

**DRUG AND ALCOHOL ABUSE  
PREVENTION PROGRAM**

*CITY OF ASHLAND*

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## **HISTORICAL OVERVIEW RELATED TO DRUG-FREE WORKPLACE**

The Drug-Free Workplace Act of 1988 established that employers who are federal contractors with contracts of \$25,000.00 or more must provide and maintain a drug-free workplace by satisfying the following requirements:

1. Publishing a policy statement prohibiting the unlawful manufacture, distribution, possession or use of a controlled substance in the workplace and specifying what actions will be taken against employees who violate the policy;
2. Establishing a drug-free awareness program to inform employees of the dangers of drug abuse in the workplace and of the availability of drug counseling, rehabilitation and the employee assistance program;
3. Providing employees working under the program with a copy of the policy;
4. Including in the policy statement a notice to employees that, as a condition of employment, they must abide by the policy and must notify the employer if they are convicted of a criminal drug offense occurring in the workplace within five days after the conviction;
5. Notifying the contracting agency . . . (NA)
6. Imposing sanctions (including, but not limited to, termination) on the convicted employee or requiring the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program; and
7. Making a good faith effort to continue to maintain a drug-free workplace by satisfying the forgoing requirements.

## HISTORICAL OVERVIEW RELATED TO COMMERCIAL MOTOR VEHICLES

In 1984, Congress enacted the Motor Carrier Safety Act (49 U.S.C. app. 2501-2520). The regulations, which followed this law, the Federal Motor Carrier Safety Regulations (FMCSR), provide safety guidelines for operating commercial motor vehicles including:

- (a) Driver Qualification Requirements (49 CFR Part 391)
- (b) Operating Rules (49 CFR part 392)
- (c) Parts and Accessories (49 CFR part 393)
- (d) Hours of Service (49 CFR part 395)
- (e) Inspection, Repair, Maintenance (49 CFR part 396)
- (f) Transportation of Hazardous materials: driving and parking rules (49 CFR part 397)

The Federal Highway Administration (FHWA) had regulatory authority over motor carriers. This law applied to private sector motor carriers.

In 1986, Congress passed the **Commercial Motor Vehicle Safety Act** that included Federal, State and local governments in the definition of employers (49 U.S.C. app. 2701 et. sig.). This act required the issuance of commercial driver's licenses to all drivers operating large commercial motor vehicles in interstate and intrastate commerce.

On October 28, 1991, President George Bush signed the **Omnibus Transportation Employee Testing Act of 1991** (Pub. L. 102-143, Title V). This act required the Department of Transportation (DOT) to prescribe regulations requiring testing of safety-sensitive employees in the aviation, highway, rail and transit industries for alcohol and controlled substance use.

### The 1991 Act states:

All employers, including political subdivisions of the state, of operators of commercial motor vehicles (CMV) must establish and maintain programs to combat drug and alcohol abuse, including testing of commercial motor vehicle drivers for the use of alcohol and controlled substances.

The final rules issued February 15, 1994, 59 FR 7302, the Department of Transportation cited statistics gathered by the National Transportation Safety Board indicating that thirty-three percent (33%) of the fatally injured CMV operators tested positive for alcohol or drugs. The National Safety Council estimates that one on-the-job accident is four (4) times more costly than one that occurs in a personal vehicle. An average cost to employers is \$168,000 for fatal accidents and \$6,900 for non-fatal accidents.

## ENTITIES COVERED

All City of Ashland employees under the authority of the Mayor and the Director of Finance shall be required to submit to the guidelines of the City of Ashland Drug and Alcohol Abuse Prevention Policy and Procedures.

Employees who hold a Commercial Driver's License will be subject to the testing program mandated by 40 CFR part 382 in addition to all aspects of the City of Ashland Drug and Alcohol Abuse Prevention Policy and Procedures.

This document constitutes minimum standards. Various divisions may make and enforce more extensive standards based on the nature and scope of job responsibilities within their division.

Omnibus Transportation Employee Testing Act of 1991

Any person (including the United States, a state, or a political subdivision of a state) who owns or leases commercial motor vehicles, or assigns person to operate such vehicles. (49 CFR 382.107)

The Federal Highway Administration (FHWA) regulates commercial drivers licenses (CDL) holders and employers of CDL holders. (Feb. 15, 1994, 59 FR 7484)

### **Date of Compliance**

All employers of less than 50 CDL holders are required to be in compliance and begin testing on January 1, 1996.

## **City of Ashland Drug and Alcohol Testing Policy For CDL holders and all safety sensitive employees**

### **1.0 Policy Statement**

The City of Ashland is committed to providing a safe and healthy workplace for all employees and high quality service to the Ashland community. To meet these goals, it is the policy of the City of Ashland to (1) assure that employees are not impaired in their ability to perform assigned duties in a safe, productive and healthy manner; (2) create a workplace environment free from the adverse effects of drugs and alcohol substance abuse or misuse; (3) prohibit the unlawful manufacture, distribution, dispensing, possessing or use of controlled substances; and (4) to encourage employees to seek professional assistance any time personal problems, including alcohol or drug dependency, adversely affect their ability to perform assigned duties.

The City of Ashland recognized its responsibility by law, 49 CFR Part 382, 391, 395, 40 and "The Drug Free Workplace Act," 49 CFR Part 29, to comply with Federal drug and alcohol testing requirements. The City considers the work performed by each employee as vital to the well-being and safety of the work force and the community. Therefore, all employees of the City who are appointed by the Mayor or the Director of Finance shall be considered safety sensitive and shall participate, to the fullest extent, in the program herein.

