




Subject: Substance Abuse and Testing Policy
Effective Date: 4/23/2019
Department: Human Resources
Revised Date: [Policy Revised Date]

Revision: 2
Policy Number: HRM-714
Rescinded Date: [Policy Rescinded Date]

DocuSigned by:

B1CC34DB0CF6463... City Manager

To All City Employees:

I. Purpose

This policy provides guidance to all employees and supervisors concerning the City’s position on the use of drugs and alcohol and their effect on the workplace. This policy also establishes a testing program designed to deter on-the-job alcohol and drug use and off-the-job alcohol and drug use resulting in on-the-job impairment. Drug screenings, to deter all use of illegal drugs, are also part of the testing program.

This policy also provides standards for those City employees who have a Commercial Driver License (CDL) as a requirement of their job, as-well-as, other safety sensitive positions. This class of employee is subject to drug and alcohol testing rules established by the Federal Highway Administration in 49 CFR 382, Controlled Substances and Alcohol Use and Testing and 49 CJYR 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. Additionally, this policy provides notice to employees as required by 49 CFR 32, Government wide Requirements for Drug-Free Workplace (Financial Assistance).

II. Policy

It is the policy of the City of Durham that the unlawful manufacture, distribution, dispensing, possession, or use of alcohol or drugs by its employees during work hours or while employees are on City property, operating City equipment (including ATV/UTVs) or are drivers or passengers in a City vehicle, is prohibited. Off-the-job use that results in a positive drug or alcohol test while on the job is also prohibited. Employees must abide by the terms of this policy statement as a condition of employment. This policy applies to all employees.

It is also the policy of the City of Durham to comply with the standards established for Commercial Driver License holders under the Federal Highway Administration in 49 CFR 382, *Controlled Substances and Alcohol Use and Testing*. This standard establishes a drug and alcohol testing program for affected employees. To assure compliance, the City will maintain a testing program to identify employees who violate the prohibitions of this policy; this testing program shall include both forensic urine drug tests and evidential breath alcohol tests. Tests shall be performed under guidelines established in 49 CFR 40, *Procedures for Transportation Workplace Drug and Alcohol Testing Programs*.

The details of this “No Tolerance” policy, the testing program and the associated procedures are below. Employees who test positive for drugs will be terminated. Employees who test positive for alcohol above the action levels outlined in this policy will be terminated.

The City shall make a variety of services available to employees to ensure that assistance is accessible for help in eliminating the abuse of drugs and alcohol. These services are available to both those employees identified through the testing program (but below the termination action level for alcohol) and to those who seek assistance voluntarily. An employees’ first request for assistance, before notification of a pending test, will not be considered a violation of the “No Tolerance” provision of this policy. The resources that may be used are the Employee Assistance Agreement, Employee Assistance Program (EAP), the Employee Relations Analyst, the Employee Assistance Program Coordinator (EAPC), and the City’s Group Medical Plan mental health and substance abuse benefit. The EAP may be used as a resource by employees, as well as their insurance eligible dependents, that have been terminated from City employment for up to six (6) months after their termination date. A variety of independent services are also available in the Durham community.

This policy is administered by the Human Resources Department, as designated by the City Manager.

III. Definitions

Any Lab Test Now – A third party administrator (TPA) and healthcare lab testing facility/service agent that provides compliant healthcare lab tests and substance abuse testing in a professional, convenient and cost-effective manner.

Alcohol – the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl or isopropyl alcohol.

Breath Alcohol Technician – An individual who instructs and assists individuals in the alcohol testing process and operates an EBT.

Breath Alcohol Content – the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

CDL Holder – Any employee who possesses a Commercial Driver License (CDL) from the State of North Carolina, Division of Motor Vehicles, and who is required to operate or repair a commercial motor vehicle for the City of Durham.

City Official – A professional employee who set broad policy, exercises overall responsibility for execution of these policies, direct departments or provides specialized consultation on a regional, city-wide, district or area basis, including department heads, bureau chiefs, division chiefs, deputy directors, police and fire chiefs, etc.

