

ALCOHOL AND DRUG POLICY FOR EMPLOYEES WHO HOLD COMMERCIAL DRIVER'S LICENSES

1.0 Purpose

This policy supplements the Alcohol and Drug Policy of the City of Lake Forest to specifically address requirements of those employees whose job duties require a Commercial Driver's License. This policy does not limit the City's authority to make and enforce additional rules and regulations consistent with the City's commitment to a drug-free workplace. This policy is intended to prevent accidents and injuries resulting from the misuse of alcohol and/or controlled substance abuse by drivers of commercial motor vehicles. It is intended to comply with the Department of Transportation and FMCSA's published regulations (49 CFR parts 40 and 382) that require employers to test drivers who have a commercial driver's license for the misuse of alcoholic and controlled substances. If at any time there is a conflict between the Federal regulations and this policy, the Federal regulations shall govern.

2.0 Scope

2.1 Prohibited Activities

Federal regulations contain specific prohibitions with respect to the use of alcohol and drugs by drivers who are required to hold a CDL license for their position.

The Federal regulations contain the following prohibitions concerning the use of alcohol:

- a. No driver may report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
- b. No driver may use alcohol while performing safety-sensitive functions.
- c. No driver may perform safety-sensitive functions within four (4) hours after using alcohol.
- d. No driver required to take a post-accident alcohol test may use alcohol for eight (8) hours following an accident or until he or she undergoes a post-accident alcohol test, whichever occurs first.
- e. No driver may refuse to submit to or perform safety-sensitive functions after refusing to submit to a post-accident, random, reasonable suspicion, **return-to-duty**, or follow-up alcohol test required by the Federal regulations.
- f. No driver may report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse.
- g. **No driver shall perform safety-sensitive functions, if the driver has engaged in conduct prohibited by an alcohol usage rule of another DOT agency.**

The Federal regulations contain the following prohibitions concerning the use of drugs:

- a. No driver may report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any drug, except when the use is pursuant to the instructions of a licensed medical practitioner **who is familiar with the driver's medical history and** has advised the driver that the substance will not adversely affect his or her ability to safely operate a commercial motor vehicle.
- b. No driver may report for duty, remain on duty, or perform a safety-sensitive function if the driver tests positive or has adulterated or substituted a test specimen for drugs.
- c. No driver may refuse to submit to or perform safety-sensitive functions after refusing to submit to a **pre-employment**, post-accident, random, reasonable suspicion, **return-to-duty**, or follow-up drug test required by the Federal regulations.
- d. **No driver shall perform safety-sensitive functions if the driver has engaged in conduct prohibited by a drug usage rule of another DOT agency.**

2.2 Use of Medication

Use of medication administered, prescribed by, or under the supervision of a physician and according to the prescribing physician's lawful directions or non-prescription medication in conformity with the manufacturer's specified dosage is not prohibited by this policy. However, a driver must notify his or her supervisor of known side effects of therapeutic drug use that might affect the employee's job performance. In addition, the employee's physician must have advised the employee that the substance will not **adversely** affect the employee's ability to safely operate a motor vehicle or equipment or otherwise function in his or her position. Pursuant to its independent authority, and separate from the requirements of the Federal regulations, the City may require the employee to produce written evidence that any prescription medication has been lawfully prescribed by a physician, as well as information from the physician concerning any potential side effects of the medication and the effect of the medication on the employee's ability to operate a motor vehicle or other equipment.

2.4 Policy Coverage

All employees who are required for their position to hold a commercial driver's license are subject to this policy. All persons who are employed by the City are also separately subject to the drug-free workplace drug and alcohol testing requirements pursuant to the City's general alcohol and drug policy (Administrative Directive 2-3).

3.0 Definitions

- 3.1 The terms used in this policy shall have the same meanings ascribed to said terms in 49 CFR 382.107 or 49 CFR 40.3, as applicable.