**1.1** All employees directly involved in safety sensitive function by the City of Ashland must participate in the City's Drug and Alcohol Testing Program.

Safety-sensitive functions include the following activities:

- Being in or on a non-commercial or commercial motor vehicle;
- Operating a non-commercial or commercial motor vehicle;
- All time inspecting, servicing, or conditioning motorized equipment, or systems and facilities used to perform the work of the City of Ashland;
- All time loading or unloading a CMV including supervising, assisting, attending or giving/receiving receipts;
- All time on public property or any other property performing the work of the City;
- All time spent performing the duties of a Police Officer of any rank;
- All time spent performing the duties of a Firefighter/Paramedic of any rank;
- All time spent performing the duties of an administrator or supervisor related to the safe and efficient operation of the City of Ashland.

**2.0 Prohibited Conduct**

The following prohibited conduct shall constitute a violation of the City of Ashland Drug and Alcohol Abuse Prevention Policy.

**2.1 Alcohol Related Conduct**

- (1) It is a violation of City policy for any employee to possess or be under the influence of alcohol during working hours. This includes the use of over-the-counter medicines or prescriptions containing alcohol. (See Employee Reporting Requirements for Prescription Drugs)
- (2) It is a violation of City policy for any safety sensitive employee to misuse any amount of alcohol within four hours of reporting to work to perform a safety-sensitive function as defined in this document. (See Definitions: Alcohol)

- (3) It is a violation of City policy for any safety-sensitive employee to perform a safety-sensitive function with an alcohol concentration of 0.02 to 0.04 or greater. (See Consequences of Positive Drug or Alcohol Test)
- (4) It is a violation of City policy for a safety-sensitive employee to use alcohol within eight (8) hours following an accident, which requires the employee to take an alcohol test, unless the employee has already taken the post-accident test.
- (5) It is a violation of City policy for any employee to have off-duty alcohol abuse which leads to tardiness, poor work performance or accidents.

## **2.2 Drug Related Conduct**

- (1) It is a violation of City policy for safety-sensitive employees to be under the influence of illegal drugs or legal drugs that are known to impair motor responses or judgment.
- (2) It is a violation of City policy for any safety-sensitive employee to sell, possess, transfer, manufacture, purchase or misuse illegal drugs on the job or otherwise engage in the misuse of drugs whether prescribed, purchased over the counter, or illegal.
- (3) It is a violation of City policy for any safety-sensitive employee to use prescription drugs illegally. Prescription drugs must be used in the manner, combination and quantity prescribed.
- (4) It is a violation of City policy for a safety-sensitive employee's concentration of illegal drugs to be equal to the cutoff levels established by federal regulations.

**2.3** A safety-sensitive employee who engages in any of the prohibited conduct outlined above will be subject to the mandatory consequences defined by DOT/FHWA and the policies and procedures adopted by the City of Ashland.

**2.4** Any safety-sensitive employee who engages in the prohibited conduct above or violates any aspect of the City of Ashland's adopted Drug and Alcohol Abuse-and Prevention policies will be subject to discipline up to and including termination.

**2.5** Any employee who is convicted of a criminal drug offense occurring in the workplace must notify the City within five (5) working days after the conviction.

**2.6** Any employee found in possession of any of the items or substances prohibited by law or this policy may also be turned over to law enforcement agencies.

### **3.0 Drug and Alcohol Testing Policy**

Six types of testing will be conducted by the City of Ashland.

The City will monitor the Drug and Alcohol Testing Program to ensure it is performed in a manner consistent with the procedures outlined in 49 CFR Part 40 with regard to Chain of Custody; Confidentiality; Collection Method; use of Department of Health and Human Services (DHHS) Certified laboratory; use of Gas Chromatography/Mass Spectrometry (GC/MS) Confirmatory test; Minimum Threshold: Split Samples; Medical Review Officer. The Ashland Industrial Medicine Services (AIMS) will provide these services for the City of Ashland except in the case of Non-CDL Random Testing and Reasonable Suspicion testing.

#### **3.1 Pre-Employment Testing - 1**

The City of Ashland will conduct post-offer/pre-employment testing to ensure all employees are tested for controlled substances usage prior to employment. Persons who fail to pass a drug test will be disqualified as an applicant for a period of 120 days. Evidence of the absence of drug dependency from a Substance Abuse professional and a negative drug test will be required prior to further consideration for employment. For CDL drivers, the City will contact the previous employer of any new hire who has been a part of a drug and alcohol-testing program to ensure that the employee has not violated the DOT or FHWA rules and regulations and is qualified to perform safety-sensitive functions. Any new hire found not to be qualified will be immediately terminated.

#### **3.2 Random Testing - 2**

The City of Ashland will annually test a minimum 50% of all safety-sensitive employees, as defined herein, for controlled substances and a minimum of 10% of all safety-sensitive employees for alcohol consumption.

CDL and Non-CDL employees to be tested will be selected on a random basis by the professional testing service with whom the City has entered into contract. Each safety-sensitive employee will have an equal chance of being tested each time selection is made. The City will contract with the Ashland Industrial Medicine Services (AIMS) as a certified collection site for drug and alcohol testing for all CDL employees. Non-CDL employees will be tested at the Division of Human Resources by a trained H.R. Specialist who will instruct the employee on how to use the OratectPlus mouth swab method of testing.

