

317 DRUG AND ALCOHOL POLICY FOR NON-DOT CITY EMPLOYEES, APPLICANTS, AND OTHER WORKERS

317.1 Policy

1. Purpose. This policy establishes uniform standards for pre-employment and employment drug and alcohol testing for non-U.S. Department of Transportation (“DOT”) regulated employees to ensure confidentiality, reliability, and fairness in drug and alcohol testing. The City of Owensboro (or “City”) recognizes that there are serious adverse effects caused by the abuse and misuse of drugs and alcohol in the workplace. As an employer, the City is committed to maintaining a drug and alcohol-free work environment, providing the safe, efficient, and professional delivery of services to the community, and ensuring respect for its employees’ rights. All notices and policies on this subject in effect prior to the adoption of this policy are hereby rescinded. The City reserves the right to modify or amend this policy as necessary, with or without notice.
2. Coverage. This policy applies to all employees, applicants, and volunteers or other persons working on behalf of the City, as warranted and permitted by applicable laws, agreement, or contract, in non-DOT regulated positions. Where the term “employee” appears herein, such shall also apply to volunteers and other persons working on behalf of the City, as warranted and permitted by applicable laws, agreement, or contract, and in no way shall such affect that person’s status. All employees and applicants shall comply with this policy and all applicable laws, including the Drug-Free Workplace Act. Employees or applicants that perform DOT regulated positions, including safety-sensitive positions as defined by the Federal Transit Administration (“FTA”) and/or the Federal Motor Carrier Safety Administration (“FMCSA”), shall refer to and comply with Policy 320. Employees and prospective employees of the City whose training is coordinated with the Department of Criminal Justice Training (“DOCJT”) shall comply with any additional rules and regulations as required by the DOCJT.
3. Safety-Sensitive Defined. Safety-sensitive is defined as any potentially dangerous function, where the discharge of duties is fraught with risks of injury to others under such circumstances that even a momentary lapse of attention can have disastrous consequences, including but not limited to, working with equipment that could cause significant injury to others and public safety positions. Please refer to 319.9 for a list of positions that perform non-DOT regulated safety-sensitive functions.
4. Participation Required. This policy shall be made available to employees via computer and/or hardcopy form. Prospective employees shall also be provided with a copy of this policy. Compliance with this policy is required for all employees and prospective employees and is a condition of employment and/or continued service. The City may require that employees and prospective employees provide written acknowledgement of receipt and understanding of this policy. An employee must follow the instructions and directions of all City supervisors and medical personnel involved in the testing process. A refusal shall result in an employee being immediately removed from his or her safety-sensitive function, and such person shall not be considered for return to such function without a satisfactory evaluation by a Substance Abuse Professional (“SAP”) and return to duty testing. An evaluation is not required in the event the employee is terminated from employment. A refusal to submit to a test shall also be deemed a violation of this policy and may result in discipline up to and including termination. A refusal means that an employee fails to provide a drug or alcohol testing sample as required by this policy without a valid medical explanation from a doctor chosen by the City, or engages in conduct that obstructs the testing process. Refusals include, but are not limited to, the following:
 - (1) Fail to appear for any test (except a pre-employment test) within a reasonable

- time, as determined by the City.
- (2) Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
 - (3) Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
 - (4) In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
 - (5) Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
 - (6) Fail or decline to take a second test as directed by the collector or the City for drug testing.
 - (7) Fail to undergo a medical evaluation as required by the MRO or the City's Designated Employer Representative (DER).
 - (8) Fail to cooperate with any part of the testing process.
 - (9) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
 - (10) Possess or wear a prosthetic or other device used to tamper with the collection process.
 - (11) Admit to the adulteration or substitution of a specimen to the collector or MRO.
 - (12) Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
 - (13) Fail to remain readily available following an accident.

