein.

#### **B. Drug and Alcohol Testing Policy**

The City of Avondale (the “City”) believes that substance abuse is a serious threat to the welfare of our employees, citizens, and the public. To address this problem, we have introduced this policy with respect to the use, possession, or sale of drugs and alcohol. By establishing this policy, we hope to:

1. Maintain a safe, healthy, and productive working environment for its employees.
2. Ensure the good reputation of the City and its employees.
3. And reduce accidents, tardiness, absenteeism, and indifferent job performance.

Typically, employees with drug and alcohol abuse problems make up only a small part of the work force, so we regret any inconvenience to the majority of you that are not substance abusers. We believe, however, that the benefits of our drug and alcohol testing program will more than make up for any inconvenience. Thus, we ask for your understanding and cooperation in implementing this policy.

#### **C. Substance Abuse Policy**

This policy requires all employees of the City to refrain from being involved in any way with illegal drugs or from abusing alcohol, on or off the job.

#### **D. Grounds for Termination or Discipline**

The following are grounds for discipline up to and including termination, even for a first offense.

##### **1. Illegal Drug Use**

Illegal drug use includes possessing, using, purchasing, distributing, or selling illegal drugs, or reporting to work impaired by illegal drugs. Under this policy, “illegal drugs” include any drug or drug-like substance which:

- a.) Is not legally obtainable.
- b.) May be legally obtainable but has not been legally obtained.
- c.) Is being used in a manner or for a purpose other than as prescribed.

## **2. Alcohol Abuse**

Alcohol abuse includes possessing, using, purchasing, distributing, or selling alcohol beverages at any time during the hours between the beginning and ending of the employee's work day, or reporting to work or working while impaired by alcohol in any way.

## **3. Failure to Participate**

The following will be considered a failure to participate in the City's drug and alcohol testing policy:

- a.) Failure to submit to drug or alcohol testing.
- b.) Failure to immediately report for drug or alcohol testing when requested to do so.
- c.) Refusal to sign all appropriate consent forms.
- d.) Any other failure to cooperate to the City's complete satisfaction.

## **4. Use of Legal Drugs**

- a.) In recognition of privacy concerns, the City will not solicit information from an employee regarding medications that an employee may be taking absent an indication that the employee is impaired or poses a safety hazard. The exception to this section of the policy is Police Officers and Detention Officers.
- b.) It is the responsibility of any employee who is taking any medication, including those sold without a prescription, which may interfere with the safe and effective performance of duties to notify their supervisor before beginning work. Disclosure of the specific medical condition or the specific medication to the supervisor is not required (it may ultimately be required to be made to City Human Resources or a City-contracted Physician). The employee shall provide documentation from the treating physician of any limitations this may impose on the employee. If the limitations are such that the employee cannot safely and effectively perform his/her job duties, the employee may be placed on sick leave and referred to the Human Resources Department for discussion of reasonable accommodation.
- c.) It is the employee's responsibility to advise the City when the employee is no longer using the medication in question.
- d.) Any medical documentation shall be sent to City Human Resources for filing in the employee's confidential medical file.

## **E. Testing**

### **1. Pre-Employment Drug Abuse Screening**

The City will test all applicants who, as required by AZ Peace Officers Standards and Training Board and Federal/state law, receive an offer of employment prior to commencing employment, in an effort to detect individuals who currently use illegal drugs.

### **2. Reasonable Suspicion Testing**

The City will require an employee to submit to alcohol and/or drug testing when there is reasonable suspicion to believe that the employee is engaged in illegal drug use or alcohol abuse. For purposes of this policy, “reasonable suspicion” will be based on specific observations concerning the appearance, behavior, speech or body odors of the employee, including, without limitation, slurred speech, red eyes, dilated pupils, incoherence, unsteadiness, unexplained carelessness or accidents, erratic behavior, inability to perform the job and other unexplained behavioral changes. These observations must be made by a supervisor or other City official who has been trained to recognize signs of alcohol and/or drug use.

### **3. Random Testing**

The following employees are subject to unannounced random screening for illegal drug use

- a.) Certified police officers
- b.) Police reserve officers
- c.) Firefighters
- d.) Firefighter reserve employees.