In the event that one employee's name is randomly selected for the third time in a one (1) year period, that employee's name will be passed over and the random test will be performed on the first appropriate alternate name selected by the contract selection service.

In the event that an employee's name has not been randomly selected one time in a three (3) year period, that employee's name may be added to the names of others selected by random draw.

Random testing dates and selections will not be announced in advance. Safety-sensitive employees will be notified at the time they are to report to the collection or testing site. (See Testing Procedure).

### **3.3 Reasonable Suspicion - 3**

Reasonable Suspicion: Belief that the employee has violated the alcohol and controlled substance prohibitions, based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the employee. (49 CFR 382.307)

Employees are subject to reasonable suspicion testing 365 days of the year prior to, during or immediately after the performance of a safety sensitive function. Any time a trained supervisor observes performance, appearance, behavior, speech or body odor that causes suspicion of the ingestion of drugs or alcohol, the supervisor, director, or appointing authority may require testing.

Following an observation and after establishing that reasonable suspicion exists, the employee must be immediately removed from performing safety sensitive functions. All CDL employees will be transported to the AIMS testing site by the employer. Non-CDL employees may be tested by a trained Division Director or his/her trained designee by instructing the employee in the use of the OratectPlus mouth swab testing procedure. An employee who tests positive when on the OratectPlus mouth swab procedure, will be immediately transported by the Division Director or his/her trained designee to AIMS for standard slip sample urine testing.

The testing for reasonable suspicion must be performed within two (2) hours and in no case longer than eight (8) hours from the determination.

Observations leading to reasonable suspicion testing must be put in written record and signed by the supervisor within 24 hours of the observed behavior or before the test results are known.

### **3.4 Post Accident Testing - 4**

Accident: An occurrence involving City of Ashland employees which results in:

- i A fatality
- ii Bodily injury to an employee or fellow employee who, as a result of the injury, immediately receives medical treatment away from the scene of the accident, and/or

City employee, receives a citation, or is likely to receive a citation and/or

Employees whose behavior by omission or commission is thought to be a contributing factor to bodily injury.

iii One or more motor vehicles, at least one belonging to the City, receiving disabling damage as a result of an accident requiring the vehicles to be transported away from the scene by a tow truck or other vehicle.

iv When an employee is involved in an action which causes \$20.00 or more damage to private property not owned by the City, and/or

When an employee is involved in behavior, by omission or commission, which causes \$200.00 or more property damage to city, or public property.

Following an accident that requires testing, the employer will transport the employee to the testing site.

Alcohol testing must be performed within eight (8) hours and controlled substance testing within thirty-two (32) hours following an accident.

### **3.5 Return-to-Duty Testing - 5**

Any safety-sensitive employee who has violated a City of Ashland Drug and Alcohol Abuse and Prevention Policy must undergo testing for alcohol and/or controlled substance before returning to work. (See Consequences)

### **3.6 Follow-Up Testing - 6**

Any safety-sensitive employee who has violated a City of Ashland Drug and Alcohol Abuse and Prevention Policy (DFWP) must be evaluated through the Employee's Assistance Program (REAP) and must be willing to submit to the prescribed rehabilitation program for the duration of months of follow-up testing. (See Consequences)

## **4.0 Compliance with Testing Requirements**

All CDL safety-sensitive employees will be subject to urine drug testing and breath alcohol testing. All Non-CDL safety sensitive employees will be subject to OratectPlus mouth swab testing and in the event of a positive test will further be subject to urine drug testing and breath alcohol testing. Any employee who refuses to comply with a request for testing, who provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution shall be removed from duty active work for the City immediately, and their employment may be terminated. Refusal to comply can include an inability to prove a specimen or breath sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test.

## **5.0 Testing Procedure**

### **5.1 Post-Offer/Pre-Employment Testing**

On a mutually agreed upon date the candidate shall report for drug screening to the designated certified screening site. Urine collection and testing shall be conducted at the direction of the City of Ashland's medical officer.

## **5.2 Random Testing**

All employees determined to be qualified as safety-sensitive employees by their position description and/or the possession of a commercial driver's license will be eligible for random drug and alcohol testing.

Names of safety-sensitive employees will be submitted to a certified testing service where a scientifically valid method of random selection will be used to determine the names of employees to be tested at unannounced times and intervals.

At the time the employee is notified of his/her selection for testing, the employee will be escorted directly to the testing site. CDL employees will be taken to the Ashland Industrial Medicine Service and Non-CDL employees will be escorted to the Human Resources and Safety office by a designated representative of the City of Ashland.

For CDL employees the required specimen will be collected as required by federal regulations. For Non-CDL employees, the employee will be instructed by a trained H.R. Specialist on the use of the OratectPlus mouth swab. If the test results appear to be negative for illegal drugs and/or alcohol, the test will be considered as accurate. If the test results appear to be positive, the employee will be transported to the Ashland Industrial Medicine Services for the standard split sample urine test administered to all CDL employees.

