

**CITY OF BROKEN ARROW
ADMINISTRATIVE REGULATION**

SUBJECT: Administrative Regulation
Procedures and Documents Concerning
Drug and Alcohol Policy/ -Testing

MANUAL: Personnel
NUMBER: 9.4.1
REVISION: 4

EFFECTIVE DATE: 07-01-2017

1.0 PURPOSE:

The City of Broken Arrow considers its employees to be its most valuable resource and is concerned about the health, safety, well-being, and satisfactory work performance of all employees. The use, abuse, and dependence on alcohol and/or drugs can seriously affect the health of employees, jeopardize their own safety and that of others, as well as impair job performance.

2.0 ORGANIZATIONS AFFECTED:

This Alcohol and Drug Free Workplace Policy shall apply to all employees of the City of Broken Arrow ("City").

3.0 POLICY:

The possession, use, manufacture, dispensation, sale, or distribution of alcohol and/or controlled substances (this includes prescription medications not used by the patient as prescribed) while on duty, while in or on City property, or while wearing a City uniform, whether on or off duty, is prohibited and may result in discipline up to and including termination.

Being under the influence of alcohol or controlled substances (this includes prescription medications not used by the patient as prescribed) while on duty, or while wearing a City uniform, whether on or off duty, is prohibited and may result in discipline, up to and including termination.

All "Employees", without a written and executed contract to the contrary are "at will" employees. In other words, the employee may quit or be discharged without any reason at all and without any notice, subject to pre-termination hearing, if applicable, as provided in Section 2-169 and 2-170 of the City of Broken Arrow Code of Ordinances. However, in an effort to explain certain conduct which the City prohibits and which will lead to discipline, up to and including termination, the City has developed this regulation. This regulation in no way creates a contract of employment or otherwise alters the employee's status as an "at will" employee. Likewise, this regulation may be amended from time-to-time as deemed necessary by the City or as required by law.

Employees who violate any aspect of this policy may be subject to disciplinary action, up to and including termination. In addition, the City may, at its discretion, require

employees who violate this policy to successfully participate in and/or complete a substance abuse assistance or rehabilitation program as a condition of continued employment.

4.0 DRUG-FREE WORKPLACE ACT

The City is the recipient of a grant from the Community Development Block Grant Program from the United States Department of Housing and Urban Development (HUD) and is, thus, required to comply with the Drug-Free Workplace Act. As such, employees must notify the City of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction. The City will notify the granting agency within 10 days after receiving notice of such a conviction. Employees so convicted will be either (i) disciplined up to and including discharge or (ii) required to satisfactorily participate in a drug abuse assistance or rehabilitation program; at the City's discretion.

5.0 DRUG AND ALCOHOL TESTING

This section governing drug and alcohol testing shall apply to all employees of the City of Broken Arrow ("City") with the exception of employees governed by the Department of Transportation drug and alcohol testing regulations for drivers of commercial motor vehicles. Those persons should refer to the City's Alcohol and Drug Free Workplace Policy for Commercial Drivers.

5.1 DEFINITIONS

5.1.1 "Alcohol" means ethyl alcohol or ethanol.

5.1.2 "Applicant" means a person who has applied for a position with an employer and received a conditional offer of employment.

5.1.3 "City property" includes, but is not limited to; any City facility, employee or contractor parking lots, and City or contractor owned or leased vehicles, vessels, aircraft, and other equipment.

5.1.4 "Confirmation test" means a drug or alcohol test on a sample to substantiate the results of a prior drug or alcohol test on the same sample and which uses different chemical principles and is of equal or greater accuracy than the prior drug or alcohol test. Where a breathalyzer test is utilized, a confirmation test means a second sample test that confirms the prior result. Where a single-use test is utilized, a confirmation test means a second test confirmed by a testing facility.

5.1.5 "Drug" means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), hallucinogens, methaqualone, opiates, barbiturates, benzodiazepines, synthetic narcotics, designer drugs, or a metabolite of any of the substances listed herein.