As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

317.2 Prohibited Activity and Substances

The presence of any prohibited substances in an employees' body is forbidden during working time. "Prohibited substances" addressed by this policy include the following:

1. Illegal Drugs. Employees shall not use, possess, manufacture, be under the influence of, or distribute illegal substances identified in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. § 812), Title 21 C.F.R., or as otherwise defined in Kentucky statutes, or any unauthorized prescription medications, or use or be under the influence of synthetic cannabinoid or other like substance. All employees subject to testing under this policy will be tested for the following drugs or classes of drugs, in addition to any others required under DOCJT regulations, if applicable: Cannabinoids; Amphetamines; Opiates; Benzodiazepines; Methadone; Cocaine; Barbiturates; Phencyclidine; Propoxyphene; Oxycodone.
2. Prescription Drugs. The misuse or abuse of prescription drugs is prohibited if it causes a positive test which cannot be medically explained and verified by the Medical Review Officer ("MRO"). All prescriptions must be properly administered and followed, and issued in the employee's name by a licensed physician.
3. Alcohol. Employees shall not use, possess, manufacture, be under the influence of, or distribute alcohol while on duty, while at a work site, or while operating a City or other vehicle or equipment on City business, engage in illegal activity involving alcohol while off duty, or consume alcohol 4 hours prior to a work shift.
4. Positive Test. The City will be notified of a positive test result. A positive test result means

a prohibited substance has appeared as a result of a test.

317.3 Duties to Report

1. Duty to Report Use of Prescription Drugs. An employee shall notify his or her supervisor when a physician-prescribed or non-prescription medication is being used that may adversely affect his or her ability to perform job duties and responsibilities safely. Unless otherwise allowed by applicable law, the employee is not required to inform the City of the name of the medication. The City reserves the right to require the employee to provide a Medical Certification form, Job Task Health Assessment form, and/or other written confirmation, from the appropriate health care provider(s), to establish Fitness for Duty in accordance with the Fitness for Duty policy. Temporary Modified Duty, Medical Leave, or Reasonable Accommodations may be considered by the City in accordance with the Fitness for Duty policy and/or other applicable policy/law.
2. Duty to Report Drug or Alcohol Conviction. Any employee convicted of any federal or state criminal drug or alcohol offense shall notify his or her supervisor of that fact within five (5) calendar days of being informed of the conviction. If necessary due to the nature of the job, the City shall report drug and alcohol related convictions of any of its employees to appropriate government or law enforcement agencies.
3. Citation Resulting from Traffic Collision. Employees shall provide notice to the City of any traffic collision, incident, accident, or ticket occurring in a City or other vehicle or equipment used for City business, whether owned or leased. It is the responsibility of the employee to report any citation received as the result of a traffic collision, incident/accident.

317.4 Categories of Testing

Testing for drugs and alcohol will be conducted in accordance with the following:

1. Pre-Employment. Non-DOT regulated employees and applicants offered employment are subject to post-offer, pre-employment testing (except for alcohol). Furthermore, employees are required to undergo drug and alcohol testing prior to transfer into a DOT regulated and/or safety-sensitive position. An applicant may not be hired until after a verified negative result. When a safety-sensitive employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the City's random selection pool during that time, the City shall ensure that the individual takes a pre-employment drug test with a verified negative result. An individual who is notified of testing under this category shall report to a designated collection site, during its business hours, within 24 hours of notification.
2. Reasonable Suspicion. Non-DOT regulated employees are subject to reasonable suspicion testing. Reasonable suspicion means suspicion based on specific observations concerning appearance, behavior, speech, or body odor which leads one to reasonably suspect an employee has or is actively engaging in prohibited activity under this policy. An individual notified of testing under this category shall report to a designated collection site immediately by transportation provided by the City.
3. Post-Incident. Non-DOT regulated safety-sensitive employees are subject to post-incident testing. An incident, for purposes of testing under this category, shall require: (i) an injury requiring the hospitalization of any individual; or more than 1 day off from work; or a fatality; or an estimated \$10,000 worth of property damage; and (ii) the City believes, based upon the information available at the time of the decision, that the employee contributed to the causation of the incident. An individual who is notified of testing under this category shall submit to a drug and alcohol test immediately, via transport provided by the City, law enforcement, or emergency responder. If medical treatment is necessary as a result of the incident, the employee shall submit to a drug and alcohol test as soon as medically

possible. An individual who is subject to post-incident testing who fails to remain readily available for such testing, including notifying the City or the City's representative of his or her location if he or she leaves the scene of an incident prior to submission to such test, may be deemed by the City to have refused to submit to testing. Nothing in this policy shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit an individual from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