City Vehicle/Equipment – any licensed/unlicensed motor vehicle or equipment (on road/off road) owned, leased, maintained, insured by or loaned to the City of Durham. This includes all motor vehicles and lawn equipment. Use or operation shall be defined as starting the ignition/motor vehicle and/or moving, towing or driving City vehicle/equipment. Any reference made in this policy to a City motor vehicle shall also mean and include City equipment.

Commercial Driver's License (CDL) – a driver's license required to operate large or heavy vehicles

Commercial Motor Vehicle – A vehicle which is:

1. In excess of 26,001 pounds GVWR;
2. designed to carry 16 or more passengers; or
3. used in the transportation of a large amounts of hazardous materials.

Confirmation Test – in drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. In alcohol testing, a second test, following a

screening test with a result of 0.02 or greater, which provides quantitative data of alcohol concentration. Confirmation Tests are the basis for any disciplinary action.

Controlled Substances – the terms “controlled substances” and “drugs” have the same meaning and are interchangeable.

Drug(s) – those defined by the National Institute of Drug Abuse (NIDA) include: marijuana and its metabolites; cocaine and its metabolites; the opiates - morphine and codeine; phencyclidine (PCP, Angel Dust); the amphetamines - amphetamine and methamphetamine (the NIDA 5 Drugs); the opioids – Fentanyl, Percocet, Demerol, Oxycodone, Oxymorphone, Hydrocodone and Ydromorphone. This includes other controlled substances that may be used inappropriately in violation of the policy. Drugs may also be referred to as controlled substances.

Employee Assistance Agreement – when an employee voluntarily reports having a problem with drugs or alcohol prior to being selected for testing, the employee will be give the Employee Assistance Agreement to sign promising to abstain from the use of alcohol, drugs or controlled substances and to actively participate in and follow all recommendations prescribed by the EAP/SAP provider regarding their treatment plan.

Employee Assistance Program (EAP) – this program is provided by the City through a third-party contract. EAP provides assistance, counseling and referral for employees for various problems which could affect an employee’s ability to do his/her job, as well as the quality of his/her life. Drug and alcohol counseling and referral are among those services provided. EAP coverage is available to terminated employees and their insurance eligible dependents for up to six (6) months after the City employee’s date of termination.

Evidential Breath Testing Device (EBT) – an EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath alcohol content and placed on NHTSA’s “Conforming Products List of Evidential Breath Measurement Devices.”

Failure of Drug and/or Alcohol Test – a verified positive drug test result or an alcohol test at or above the designated level, reported to the City Manager (or designee) by the TPA after all procedures have been completed. In addition; failure to report to the lab for testing as instructed, including failure to report within the allotted time frame or failing to remain at the testing facility for the duration of testing.

Health and Safety Position – position which includes duties that directly impact public or employee health and safety, or the protection of life, property and the environment. Determinations for placement or removal of positions on this list will be made by the City Manager upon the recommendation of the Human Resources Department and the Risk Management Division.

Medical Review Officer (MRO) – a licensed physician, contracted by the City of Durham, who is 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 result together with his or her medical history and any other relevant biomedical information.

Negative result – a test result indicating no evidence of a drug(s) in that urine sample at or above the designated cut off levels; for alcohol, an EBT result below the designated level.

Positive result – a test result indicating the presence of a drug(s) in the urine sample. These drug(s) are found to be in concentrations at or above the designated cut off levels, consistent with NIDA Regulations and in accordance with the testing laboratory processes and City policy. For alcohol, EBT results at or above designated levels, according to Federal law and City policy.

Random Test – a drug and alcohol test performed on City employees who are in health and safety related positions, CDL positions or in safety sensitive positions. Selection is by a scientifically valid, random number generation method. Random generation of employee names to be tested is performed by the independent medical provider.