## **F. Consequences of Violating This Policy**

- 1. An employee who tests positive, refuses to submit to drug or alcohol testing, refuses to sign all appropriate consent forms, or otherwise fails to participate in this policy to the City’s complete satisfaction, may be subject to discipline up to, and including, immediate termination.
- 2. The appropriate level of discipline will be determined on a case-by-case basis at the City’s discretion, and may include treatment or rehabilitation under terms established by the City in consultation with a substance abuse professional.
- 3. This policy shall be construed in accordance with federal and state laws, including the Americans with Disabilities Act, the Family and Medical Leave Act, and the ~~OMNIBUS Transportation Employee Testing Act of 1991~~

4. Rehabilitation is the responsibility of the individual employee. An employee with a drug or alcohol abuse problem is encouraged to use whatever treatment or rehabilitative services are available under the City's group and health plan in effect at that time.
5. The City may not keep an employee in any particular job classification or position after the employee, either voluntarily or as a result of a positive drug test, seeks treatment or rehabilitation, unless otherwise required by law.

#### **G. Federal Highway Administration Controlled Substances and Alcohol Use Testing Requirements**

The United States Department of Transportation (DOT) has adopted mandatory rules which require employers to adopt and maintain substance abuse prevention programs, including drug and alcohol testing.

##### **1. Rules**

These rules apply to every person who performs a safety sensitive function on a commercial motor vehicle (CMV) and is required to hold a commercial driver's license (CDL) to perform his or her job duties.

- a.) All employees required to hold a CDL as part of their job with the City must always be immediately available to perform any safety sensitive function, and must comply with these rules at all times while on duty.
- b.) Any questions concerning the DOT drug and alcohol testing rules should be directed to the Human Resources Department.

##### **2. Definitions**

- a.) **Alcohol use** means the consumption of any beverage, mixture or preparation, including any medication, containing alcohol.
- b.) **Controlled substances** are marijuana, cocaine, opiates, amphetamines and phencyclidine.
- c.) A **commercial motor vehicle** is any motor vehicle used to transport passengers or property if it has a gross vehicle or combination weight of 26,001 or more pounds, is designed to transport 16 or more passengers, including the driver, or is used to transport placarded hazardous materials.
- d.) A **driver** is considered to be performing a safety sensitive function during any period in which he or she is doing any of the following with respect to a CMV; waiting to be dispatched, inspecting, servicing, conditioning, driving, loading or unloading (whether supervising, assisting or merely attending), repairing, obtaining assistance, waiting for held while the vehicle and all other time in or upon the vehicle.

e.) A *refusal to submit to alcohol or controlled substance testing* includes any of the following:

- 1.) Failure to provide adequate breath for alcohol testing without a valid medical explanation.
- 2.) Failure to provide an adequate urine sample for controlled substances testing without a genuine inability to provide such a sample.
- 3.) Or any other conduct that obstructs the testing process.

### **3. Prohibitions**

The City will not permit any driver to operate or continue to perform safety sensitive functions if he or she:

- a.) Has an alcohol concentration of 0.04 or greater.
- b.) Is using alcohol while performing any safety sensitive function.
- c.) Has used alcohol within 4 hours of performing any safety sensitive function.
- d.) Has used a controlled substance.
- e.) Or has tested positive for any controlled substance.
- f.) If a driver has an alcohol concentration of 0.02 – 0.039, he or she will not be allowed to perform any safety sensitive function for the City for at least 24 hours.
- g.) The City also will not permit a driver to operate a commercial motor vehicle if the driver possesses alcohol or if the driver refuses to submit to required alcohol or controlled substance testing.

### **4. Required Testing**

#### **a.) Pre-Employment Testing**

The City will not permit any driver to perform safety sensitive functions unless that driver has received a controlled substances test result from the medical review officer (MRO) indicating a verified negative result. The only exception to this rule is if the driver is excused from the pre-employment testing requirement pursuant to 49 C.F.R. 381.301 (c).

#### **b.) Post Accident Testing**

As soon as practicable following an accident, the City will test each driver for alcohol and controlled substances if:

- 1.) The driver was performing a safety sensitive function with respect to the vehicle, and the accident involved the loss of a human life.
- 2.) Or the driver receives a citation for a moving traffic violation arising from the accident, and the accident resulted in bodily harm to any person requiring medical treatment away from scene of the accident
- 3.) Or there is disabling damages to any of the vehicles involved in the accident.
- 4.) An alcohol test will be administered within 8 hours and a drug test will be administered within 32 hours of the accident. If these tests are not performed within these periods, the City will cease its testing efforts and prepare to record identifying the reason(s) why one or both of these tests were not administered.
- 5.) A driver who is subject to post accident testing shall remain readily available for such testing or may be deemed to have refused to submit to testing.
- 6.) A driver may not consume any alcohol for 8 hours following an accident, or until tested, whichever occurs first.
- 7.) A driver must contact his or her supervisor immediately after an accident so that the need for alcohol and drug testing can be assessed and to ensure that the driver will be able to comply with the DOT rules. Failure to report an accident involving a commercial motor vehicle may be grounds for disciplinary action.