4. Random. Non-DOT regulated safety-sensitive employees are subject to random testing. Employees will be selected and tested based on a computer based random number generator. Each covered employee will have an equal chance of being tested each time selections are made. Random dates will be spread reasonably throughout the year, testing will be conducted at all times of day when safety-sensitive functions are performed, and testing will be conducted unannounced. An individual who is notified of testing under this category shall report to a designated collection site immediately. The employee will be provided the maximum privacy possible in accordance with applicable law. Please refer to 317.9 for a list of positions that perform non-DOT regulated safety-sensitive functions.
5. Return to Duty. Non-DOT regulated safety-sensitive employees are subject to return to duty testing. An employee shall be tested preceding the return to work, generally within 30 days, or as otherwise required by law, as the result of a positive test result, voluntary notification of a substance abuse problem, or other applicable incident as described above. Testing may be for drug(s) and/or alcohol, as determined by the SAP, even if the original infraction only involved one drug and/or alcohol. Upon completion of rehabilitation, if applicable, the employee shall not return to work until the employee: completes a drug/alcohol rehabilitation program approved by the City's Loss Prevention Manager; is released by the SAP to return to work; and the employee submits to a subsequent test, and such test is negative.
6. Follow-Up. Non-DOT regulated safety-sensitive employees are subject to follow-up testing for up to 60 months. In addition to return to duty testing, the employee shall submit to unannounced follow-up testing without prior notice. A return to duty test may screen for all drugs as defined herein and alcohol, regardless of the nature of the initial infraction. A safety-sensitive employee who returns to duty after a substance related leave or after an evaluation made by a SAP is subject to unannounced follow-up testing. The frequency and duration of such testing will be solely determined by the SAP. The duration could extend up to 60 months with a minimum requirement of at least 6 tests within the first 12 month period. An individual who is notified of testing under this category shall report to a designated collection site immediately.

317.5 Testing Procedure

1. General Procedure. Except for limitations regarding substances tested, the City shall follow the drug and alcohol testing procedures accepted by the Department of Transportation under 49 CFR (Part 40) (e.g., breath analysis, collection of urine specimen, direct observation, transfer of specimen, chain of custody, laboratory testing, split specimen testing, MRO procedures), as amended from time to time, for all employees, including non-DOT regulated and non-safety-sensitive employees, unless otherwise supplemented as stated herein. Employees will be provided with a copy of these regulations upon request. Also, links to the regulations may be found via the City Employee Intranet. These safeguards are mandated to assure protection, integrity and accuracy of the results. Testing consists of urine tests for the drugs identified in this policy and breath tests for alcohol. The identification of laboratories will be identified by the City in advance upon request.

2. Drug Testing Procedure. The City will test for drugs as stated in this policy. The employee reporting to the test site must provide photographic identification. All urine specimens must be collected at an appropriate collection site and testing shall be conducted by a certified laboratory. Payment for split sample testing shall be the responsibility of the employee when a verified positive result occurs. If an employee produces a diluted specimen, he or she will be subject to recollection requirements. In a case of a directly observed or monitored collection in a drug test, failure to permit the observation or monitoring of your provision of a specimen shall constitute a refusal to take the test. For an observed collection, failure to follow the instructions of the observer to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process will also constitute a refusal to take the test. Possessing or wearing prosthetic or other devices during testing that could be used to interfere with the collection process constitutes a refusal to take the test. You have also refused to take a test if you fail or decline to take a second test the City or collector has directed you to take, or if you admit to the collector or MRO that you adulterated or substituted the specimen. If the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a test.
3. Alcohol Testing Procedure. The City will test for alcohol as stated in this policy. Breath testing will be conducted through the use of an Evidential Breath Testing (EBT) devices approved in accordance with applicable regulations. The test must be performed by a breath alcohol technician ("BAT") or by an appropriately certified law enforcement officer. Testing sites shall be designated by the City. A failure to complete all required steps, including signing the certification on the Alcohol Testing Form, shall constitute a refusal to take a test.
4. Return to Work Pending Test Results. An employee must await negative test clearance under the following circumstances: return to work after a drug and/or alcohol related leave; reasonable suspicion testing; post-incident testing; pre-employment testing; and transfer to a DOT regulated position or non-DOT regulated safety-sensitive position.