4.0 FMCSA Clearinghouse

- 4.1** *The City and all employees covered by this Section are federally mandated to comply with the reporting requirements of the FMCSA Clearinghouse under 49 CFR Part 382. This includes the City's obligation to perform pre-employment queries for all applicants and annual queries for all employees.*
- 4.2** *Employees subject to the FMCSA Clearinghouse shall provide the necessary consent as required by 49 CFR § 382.703(a)-(b) for the City to perform clearinghouse queries, including electronic authorization for all full queries. If an employee fails to provide consent as required under this section, then the employee is unable to perform safety-sensitive functions under federal law and the employee will be removed from duty. The refusal to provide consent shall also be considered a violation under this policy and the employee may be subject to disciplinary action, including termination, pursuant to the City's independent authority and separate from the requirements of the Federal regulations.*
- 4.3** *The following personal information that is collected and maintained under 49 CFR Part 382 shall be reported to the Clearinghouse by either the City, MRO and/or SAP:*
- a. A verified positive, adulterated, or substituted drug test;*
 - b. An alcohol confirmation test with a blood alcohol concentration of 0.04 or higher;*
 - c. A refusal, as defined in this policy, to submit to any drug or alcohol test of 49 CFR Part 382;*
 - d. The City's report of "actual knowledge", as defined under 49 CFR § 382.107:*
 - 1) On-duty alcohol use pursuant to § 382.205;*
 - 2) Pre-duty alcohol use pursuant to § 382.207;*
 - 3) Alcohol use following an accident pursuant to § 382.209; and*
 - 4) Controlled substance use pursuant to § 382.213*
 - e. The SAP report of the successful completion of the return-to-duty process;*
 - f. A negative return-to-duty test; and*
 - g. The City's report of completion of follow-up testing.*

*Subject to the exceptions in 49 CFR § 382.702(d), no driver may perform any **safety-sensitive function** if the results of a Clearinghouse query demonstrate that the **driver** has a verified positive, adulterated, or substituted **controlled substances** test result; has an **alcohol** confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of § 382.211; or that an **employer** has reported **actual knowledge**, as defined at § 382.107, that the **driver** used **alcohol** on duty in violation of § 382.205, used **alcohol** before duty in violation of § 382.207, used **alcohol** following an **accident** in violation of § 382.209, or used a **controlled substance** in violation of § 382.213. A driver may be subject to disciplinary action, including termination, pursuant to the City's independent authority, if the Clearinghouse query discloses one of the aforementioned facts.*

5.0 Required Tests

The City will comply with all Federal regulations which require testing of drivers. Testing will be conducted according to the procedures provided in those regulations.

5.1 Pre-Employment Testing

Applicants for positions as drivers will be required to take and successfully pass a urine drug test before they may perform safety-sensitive functions for the City. Applicants must also authorize prior employer(s) to disclose positive test results and refusals to cooperate.

5.2 Reasonable Suspicion Testing

The City will require a driver to submit to an alcohol or drug test any time the City has a reasonable suspicion to believe that the driver has used alcohol or drugs in violation of this policy or the Federal regulations.

5.3 Random Testing

All drivers will be included in the group from which the City's Director of Human Resources will randomly select drivers to submit to alcohol and drug testing as required by 49 CFR Section 382.305. All drivers will remain in the random testing pool throughout the calendar year. Each year, at least 10% of the City's drivers will have to take random alcohol tests; at least 50% will have to take random drug tests, unless a different percentage is set by DOT regulation. These tests will be unannounced, spread reasonably throughout the year, and all drivers will have an equal chance for selection.

5.4 Post-Accident Testing

Post-accident drug and alcohol testing will be required of employees who were performing safety-sensitive functions following an accident involving a commercial motor vehicle operating on a public road that results in a fatality; or for which the employee is ticketed (**within 8 hours for alcohol testing and 32 hours for drug testing**) for a moving violation: (1) when the accident causes bodily injury to a person who immediately received emergency medical treatment away from the accident scene or (2) that involves damage to a vehicle that requires the vehicle to be towed away from the accident scene. Employees must notify a supervisor as soon as safely possible after an accident. Alcohol testing will occur within two (2) hours and a drug test within thirty-two (32) hours following the accident. An employee subject to a post-accident test shall remain readily available for such testing, or may be deemed to have refused to submit to testing; provided, however, that this subsection shall not be construed to require the delay of necessary medical attention for injured people or to prohibit an employee from leaving the scene of the accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

5.5 Return-to-Duty and Follow-Up Testing

If a driver engages in conduct prohibited by this policy or the Federal regulations, including having a verified positive drug test, an alcohol test with a result indicating an alcohol concentration of 0.04 or greater, or a refusal to test (including by adulterating or substituting a urine specimen), and is not discharged, the driver must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming the performance of safety-sensitive functions. The driver will also have to take **at least six (6)** unannounced follow up tests for at least one (1) year (and **an additional number of tests** up to five (5) years as determined by a substance abuse professional (SAP)) and comply with all of the SAP's prescribed education and/or treatment.