**c.) Random Testing**

The City will also randomly select a number of drivers each calendar year for drug and alcohol testing at an annual percentage rate determined by the FHWA Administrator. Currently, the annual percentage rate for covered drivers is 25 percent for alcohol testing and 50 percent for controlled substances testing.

**d.) Reasonable Suspicion Testing**

The City will require drivers to submit to alcohol and/or controlled substances testing when there is reasonable suspicion to believe that the driver has violated the DOT rules concerning alcohol use or controlled substances. "Reasonable suspicion" will be based on specific, contemporaneous, articulable observations regarding the appearance, behavior, speech or body odors of a driver during, or just before or after. The period of the work day

that the driver is required to be in compliance with the DOT rules. These observations will be made by a supervisor or City official who has been trained to recognize signs of alcohol and/or controlled substance abuse.

When the City reasonably believes a driver is impaired, that driver will not be allowed to perform any safety sensitive function until

- 1.) An alcohol test is administered and the alcohol concentration is less than 0.02;
- 2.) Or 24 hours have elapsed since the reasonable suspicion determination.

**e.) Return to Duty Testing**

Before returning to duty requiring the performance of any safety sensitive function following alcohol-related conduct prohibited by the DOT rules, a driver must undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

Before returning to duty requiring the performance of any safety sensitive function following controlled substances related conduct prohibited by the DOT rules, a driver must undergo return to duty controlled substances testing with a result indicating a verified negative result for controlled substances.

**f.) Follow Up Testing**

A driver who has been determined to need assistance in resolving problems associated with alcohol misuse and/or controlled substances is subject to unannounced follow up testing as directed by a substance abuse professional. There must be at least 6 follow up tests within the first 12 months after a driver returns to duty, follow up testing will not exceed 60 months from the date of the driver's return to duty.

*Testing under paragraphs c, d, and f will occur while the driver is performing safety sensitive functions, or just before the driver is to perform safety sensitive functions or just after the driver has ceased performing such functions.*

**5. Testing Procedures**

**a.) Controlled Substances**

Precautions will be taken to ensure that a urine specimen is not adulterated or diluted during the collection procedure, and that information on the urine bottle and on the urine custody and control form identifies the driver from whom the specimen was collected. These precautions will include placing a bluing agent in toilets when possible, securing and monitoring water sources and positively identifying the driver as the employee selected for testing. Additionally, drivers will be required to remove any outer garments and personal belongings (such as purses or briefcases) in which items may be concealed, and to wash and dry their hands prior to testing.

Under normal circumstances, the actual collection of the urine specimen will not be observed unless:

- 1.) The urine specimen falls outside the normal temperature range and the driver either declines to allow measurement of his or her body temperature or his or her oral body temperature varies by more than 1.8 degrees Fahrenheit from the specimen;
- 2.) The driver's previous specimen did not register a normal measurement of specific gravity and creatinine;
- 3.) The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the specimen; or
- 4.) The driver has previously been determined to have used a controlled substance and the particular test was being conducted under DOT agency regulation providing for follow up testing upon or after the driver's return to duty.
- 5.) If the temperature of the specimen falls outside of the normal range, the assumption will be that it has been altered or substituted. The driver may volunteer to have his or her oral temperature taken to counter this presumption. In all circumstances, the collection site person will inspect the specimen to determine if it has been contaminated, and will note any unusual findings on the custody and control form. All specimens suspected of being adulterated will still be forwarded for testing. Whenever there is reason to believe that a specimen has been altered or substituted, a second observed specimen will be obtained from the driver as soon as possible.

Both the driver and the collection site person must be present when:

- 1.) The specimen is labeled;
- 2.) The driver initials the label to confirm that it is his or her specimen;
- 3.) The collection site person enters the information to identify the specimen and
- 4.) Signs the custody and control form;
- 5.) The driver reads and signs the statement of the form certifying that the specimen is the one he or she provided; and
- 6.) The driver signs a consent or release form if specified by DOT rules or is required by the collection site or laboratory.