- 5.1.6 "Drug or alcohol test" means a chemical test administered for the purpose of determining the presence or absence of a drug of its metabolites or alcohol in a person's bodily tissue, fluids, or products.
- 5.1.7 "On duty" means any time an employee is acting on behalf of the City, any time during which the employee is being compensated by the City, and unpaid breaks of one hour or less.
- 5.1.8 "Review Officer" - means a person, qualified by the State Board of Health, who is responsible for receiving results from a testing facility which have been generated by the City's drug or alcohol testing program, and who has knowledge and training to interpret and evaluate an individual's test results together with the individual's medical history and any other relevant information.
- 5.1.9 "Sample" means tissue, fluid, or product of the human body chemically capable of revealing the presence of drugs or alcohol.
- 5.1.10 "Testing facility" means a facility which provides laboratory services to test samples for the presence of drugs or alcohol in the human body.

5.2 TYPES OF TESTING:

- 5.2.1 Applicant Testing: All applicants will be required to undergo drug testing. A refusal to undergo testing or a positive test result may be used as a basis for refusal to hire.
- 5.2.2 For-Cause Testing: The City may require an employee to undergo drug or alcohol testing at any time it reasonably believes that the employee may be under the influence of drugs or alcohol, including, but not limited to, the following circumstances:
- a. drugs or alcohol on or about the employee's person or in the employee's vicinity,
 - b. conduct on the employee's part that suggests impairment or influence of drugs or alcohol,
 - c. a report of drug or alcohol use while at work or on duty,
 - d. information that an employee has tampered with drug or alcohol testing at any time,
 - e. negative performance patterns, or

f. excessive or unexplained absenteeism or tardiness.

5.2.3 Post-accident Testing: The City may require an employee to undergo drug or alcohol testing if the employee or another person has sustained an injury while at work or the employer's property has been damaged, including damage to equipment.

5.2.4 Random Testing: The City may require the following employees to undergo drug or alcohol testing on a random selection basis: 1) police or peace officers including all bargaining unit members of the Fraternal Order of Police; 2) those with drug interdiction responsibilities; 3) those authorized to carry firearms; 4) those engaged in activities which directly affect the safety of others such as firefighters, EMS personnel including all bargaining unit members of the International Association of Firefighters, employees who operate any City construction equipment or any City vehicles, dispatchers or any employee assigned to operate communication equipment or jailers; 5) those who work in direct contact with inmates in the custody of the Department of Corrections or work in direct contact with juvenile delinquents or children in need of supervision in the custody of the Department of Human Services.

Every employee who is selected for random drug or alcohol testing shall proceed to the test site immediately upon notification; unless the employee is actively performing a safety-sensitive function at the time of notification which will not reasonable allow his or her replacement. In such cases, the employee's supervisor shall ensure that the employee proceeds to the testing site as soon as possible.

5.2.5 Post-rehabilitation Testing: The City may request or require an employee to undergo unannounced drug or alcohol testing for a period of up to two (2) years commencing with the employee's return to work following a positive test result or following participation in a drug or alcohol dependency treatment program.

5.3 TIME AND COSTS OF TESTING

Any drug or alcohol testing by the City shall be deemed work time for purposes of compensation and benefits for current employees.

The City will pay all costs of testing for drugs or alcohol that it requires. However, if an employee or applicant requests a confirmation test of a sample within twenty-four (24) hours of receiving notice of a positive test in order to challenge the results of a positive test, the employee or applicant will pay all costs of the confirmation test (unless the confirmation test reverses the findings of the challenged positive test in which case the City will reimburse the individual for the costs of the confirmation test).

5.4 CONDITIONS FOR CONDUCTING SAMPLE COLLECTION AND TESTING

All sample collection and testing for drugs and alcohol pursuant to the provisions of this act shall be conducted in accordance with the following conditions:

1. Samples shall be collected and tested only by individuals deemed qualified by the State Board of Health (“Board”) and may be collected on the premises of the employer;
2. Only samples deemed appropriate by the Board for drug and alcohol testing shall be collected;
3. The collection of samples shall be performed under reasonable and sanitary conditions;
4. A sample shall be collected in sufficient quantity for splitting into two separate specimens, pursuant to rules of the Board, to provide for any subsequent independent analysis in the event of challenge of the test results on the main specimen;
5. Samples shall be collected and tested with due regard to the privacy of the individual being tested. In the instances of urinalysis, no employer or representative, agent or designee of the employer shall directly observe an applicant or employee in the process of producing a urine sample; provided, however, collection shall be in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples;
6. Sample collection shall be documented, and the documentation procedures shall include: (a) labeling of samples so as reasonably to preclude the probability of erroneous identification of test results, and (b) an opportunity for the applicant or employee to provide notification of any information which the applicant or employee considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant information;
7. Sample collection, storage, and transportation to the testing facility shall be performed so as to reasonably preclude the probability of sample contamination or adulteration;
8. Sample testing shall conform to scientifically accepted analytical methods and procedures. Testing shall include confirmation of any positive test result by gas chromatography,