- 5.2 a** The drugs tested for include marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). An initial drug screen will be conducted on each specimen. For specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts present are above the minimum threshold established in 49 CFR Part 40.
- 5.2 b** The CLD employees test for alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA) approved evidential breath testing device (EBT), operated by a trained breath alcohol technician (BAT). If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the result of the initial test.
- 5.2 c** The Medical Review Officer will review the test results. (49 CFR 40.3)
- 5.2 d** Any employee whose test results are verified negative will not be removed from his/her safety-sensitive position.
- 5.2 e** Any CDL or Non- CDL employee whose test results are verified positive will be removed immediately from the performance of safety-sensitive duties. Testing "positive" for alcohol means having a prohibited blood alcohol concentration (BAC). A BAC of 0.04 is a clear violation and all of the mandatory consequences

must be imposed. A BAC of 0.02 results in the employee being placed out-of-service for at least twenty-four (24) hours.

- **Any employee who receives a positive confirmatory drug test may request that the split sample be tested to verify the results at the employee's expense.** If a split sample review shows a verified negative result, the safety-sensitive employee will returned to his/her position. **The test cost will then be covered by the City of Ashland.**
- **If a split sample shows a verified positive result, the employee must report to the Employee Assistance Program (EAP) for evaluation by a Substance Abuse Professional (SAP) who will evaluate the employee to determine an appropriate rehabilitation program. The test cost will be covered by the employee.**
- Assessment by a Substance Abuse Professional does not shield the employee from disciplinary action or guarantee employment. If an employee is allowed to return to work, he/she must properly follow the rehabilitation program prescribed by the Substance Abuse Professional. The employee must pass return-to-duty drug and alcohol tests, and be subject to unannounced follow-up tests for a period of one (1) to five (5) years, as determined by the applicable contract or this approved policy. (49 CFR 387.107) **The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider.**

### **5.3 Employee Testing: Reasonable suspicion**

At the time an employee is requested to submit to drug and alcohol testing, the CDL employee will be escorted to the testing site by a designated representative of the City. The specimen will be collected in a manner complaint to Federal guidelines. A Non-CDL employee will be instructed in the use of the OratectPlus mouth swab screening test by the Division Director or his/her designee. If the screening test appears negative, the test will be considered accurate. If the screening test appears positive, the employee will immediately be escorted to AIMS for the standard split screen urine test and breath alcohol test.

**5.3 a** If a container which may contain alcohol or illegal drugs is readily visible, it may also be taken for testing. The container will be taped to seal, labeled with the name of the employee, the date, and time before it is removed from the worksite.

**5.3 b All property belonging to the City is subject to inspection at any time without prior notice as there is no expectation of privacy.** The U.S. Supreme Court has recognized the reasonableness of a search to retrieve work-related materials or **to investigate violations of workplace rules.** Property that may be searched includes, but is not limited to, City owned vehicles, containers, files, storage lockers, and lockers that are locked by the employee. Individual division search procedures will be adhered to on all occasions.

- 5.3 c** The drugs tested for include marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). An initial drug screen will be conducted on each specimen. For specimens that are not negative, a confirmatory test will be performed. The test will be considered positive if the amounts present are above the minimum threshold established in 49 CFR part 40.
- 5.3 d** The test for alcohol concentration will be conducted utilizing an approved evidential breath testing device (EBT), operated by a trained breath alcohol technician (BAT). If the initial test indicates an alcohol concentration of 0.06 or greater, a second test will be performed to confirm the result of the initial test. A blood test will be used if the employee is unable to provide adequate breath or testing per union.
- 5.3 e** The Medical Review Officer will review the test results. (49 CFR 40.3)
- 5.3 f** Transportation home will be arranged by the City via the employee's family, or friends, or by taxi, at the City's expense.
- 5.3 g** Any employee whose test results are verified negative will not be removed from his/her work for the City.
- 5.3 h** Any employee whose test results are verified positive will be removed immediately from performing work for the City. Testing "positive" for alcohol means having a prohibited blood alcohol concentration (BAC). A BAC of 0.06 or greater is a clear violation and mandatory consequences must be imposed.

Any employee requested to submit to testing for reasonable suspicion may be suspended with pay until the time of a formal disciplinary action or until test results are released.

- Any employee who receives a confirmatory drug test may request that the split sample be tested to verify results at the employee's expense. If a split sample review shows a verified negative result, the employee will return to his/her position. The test cost will then be covered by the City of Ashland.
- If split sample shows a verified positive result, the employee must report to the Employee Assistance Program (EAP) for evaluation by a Substance Abuse Professional (SAP) who will evaluate the employee to determine an appropriate rehabilitation program.
- Assessment by a Substance Abuse Professional does not shield the employee from disciplinary action or guarantee employment. The employee must pass return-to-duty drug and alcohol tests and be subject to unannounced follow-up tests for a period of three (3) years. (49 CRFE 387.107). **The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider.**
- Employees will be allowed to take accumulated sick leave and vacation leave to participate in the prescribed rehabilitation program. Employees who are participating in an out-patient rehabilitation program may use

vacation leave to take part in the prescribed program. Employees who are participating in an in-patient program may use accumulated sick leave and vacation leave in the prescribed program.

## **6.0 Consequences**

The City will use progressive discipline if appropriate. The City reserves the right to discipline up to and including termination. An employee's willingness to comply with rehabilitation does not constitute a contract of employment.

### **6.1 Positive Alcohol Test**

BAC 0.02 - Safety-Sensitive employee will be placed out-of-service for 24 hours. Additional discipline administered according to the City of Ashland Drug and Alcohol Abuse and Prevention Policy. Discipline may be progressive and/or may result in termination. A negative BAC test is a requirement for return to work.

**6.2** Positive Alcohol Test BAC 0.04 or Positive Drug Test - The Safety-Sensitive employee will be immediately placed out-of-service. The individual will not be permitted to perform safety-sensitive duties until:

- They have been assessed by a substance abuse professional.
- They have passed a duty test.