6.0 Testing Procedures

The City will require drug and alcohol testing in accordance with the Procedures for Transportation Workplace Drug and Alcohol Testing Programs as set forth in 49 CFR Part 40, as those regulations may be amended from time to time.

6.1 Drug Testing

Urine samples will be used to determine the presence of drugs in an employee's system. All urine samples must be split samples. Any primary sample that tests positive during the screening test for drugs will be confirmed by testing the second portion of the same specimen. Only specimens that are confirmed positive for drugs will be reported to the MRO as positive for a specific drug. The laboratory will report as negative all specimens that test negative on either the initial test or the confirmatory test.

The MRO will review and interpret all confirmed positive, adulterated, substituted and invalid drug test results from a laboratory to determine whether there is a legitimate medical explanation for the result.

When the MRO receives a confirmed positive test result, the MRO will interview the employee (or make a reasonable effort to do so) and examine his or her medical history, including his or her current prescriptions, and any other relevant biomedical factors presented by the employee. The MRO will give the person tested an opportunity to discuss the test results and provide documentation of legally prescribed medication or other information forming the basis of a legitimate medical explanation for a confirmed positive test result. The MRO may direct the employee to undergo further medical evaluation by the MRO or another physician and/or contact the employee's physician or other relevant personnel for further information concerning an employee's assertion that a positive test is the result of taking prescription medication. If the employee provides adequate information and the MRO determines that there is a legitimate medical explanation for the prohibited drug found in the employee's system, the drug test will be reported to the City as negative. However, if there is no legitimate, alternative medical explanation for the test result, the MRO will send the positive test result to the City's Director of Human Resources, who will maintain it in a secure location with controlled access.

If the MRO determines that a positive drug test was dilute, the test will be treated as a verified positive test. If the MRO determines that a negative drug test was dilute, the City will direct the employee to take another test immediately.

The process for an adulterated or substituted test is similar to that for a confirmed positive drug test. The MRO will attempt to verify the test result and will offer the employee the opportunity to present a legitimate medical explanation for the laboratory findings. If the MRO determines that there is a legitimate medical explanation for the test result, the MRO will cancel the test. If the MRO determines that there is not a legitimate medical explanation for the test result, the MRO will send the test result to the City's Director of Human Resources as a verified refusal to test because of adulteration or substitution, who will maintain it in a secure location.

When an MRO has verified a drug test as positive for a drug, or as a refusal to test because of adulteration or substitution, the MRO will advise the employee that he or she may have the split sample tested by a HHS-certified clinical laboratory or hospital facility of the employee's own choosing, provided the employee notifies the MRO of his or her request to test the split specimen within seventy-two (72) hours of receiving notification of his or her rights from the MRO. The City will seek reimbursement for the cost of testing the split specimen. The MRO will ensure that the test takes place, but no additional tests of the

split specimen are authorized. If the testing of the split sample fails to reconfirm the presence of the drug that was found in the primary specimen, or fails to reconfirm adulteration or substitution, or if the split specimen is unavailable or invalid, the MRO will cancel the test and report the cancellation to the City and the employee. However, if the test of the split specimen reconfirms the presence of a drug or that a sample was adulterated or substituted, the MRO will report the reconfirmation to the City and the employee.

The MRO will also verify all negative drug test results received from a laboratory.