The collection site person will note any refusal to cooperate with the testing process on the custody and control form and will notify the City.

The City will use a “split sample” method of testing performed by laboratories certified under the HHS “Mandatory Guidelines for Federal Workplace Drug Testing Programs.” If the initial screening test is positive, the driver may request that the MRO send the split specimen to another HHS certified laboratory to test for the presence of the drugs for which a positive result was initially obtained. This request must be made within 72 hours of the driver’s notification of the test results.

The MRO will review the final confirmed test results before they are transmitted to the City. However, the MRO will first contact a driver to discuss a confirmed positive test result. If the MRO is unable to contact the driver directly, he or she will attempt to do so through a designated City official. The MRO may verify a test result as positive without communicating with the driver if:

- 1.) The driver declines to discuss the test with the MRO;
- 2.) More than 5 days pass since the time the designated City official informs the driver that he or she should contact the MRO; or
- 3.) Other circumstances provided for in DOT agency rules.

Following verification of a positive test result, the MRO will refer the case to the City’s Human Resources Department.

**b.) Alcohol Testing**

The City will conduct a screening test for alcohol use using either an evidentiary breath testing device (EBT) or a non-evidential screening device approved by the National Highway Traffic Safety Administration. If the screening test yields an alcohol concentration of 0.02 or greater, a confirmation test will be performed between 15 and 30 minutes after the first test using an EBT. If the two tests yield different results, the confirmation test will be deemed to be the final result upon which any action is based.

The City will comply with the quality assurance plan and the manufacturer’s instructions for each screening device used, and shall maintain records relating to the inspection, maintenance, compliance with the quality assurance plan, calibration and qualifications of individuals using each screening device.

**c.) Handling of Test Results**

Test results will be kept confidential except as required by law or expressly authorized by the DOT rules.

The City will notify driver applicants of pre-employment test results if the driver requests such results within 60 days of being notified of the disposition of his or her application.

The City will notify a driver of the results of random, reasonable, suspicion, and post accident test results verified as positive for controlled substances, and identify for the driver the controlled substances that were detected and verified.

#### **6. Consequences for Engaging in Prohibited Conduct**

A driver who engages in conduct prohibited under the DOT rules must be evaluated by a substance abuse professional who will determine what assistance, if any, the driver needs in resolving problems associated with alcohol or controlled substances use.

Additionally, the driver will not be allowed to perform any safety sensitive function for the City until meeting the requirements for referral, evaluation and treatment, and has taken and passed a return to duty test.

### **H. Other Policies**

This appendix is in addition to the City of Avondale Drug and Alcohol Abuse Policy adopted by the City pursuant to all employees. All City employees are subject to this general drug and alcohol testing policy and the City may, independent of the rules described in this Appendix and the DOT rules, require any City employee to submit alcohol and/or drug testing in accordance with that policy. Any employee who violates that Policy is to be subject to discipline under its terms and provisions, which may include termination of employment.

### **I. Drug Free Awareness Program**

To educate employees about the dangers of substance abuse, the City has established a drug free awareness program along with the availability of counseling, and the City's policy regarding substance abuse.

The City has also established a training program for all Commercial Motor Vehicle operators and supervisory employees, which includes information on the effects and consequences of controlled substances and training to detect controlled substance abuse.

#### **1. Treatment**

a.) The City encourages employees with substance abuse problems to avail themselves of any available treatment or rehabilitative services available under the City's group health plan.

b.) Information regarding these services can be obtained from the Human Resources Department.

## **2. Discipline**

- a.)** An employee who tests positive, refuses to submit to drug or alcohol testing, refuses to sign all appropriate consent forms, or otherwise fails to comply with this policy to the City's complete satisfaction may be subject to discipline up to, and including, immediate termination.
- b.)** The appropriate level of discipline will be determined on a case by case basis at the City's discretion, and may include treatment or rehabilitation under terms established by the City.
- c.)** The City is entitled to rely on the results of its drug or alcohol test to determine whether the employee has violated the policy prohibiting drug or alcohol.

## **J. Other Laws**

This policy will be construed in accordance with federal, state, and local laws, including the Americans with Disabilities Act the Family Medical Leave Act, and the OMNIBUS Transportation Employee Testing Act of 1991.