Additional discipline may be administered as determined by the applicable union contract or this approved policy. **Discipline may be progressive and/or may result in immediate termination.**

## **7.0 Discipline - Offense**

The City of Ashland will take one of the following disciplinary actions:

1. Voluntary resignation; or
2. Termination; or
3. Discipline (See Appendix Attached)

## **8.0 Re-Entry Contracts**

Employees who re-enter the work force must agree to a re-entry contract. That contract may include (but is not limited to):

1. A release to work statement from an approved Substance Abuse Professional.
2. A negative test for drugs and/or alcohol.
3. An agreement to unannounced frequent follow-up testing.

4. A statement of expected work-related behaviors.
5. An agreement to follow specified after-care requirement with the understanding that violation of the re-entry contract is grounds for termination.

## **9.0 Education and Information Regarding Drug and Alcohol Abuse**

The City of Ashland is committed to providing a safe and healthy workplace for all employees. Providing opportunities for employees to be well educated concerning proper use of prescription and over the counter drugs and the harmful effects of excessive alcohol or illegal drug use is an important part of the City's commitment. All safety sensitive employees, as defined in this document, will receive one (1) hour training related to identification, prevention, job safety, consequences, effect on personal health and treatment of drug or alcohol abuse.

Supervisory and administrative employees will receive two (2) hours annually, including additional training in reasonable suspicion and follow-up.

Employees may receive additional information through EAP, Samaritan Health Regional Health Center, or the AIMS clinic by contacting the Director of the Division of Human Resources & Safety.

## **10.0 Record Retention**

The City of Ashland will keep all records required by this program in a secured location with controlled access.

- All documents relating to results of 0.02 or greater or any other violation of the rules will be retained for a period of five (5) years.
- All records related to referrals and evaluations will be retained for five (5) years.
- Records of negative and canceled controlled substance tests indicating alcohol concentrations of less than 0.02 will be retained for one (1) year.
- All records relating to training, education and the collection process must be kept for two (2) years.
- Records kept under this rule will be considered confidential medical records.
- Records regarding a safety-sensitive employee's test results or participation may not be released without written authorization by the employee. Upon written request by the employee, the records may be disclosed to the employee, a subsequent employer, or to any individual specifically identified in the employee's written consent.

### **10.1** The City of Ashland will disclose information when requested as an exception to confidentiality requirements to:

1. Any state or local officials with regulatory authority over the employer or its CDL employees.

2. The decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual (including, but not limited to, a workers' compensation or unemployment proceeding), and arising from results of the test, or from the employer's determination that the driver engaged in prohibited conduct.

#### **11.0 Registration of Prescription and Over-the-Counter Drugs**

Any employee who has cause to believe, due to written information or verbal communication, that the legitimate use of their over-the-counter or prescription drug could pose a safety problem, has the responsibility to report such information to his/her supervisor.

The supervisor has the responsibility to:

1. Temporarily remove the employee from potentially dangerous functions.
2. Notify the Division Director of the concern.
3. Provide information including the exact name of the drug and the exact dosage being taken by the employee.

The Division Director will contact the Director of Human Resources regarding the drug. Appropriate medical professionals will be consulted and a determination will be made based on that information if the employee may continue to use the drug during working hours or if the employee's medical doctor should be requested to provide an alternative drug with no unsafe side effects. If an alternative drug is not available, the City will make every attempt to provide reasonable job accommodation.

If the drug in question is determined to be of very minimal to no risk, the employee may resume safety-sensitive work. A record of the drug and dosage will be kept in the employee's confidential medical file.

The employees in all cases are responsible to:

1. Use an approved drug according to the prescribed dosage.
2. Refrain from any type of transfer of drugs to another employee that includes providing a pain medication, sinus medication, etc. for a fellow worker.
3. Notify the supervisor of all prescription or over-the-counter drugs being taken which may have side effects that could inhibit the proper performance of a safety-sensitive job.

#### **12.0 Program Contact Person**

Any questions regarding this policy or any aspect of the drug and alcohol free workplace program should be directed to:

Cherie Helterbride, Director of Human Resources and Safety  
211 Claremont Avenue  
Ashland, OH 44805  
419-289-3426

## **Drug and Alcohol Abuse Prevention for Contractors and Vendors**

The City of Ashland will require all contractors to show proof of their established policies for Drug and Alcohol Abuse Prevention and/or be in full compliance with the City of Ashland approved policies and procedures. All contractors will be subject to New Hire testing by the City during the first ninety (90) days of on-site work.

The City maintains the right to do post-accident and reasonable suspicion drug and alcohol testing for cause any time a contractor is performing work for the City of Ashland. All drug and alcohol testing will be provided by the City's certified collection site and lab. The cost will be borne by the contractor. The City will provide every employee, at no charge to the contractor, training in drug and alcohol abuse prevention and EAP resources.

### **TERMS AND DEFINITIONS**

**Administrator**-The Administrator of the Federal Transit Administration or the Administrator's designee.

**Air Blank**- A reading by an EBT of ambient air containing no alcohol.

**Alcohol**- Intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol.

**Alcohol Concentration**- Alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under this part.

**Alcohol Use**-Consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

**Aliquot**- A portion of a specimen used for testing.

**Blind Sample or Blind Performance Test Specimen**- Urine specimen submitted to laboratory for quality control testing purposes, with a fictitious identifier, so that laboratory cannot distinguish it from employee specimens, and which is spiked with known quantities of specific drugs or which is blank, containing no drugs.