6.2 Alcohol Testing

Two breath tests are required to determine if a person has a prohibited alcohol concentration. A screening test shall be conducted first. Any result less than .02 alcohol concentration is considered a negative test. If the alcohol concentration is .02 or greater, a second or confirmation test must be conducted. The test shall be by an Evidential Breath Testing (EBT) device that has the capability of providing printed test results. The EBT must print on each copy the test result, the date and time of the test, a unique test number, the manufacturer's name for the testing device, and the serial number of the testing device. The alcohol tests must be conducted by a Breath Alcohol Technician who is trained to operate that EBT and is proficient in all breath alcohol testing procedures. A Screening Test Technician may also conduct an alcohol screening test, but not a confirmation test. Once a confirmation test is completed, test results shall be immediately transmitted to the City's Director of Human Resources in a confidential manner. If an employee is unable to provide an adequate amount of breath, the City will direct the employee to obtain, within five (5) days, an evaluation from a licensed physician who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen. The physician who evaluates the employee shall submit a written statement with his or her conclusions, and the basis for those conclusions, to the City's Director of Human Resources.

6.3 Positive Alcohol Test Results

If an alcohol test shows an alcohol concentration of 0.04 or greater, or a drug test is verified positive, the driver will be prohibited from performing safety-sensitive functions, including driving a commercial motor vehicle. The driver shall not be permitted to resume performing safety-sensitive functions unless the SAP determines that the driver has successfully complied with all prescribed education and/or treatment and the driver has a return-to-duty alcohol test with an alcohol concentration of less than 0.02 and/or a negative drug test as described in Section 4.5 of this policy.

If a driver is found to have an alcohol concentration of 0.02 or greater, but less than 0.04, the driver shall be prohibited from performing safety-sensitive functions, including driving a commercial motor vehicle, until the start of the driver's next regularly scheduled duty period, but not less than twenty-four (24) hours following administration of the alcohol test.

6.4 Sample Collection

Samples will be collected in such a manner as to preserve the employee's rights to privacy to the greatest extent practicable unless, under the circumstances, the Federal regulations require a directly observed collection or a monitored collection. A chain of custody procedure will be followed for both the sample collection and testing that will ensure the integrity of each sample and test result.

6.5 Designated Employer Representative

The City's Director of Human Resources is the individual authorized by the City to receive communications and test results relating to testing under this policy, to take immediate action to remove employees from safety-sensitive duties, and to make required decisions in the testing and evaluation processes. Any questions concerning the City's testing program, this policy, or the Federal regulations should be directed to the Director of Human Resources.

6.6 Confidentiality

As required by the Federal regulations, the City will maintain records relating to its alcohol misuse and drug use prevention programs in a secure location with controlled access. Such records will include, but not be limited to: test results from all drug and alcohol tests; documents of refusals to take required tests; records related to driver evaluations and referrals, education and training, the collection process, and other violations of this policy and/or the Federal regulations; and administrative records related to alcohol and drug testing. No test results or other driver information will be released except as required by law, as expressly authorized or required by the Federal regulations, or as directed by the specific written consent of the driver authorizing release of the information to an identified person.

All information provided as part of the testing process, test results, and driver information will become a part of the driver's qualification file which shall be maintained in a secured location with controlled access.

7.0 Discipline

7.1 Positive Test Results

Pursuant to its independent authority and separate from the requirements of the Federal regulations, a driver who has an alcohol test with an alcohol concentration of 0.04 or higher or a confirmed positive drug test shall be subject to disciplinary action, up to and including discharge, even for the first offense.

7.2 Refusal to Test

Pursuant to the City's independent authority and separate from the requirements of the Federal regulations, a driver who refuses to submit to a required drug or alcohol test (including having an adulterated or substituted specimen) will be subject to discipline, including discharge, even for the first offense.

7.3 Other Conduct


Pursuant to its independent authority and separate from the requirements of the Federal regulations, the City reserves the right to discipline, up to and including discharge, an employee who fails to follow any recommendation of an SAP. In addition, pursuant to its independent authority and separate from the requirements of the Federal regulations, the City reserves the right to discipline, up to and including discharge, any driver who has an alcohol test with an alcohol concentration less than 0.04. Employees are reminded that Federal Regulations do not authorize the use of Schedule I drugs, including cannabis, for any reason.

7.4 Bargaining Unit Employees

For any employee covered by a collective bargaining agreement, any discharge for violation of this policy and/or the Federal regulations shall be considered a termination for just cause without the need for any prior warning.

8.0 **Distribution**

Published on the Employee Information Site, www.citylf.org.



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City Manager

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