gas chromatography-mass spectroscopy, or an equivalent scientifically accepted method of equal or greater accuracy as approved by Board rule, at the cutoff levels as determined by Board rule, before the result of any test may be used as a basis for refusal to hire a job applicant or any action by an employer; and

9. A written record of the chain of custody of the sample shall be maintained from the time of the collection of the sample until the sample is no longer required.

5.5 DISCIPLINARY ACTIONS

- 5.5.1 The City may discipline any employee, up to and including termination of employment, for (a) refusing to undergo a drug or alcohol test which shall include adulteration of a specimen or of a drug or alcohol test or (b) for a positive test for the presence of drugs or alcohol. However, no employee will be terminated based upon the results of a breathalyzer test without a confirmation test.
- 5.5.2 Such discipline will follow a pre-disciplinary or pre-termination hearing, if applicable, as provided in Section 2-169 and 2-170 of the City of Broken Arrow Code of Ordinances. In addition to the alleged offense, the appropriate course of action shall be determined based on the employee's total work record including but not limited to any prior drug or alcohol problems.
- 5.5.3 If an employee reports to Human Resources that he or she has a drug or alcohol abuse problem prior to being requested to test under this policy and prior to being charged with violating any provision of this policy, that employee will be given the option to complete a City approved rehabilitation program and agree to post rehabilitation testing. If the employee accepts that option and completes all requirements listed herein, the employee will not receive any discipline for self-reporting the drug or alcohol abuse. However, at all times, the employee remains subject to this regulation. Merely selecting the option described herein does not relieve the employee of discipline which may be imposed due to a positive result or for any other violation of this or any other regulation, policy, practice, law or the like.
- 5.5.4 The City, in its sole discretion, may offer continued employment after discovering a violation of this regulation which shall be contingent upon the employee agreeing in writing to undergo Post-Rehabilitation Testing and to satisfactorily participate in a treatment or rehabilitative program as directed by the City.

5.6 ABILITY TO EXPLAIN RESULTS IN CONFIDENCE

An applicant or employee may have a reasonable opportunity to explain, in confidence, any reasons that the test result, in the applicant's or employee's opinion, may have been positive, including the opportunity to explain in confidence to the City's Review Officer the presence of any drug in the applicant or employee's system, or any other relevant information, and to substantiate such explanation with medical evidence. To take advantage of this opportunity, the applicant or employee must provide the information to the Review Officer within 24 hours of being notified of the test results.

5.7 CONFIDENTIAL RECORDS

5.7.1 The records of all drug and alcohol test results and related information maintained by the City shall be the property of the City and, upon the request of the applicant or employee tested, shall be made available for inspection and copying to the applicant or employee. Other than as described in the next section, the City will not release such records to any person other than the applicant, employee, or the Review Officer.

5.7.2 Records of all drug or alcohol tests results and related information maintained by the City may be released by the City for any of the following purposes:

1. As admissible evidence by the City in a case or proceeding before a court or administrative agency if either the City or the individual tested is named as a party in the case or proceeding;
2. In order to comply with a valid judicial or administrative order; or
3. To the City's employees, agents, and representatives who need access to records to administer the Standards for Workplace Drug and Alcohol Testing Act.

5.7.3 This does not preclude the City, contracting with another employer, from a sharing drug and/or alcohol testing results of any tested applicant or employee who works pursuant to such contractual agreement.

5.8 AVAILABLE APPEAL PROCEDURES

Any employee who disagrees with a personnel action taken as a result of his or her refusal to undergo drug or alcohol testing or because of a test result will, upon request, be given an opportunity to discuss such matter with the Human Resources Director, or his or her designated representative. Such discussion shall constitute the employee's or applicant's appeal to any

personnel action taken, except to the extent that the employee has other grievance rights or a collective bargaining agreement.

6.0 QUESTIONS

Should you have any questions about this policy, please contact the Human Resources Department.