**Breath Alcohol Technician (BAT)**- An individual who instructs and assists individuals in alcohol testing process and operates an EBT.

**Canceled or Invalid Test**- In drug testing, a drug test that has been declared invalid by Medical Review Officer. A canceled test is neither a positive nor a negative test. For purposes of this part, a sample that has been rejected for testing by a laboratory is treated the same as a canceled test. In

alcohol testing, a test that is deemed to be invalid under 40.81 CFR is neither positive nor negative.

**Certification-** A recipient's written statement, authorized by the organization's governing board or other authorizing official, that the recipient has complied with the provisions of this part.

**Chain of Custody-** Procedures to account for integrity of each urine or blood specimen by tracking its handling and storage from point of specimen collection to final disposition. With respect to drug testing, these procedures shall require that an appropriate drug testing custody form (see 40.23(a)) be used from time of collection to receipt by laboratory and that upon request by the laboratory (an) appropriate chain of custody form(s) account(s) for sample aliquots within the laboratory.

**Collection Container-** A container into which employee urinates to provide the urine sample used for a drug test.

**Collection Site-** Place designated by employer where individuals present themselves for purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

**Confirmation (or Confirmatory) Test-** In drug testing, a second analytical procedure to identify presence of a specific drug or metabolite that is independent of screening test and that uses a different technique and chemical principle from that of screening test to ensure reliability and accuracy. (Gas chromatography/mass spectrometry [GC/MS] is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines and phencyclidine). In alcohol testing, a second test, following a screening test with result of 0.02 or greater, that provides quantitative data of alcohol concentration.

**Consortium-** An entity, including group or association of employers, operators, recipients, sub-recipients, or contractors, that provides drug testing as required by this part, or other DOT drug testing rule, and that acts on behalf of the employer.

**Contractor-** A person or organization that provides a service for a recipient, sub-recipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract of an informal arrangement that reflects an ongoing relationship between the parties.

**Covered Employee-** Person, including a volunteer, applicant or transferee, who performs safety-sensitive function for an entity subject to this part.

**DHHS-** Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

**DOT Agency-** An agency of United States Department of Transportation administering regulations related to drug or alcohol testing, including United States

Coast Guard (for drug testing purposes only), the Federal Aviation Administration, Federal Railroad Administration, Federal Highway Administration, Federal Transit Administration, Research and Special Programs Administration and Office of the Secretary.

**Drug Metabolite-** Specific substance produced when human body metabolizes a given prohibited drug as it passes through the body and is excreted in urine.

**Drug Test-** Laboratory analysis of urine specimen collected in accordance with 49 CFR part 40 and analyzed in DHHS-approved laboratory.

**EBT or Evidential Breath Testing Device-** An EBT approved by National Highway Traffic Safety Administration (NHTSA) for evidential testing of breath and place on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).

**Education-** Efforts that include display and distribution of informational materials, community service hot-line telephone number for employee assistance, and the transit entity policy regarding drug use in the workplace.

**Employee-** An individual designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. As used in this part, "employee" includes an applicant for employment. "Employee" and "individual" or "individual to be tested" have the same meaning for purposes of this part.

**Employee Assistance Program (EAP)-** Program provided directly by an employer or through a contracted service provider, to assist employees in dealing with drug or alcohol dependency and other personal problems. Rehabilitation and reentry to work force are usually arranged through an EAP.

**Employer-** Recipient or other entity that provides mass transportation service or which performs safety-sensitive function for such recipient or other entity. This term includes sub-recipients, operators and contractors.

**FHWA -** Federal Highway Administration

**FTA-** Federal Transit Administration

**Illegal Substance** – Any substance that is either prohibited for use by Federal Law or the use is regulated by Federal Law and requires a medical prescription to permit the use

**Initial Test (also known as Screening Test)-** An immunoassay screen to eliminate "negative" urine specimens from further consolidation.

**Large Operator-** Recipient or sub-recipient primarily operating in an area of 200,000 or more in population.

**Medical Review Officer (MRO) -** Licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse

disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test results together with his or her medical history and any other relevant biomedical information.

**Pass a Drug Test-** An individual passes a drug test when Medical Review Officer determines, in accordance with procedures in 49 CFR part 40, that results of the test:

- ♦ Showed no evidence or insufficient evidence of a prohibited drug or drug metabolite
- ♦ Showed evidence of a prohibited drug or drug metabolite for which there was a legitimate medical explanation
- ♦ Were scientifically insufficient to warrant further action
- ♦ Were suspect because of irregularities in administration of test, or observation, or custody and control procedures.

**Performing Safety-Sensitive Function-** Covered employee is considered to be performing safety-sensitive function and includes any period in which he or she is actually performing, ready to perform or immediately available to perform such functions.

**Permanent Employee-** An employee hired for a period of more than 120 days.

**Permanent Record Book-** Permanently bound book in which identifying data on each specimen collected at a collection site are permanently recorded in sequence of collection. May be used in conjunction with modified urine custody and control form to document collection.

**Post-Accident Test-** Drug test administered to an employee when an accident (as previously defined) has occurred and employee performed a safety-sensitive function that either contributed to the accident, or cannot be completely discounted as a contributing factor in the accident.