317.6 Voluntary Acknowledgment and Rehabilitation

1. Voluntary Acknowledgment. If no violations of this or other applicable policy have occurred, employees who voluntarily acknowledge a substance misuse or abuse problem, and request, in writing, a Medical Leave, shall be approved Medical Leave (as long as the employee is eligible, and such leave does not exceed the total amount allowable, in accordance with applicable City policy and applicable laws), with the use of benefit days (i.e., vacation, sick, compensatory) to attend any professionally approved drug and/or alcohol rehabilitation program recommended by the SAP subject to the approval of the City's Loss Prevention Manager, and at the employee's own expense, until the employee has been released by the SAP in writing as being able to return to work, and undergone Return to Duty testing, in accordance with applicable law and this Policy. The employee shall be required to undergo follow-up testing as defined in this policy. If the result of any such testing is positive, or if the employee fails to successfully complete rehabilitation, the City shall seek disciplinary action, up to and including termination from employment, as allowed by applicable policy and law. If the employee's refusal to cooperate or failure to admit the condition for which treatment is recommended precludes the qualification or acceptance of the employee for treatment, the employee will be deemed not to have successfully completed rehabilitation. Medical Leave may be offered a maximum of one time to an employee for reasons related to drugs or alcohol, throughout the duration of his or her employment, whether or not his or her employment is continuous, unless otherwise required by the Americans with Disabilities Act, the Family and Medical Leave Act, or other

applicable law.

An employee concerned about drug and/or alcohol use should immediately seek assistance. There are several resources available including, but not limited to, an Employee Assistance Program (“EAP”), the availability of substance abuse professionals, local substance abuse services and hotlines and websites. Please contact the City Loss Prevention Manager or consult the City Employee Intranet (refer to Ch. 1000) for additional information.

2. Rehabilitation Program. If an employee voluntarily acknowledges a substance misuse or abuse problem, or if the need so arises at the discretion of the City, the employee may be referred to a rehabilitation program, if eligible and approved by the City’s Loss Prevention Manager. The rehabilitation program shall consist of treatment deemed appropriate by the SAP and approved by the City’s Loss Prevention Manager. Such program may consist of a single counseling session, out-patient sessions, 30-day in-patient programs, or any other program appropriate for the circumstances. The employee may be eligible to return to duty once rehabilitation has been successfully completed and the SAP has determined the employee is fit to return to duty, in writing, and the employee has successfully completed the return to duty testing. An employee who fails to appear for any of his or her appointments/sessions required as part of the rehabilitation shall again be subject to disciplinary action, up to and including termination of employment.

317.7 Disciplinary Action

1. Non-DOT Covered Employees. Engaging in prohibited activity or otherwise failing to comply with this policy or applicable law shall be a basis for taking disciplinary action, up to and including termination from employment, in accordance with applicable law. The extent of discipline shall be at the sole discretion of the City unless otherwise provided by law.

317.8 Contact Information

1. City Loss Prevention Manager. The City’s Loss Prevention Manager represents the City as the contact for all Drug and Alcohol Program inquiries. Questions may be addressed to: City Loss Prevention Manager, Brent Kelley, City Hall, 101 E. 4th Street, Owensboro, KY 42303. Telephone inquiries may be made by calling: (270) 687-8544.

317.9 Listing of Non-DOT Safety Sensitive Job Classifications Mandated to Participate in Random Drug and Alcohol Testing Process

Any of the below job titles are subject to a title change at any given time, in accordance with applicable policy. As such, this policy still applies to those positions.

RANDOM TESTING POOL # 1: Left blank intentionally. Refer to Policy 318.

RANDOM TESTING POOL #2: All positions in the POLICE DEPARTMENT, excluding clerical/administrative positions such as Clerk Typist, Secretary, Records Manager, Administrative Aide, Crime Analyst.

RANDOM TESTING POOL #3: All positions in the FIRE DEPARTMENT, excluding clerical/administrative positions such as Administrative Aide.

RANDOM TESTING POOL #4: The following Non-DOT regulated, safety sensitive positions:

- Playground Inspector
- All persons holding positions listed in Random Pool #1 who do not possess a Commercial Driver's License.
- Loss Prevention Manager or any other position whose primary function is to promote a drug-free environment
- All part time, intermittent, and full-time positions in the Parks and Recreation Department, excluding clerical/administrative positions such as Clerk/Clerical, Administrative Aide, and Secretary.

RANDOM TESTING POOL #5: Any Non-DOT employees volunteering to be in the random testing pool, given sufficient number for an effective pool.