**Pre-Employment Test-** Drug test given to an applicant or employee who is being considered for a safety-sensitive position. Applicant or employee must be informed of purpose for urine collection prior to actual collection.

**Prohibited Drug-** Marijuana, cocaine, opiates, amphetamines or phencyclidine.

**Protocol-** Procedure requiring strict adherence to achieve scientifically valid test results from specimen collection and laboratory testing of urine specimens.

**Qualified-** Laboratory certified by DHHS to conduct urine drug testing and which permits unannounced inspections by recipient, operator or FTA Administrator.

**Random Test-** Drug test annually to a predetermined percentage of employees who perform in safety-sensitive functions and who are selected on a scientifically defensible random and unannounced basis.

**Reason to Believe-** Objective information indicating that a particular individual may alter or substitute a urine specimen.

**Reasonable Cause Test-** Drug test given to current employee who performs in a safety-sensitive position and who is reasonably suspected by two or more (small operators need only one) trained supervisors of using a prohibited drug.

**Refuse to Submit (to an alcohol test)-** A covered employee fails to provide adequate breath for testing without valid medical explanation after he or she has received notice of requirement to be tested in accordance with provisions of this part, or engages in conduct that clearly obstructs the testing process.

**Refuse to Submit (to an drug test) -** A covered employee fails to provide urine sample as required by 49 CFR part 40, without valid medical explanation, after he or she has received notice of requirement to be tested in accordance with provisions of this subpart, or engages in conduct that clearly obstructs the testing process.

**Return to Duty Test-** An initial drug test prior to return to duty and additional unannounced drug tests (for period up to 60 months) given to employees performing in safety-sensitive functions who previously tested positive to drug test and are returning to safety-sensitive positions. Return-to-duty test is also required of an individual who has refused another type of test required by the FTA rule.

**Safety-Sensitive Function**

(See: Policy Statement and 1.1 of this document)

**Safety-Sensitive Position-** Duty position or job category that requires the performance of a safety-sensitive function(s). (See: 1.1 of this document)

**Screening Test (or initial test)-** In drug testing, an immunoassay screen to eliminate “negative” urine specimens from further analysis. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.

**Secretary-** Secretary of Transportation or Secretary’s designee. Secretary’s designee may be contractor or other recognized organization that acts on behalf of Secretary in implementing DOT and FTA drug use control regulations.

**Shipping Container-** Container capable of being secured with tamper-evident seal that is used to transfer one or more urine specimen bottle(s) and associated documentation from the collection site to the laboratory.

**Small Operator-** Recipient or sub-recipient primarily operating in an area of less than 200,000 in population.

**Specimen Bottle-** Bottle that, after being labeled and sealed, is used to transmit a urine sample to the laboratory.

**Split Specimen-** An additional specimen collected with original specimen, to be tested in the event the original specimen tests positive.

**Substance Abuse Professional (SAP) -** Licensed physician (medical doctor or doctor of osteopathy), or licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in diagnosis and treatment of drug alcohol-related disorders.

**Training-** Providing information about effects and consequences of drug use on personal health, safety and work environment; about work environment; and about manifestations and behavioral cues that may indicate drug use and abuse.

**Vehicle-** Any vehicle owned by the City of Ashland.

**Verified Negative (drug test result)-** Drug test result reviewed by Medical Review Officer and determined to have no evidence or prohibited drug use.

**Verified Positive (drug test result)-** Drug test result reviewed by Medical Review Officer and determined to have evidence of prohibited drug use.

**Violation Rate-** Number of covered employees found during random tests to have alcohol concentration of 0.04 or greater, plus number of employees who refuse a random test required, divided by total reported number of employees in the industry given random alcohol tests plus total reported number of employees in the industry who refuse a random test.

**Volunteer-** A permanent, temporary, or part-time worker who is not compensated for his/her service and who is included in the requirements of FTA drug and alcohol regulations.

# DISCIPLINE

## APPENDIX "A"

### NOTICE OF DISCIPLINARY ACTION - DRUG USAGE

#### **AFSCME Union and Ordinance Employees Only**

**Due to the nature of their work, employees of the uniformed, sworn Fire Division and Police Division are held to the Standard of the Drug Free Workplace. Discipline will be uniformly applied to all members of the Safety forces.**

To:

From:

Date:

Subject: **Violation of the City of Ashland's Drug and Alcohol Policy**

You are hereby notified that your Appointing Authority (Employer) proposes to take the following disciplinary action against you:

#### **DRUG OFFENSE**

##### Option A

**Discipline related to a positive drug test will be administered in the following manner:**

1. Following a positive result on a Random or reasonable suspicion drug test the employee will be placed on suspension with pay.
  - Immediately or at a scheduled time, the employee will report to the Director of Human Resources who will provide the necessary information about counseling appointments and drug screens that must be scheduled and/or completed prior to return to work. All "follow-up" testing will be the financial responsibility of the employee.
  - At a scheduled time, the employee will report to the division director for the first level of discipline, which shall be not less than ten 10 days suspension without pay and has been determined to be \_\_\_\_\_. During the last five days of suspension without pay, the employee shall report to a designated site for drug screening. If the employee tests positive, he/she shall return to modified work on the first day after the suspension until such time as the employee tests negative or up to thirty-two (32) days.
  - At the time the employee tests negative, he/she shall be assigned to regular duty and subject to random drug screens as described herein for a period of up to three (3) years.
2. If at the end of thirty-two (32) days, the employee tests positive, the employee may be terminated "for cause."
3. The City reserves the right to require a fitness for duty test and will follow the guidelines as described on page 8 of this document.

**Administration of Follow-up Random Testing:**

**First Year:** During the first (1<sup>st</sup>) year, which will be calculated to run from the date of the first negative test following suspension for cause, the employee will be responsible for paying for the first twelve (12) random drug screens. These will be charged at not more than one (1) per month. The City has the right to administer any number of drug screens per month and will be responsible for the cost of such testing from the thirteenth (13<sup>th</sup>) test on.

**Second Year:** During the second (2<sup>nd</sup>) year, the employee will be responsible for paying for the first six (6) random drug screens. These will be charged at not more than one (1) per month. The City has the right to administer any number of drug screens per month and will be responsible for the cost of such testing from the seventh (7<sup>th</sup>) test on.

**Third Year:** During the third (3<sup>rd</sup>) year, the employee will be responsible for paying for the first two (2) random drug screens. These will be charged at not more than one (1) per month. The City has the right to administer any number of drug screens per month and will be responsible for the cost of such testing from the third (3<sup>rd</sup>) test on.

Types of testing: Random Drug Tests will be urine analysis drug tests except that in any year up to two tests may be hair follicle analysis tests.

**OPTION B**

IMMEDIATE RESIGNATION.

**OPTION C**

**TERMINATION FOR CAUSE**

You have certain rights regarding the appeal of the above proposed disciplinary action. Please read the attached information regarding these rights.

I ACCEPT OPTION \_\_\_\_\_

**The City of Ashland has determined to issue discipline per Option \_\_\_\_\_.**

Re: Option A.

I understand that if I violate any part of the following agreement or if at any time in the next three years I test positive for the use of drugs or alcohol I will be terminated immediately. I acknowledge that I must maintain my CDL (if applicable per position description) and ability to be insured on the City vehicle insurance (if applicable per position description) or I will be terminated immediately and without contest.

Employee Signature \_\_\_\_\_ Union Rep. Signature \_\_\_\_\_

Appointing Authority Signature \_\_\_\_\_ Date \_\_\_\_\_

## APPENDIX "B"

### NOTICE OF DISCIPLINARY ACTION – ALCOHOL

#### **AFSCME Union and Ordinance Employees Only**

**Due to the nature of their work, employees of the uniformed, sworn Fire Division and Police Division are held to the Standard of the Drug Free Workplace. Discipline will be uniformly applied to all members of the Safety forces.**

To:

From:

Date:

Subject: **Violation of the City of Ashland's Alcohol Policy**

You are hereby notified that your Appointing Authority (Employer) proposes to take the following disciplinary action against you:

#### **ALCOHOL IN THE WORKPLACE OFFENSE**

##### **Option A**

**Discipline related to a positive alcohol test will be administered in the following manner:**

1. Following a positive result on a Random or reasonable suspicion alcohol test the employee will be placed on suspension with pay.
  - Immediately or at a scheduled time, the employee will report to the Director of Human Resources who will provide the necessary information about counseling appointments that must be established and/or completed prior to return to work. All "follow-up" alcohol testing will be at the expense of the city.
  - At a scheduled time, the employee will report to the division director for the first level of discipline which shall be not less than ten 10 days suspension without pay and has been determined to be \_\_\_\_\_ days.
2. The City reserves the right to require a fitness for duty test, at the city's expense, prior to returning the employee to the workplace.
3. If the employee is not fit to return to the responsibilities of his/her position, the City reserves the right to assign modified duty for a designated period.
4. At the end of the period of modified duty, the city reserves the right to require a follow-up fitness for duty. If the employee is fit for duty, the employee shall be returned to full duty subject to follow-up random testing for a period of three (3) years.
5. If the employee is found to be unfit for duty, the employee may be subject to termination for cause.

The employee has the right to appeal the decision of the City's physician at the employee's expense. The doctor providing the second opinion must not be the employee's doctor of record.

\* The City and the employee must agree upon a neutral professional physician for the second opinion. If the second opinion is in agreement with the first, the decision is final. If the second opinion is different than the first, a third opinion may be sought, at the City's expense, \*with a doctor who is acceptable to the City and the employee.

\*In the event that the City and the employee cannot agree upon a physician, the names of three qualified doctors shall be placed in a hat and one drawn by the employee. The doctor drawn shall provide the second opinion. The same procedure shall be used to determine the doctor if a third and final opinion is requested.

**Administration of Follow-up Random Testing:**

First Year; Second Year and Third Year:

**During the first year following a positive alcohol test, the employee will be subject to any number of breath alcohol tests at the City's expense.**

**OPTION B**

IMMEDIATE RESIGNATION.

**OPTION C**

**TERMINATION FOR CAUSE**

You have certain rights regarding the appeal of the above proposed disciplinary action. Please read the attached information regarding these rights.

I ACCEPT OPTION \_\_\_\_\_

**The City of Ashland has determined to issue discipline per Option \_\_\_\_.**

Re: Option A.

I understand that if I violate any part of the following agreement or if at any time in the next three years I test positive for the use of drugs, or alcohol I will be terminated immediately. I acknowledge that I must maintain my CDL (if applicable per position description) and ability to be insured on the City vehicle insurance (if applicable per position description) or I will be terminated immediately and without contest.

Employee Signature \_\_\_\_\_ Union Rep. Signature \_\_\_\_\_

Appointing Authority Signature \_\_\_\_\_ Date \_\_\_\_\_