Reasonable Suspicion – belief based on facts, circumstances, and reasonable inferences that an employee is impaired by drugs, alcohol, or other substances based on the employee’s appearance, behavior, speech, body odors or other distinguishable observations. Employees may not grieve against a supervisor who had them tested based upon reasonable suspicion including, but not limited to: blurry or blood-shot eyes, odor of alcohol, deterioration of personal hygiene, unsteady walk, irrational behavior, diminished work capabilities, change in conduct, behavior which interferes with performance on the job, slurred speech, increased absenteeism and/or tardiness, inability to walk a straight line, and/or information about drug use or suspected use obtained from others. Each situation must be reviewed individually since a single

indicator or combination of the abuse indicators may not necessarily indicate substance abuse.

Refusal to Test/Submit (to alcohol and/or drug test) – when an employee refuses to report for testing or engages in any of the following behaviors:

1. Fails to provide adequate breath for alcohol breath testing within the required time limit or without a valid explanation.
2. Fails to provide adequate urine for drug testing within the required time limit or without a valid medical explanation.
3. Engages in conduct that clearly obstructs the drug/alcohol testing process.
4. Lacks proper identification presented prior to the end of the reporting period for testing.
5. Leaves the test facility prior to completion of testing.

Rehabilitation – a course of treatment, whether in-patient or out-patient, recommended by the employee’s treating physician, the Employee Assistance Program, or a drug/alcohol treatment facility, for the alleviation of the identified drug or alcohol abuse problem.

Safety Sensitive Function/CDL Position jobs in which the employee is responsible for his or her own or other people’s safety. It also refers to jobs that are particularly dangerous if performed under the influence of drugs or alcohol including positions requiring CDL licensure.

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. Screening tests are followed by a Confirmation Test.

Split Samples – each controlled substance urine specimen will be split into two bottles. One will be labeled “primary” and the other labeled “split.” Both bottles will be sent to an approved laboratory for analysis. Initially, only the primary bottle will be analyzed. If the analysis of the primary specimen confirms the presence of drugs, the employee has 72 hours after notification of the results to request the “split” specimen be sent to the same or another certified laboratory for analysis. The cost of the second analysis will be

borne by the employee or prospective employee and is payable at the time of the request. If the second test results are negative, the original test results will be canceled and the analysis cost will be refunded.

Substance Abuse – the use of a drug which has not been legally prescribed and/or dispensed, the improper excessive use of a legally prescribed drug and the excessive use of alcohol.

Substance Abuse Professional (SAP) – a licensed physician or a counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission. These professionals must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.

Substance Abuse Program Coordinator (SAPC) – Human Resources staff member acting as coordinator of the Substance Abuse Policy and the alcohol and drug testing program. SAPC also coordinates referrals to EAP process.

IV. Procedure

City of Durham Substance Abuse Testing Program

This program affects all City of Durham employees. However, Random Testing applies only to those employees in positions identified as Health and Safety Sensitive or those positions that require the employee to have a CDL. See Attachment E: Health and Safety Positions.

There are five types of alcohol and/or drug testing required by this program:

- A. Pre-Employment, Promotion, Transfer and Demotion Testing**
 1. All new applicants (pre-employment) will be tested for substance abuse
 2. Existing employees designated to be promoted, demoted, or transferred will be tested for substance abuse only if they are promoted, demoted, or transferred into a designated health and safety sensitive position
 3. Employees must report to the testing location within forty-eight (48) hours of notification.
 4. If the test yields a positive result during pre-employment testing, the prospective employee will be ineligible for employment with the City of Durham for a period of six months following the pre-employment test.

5. If the test yields a positive result during promotion, transfer or demotion testing the employee will be terminated. If the employee is terminated for a positive result from promotion, transfer or demotion testing, they cannot apply for positions with the City again for six (6) months and must provide written documentation to the Employee Relations Analyst in Human Resources that they have completed a rehabilitation program.
6. The new employee's start date must be within 60 days of the completed test. If the new employee's start date is more than 60 days from the test date, the employee will have to be tested again prior to employment. No additional background or pre-employment drug testing is required when re-employing a City employee who had a 60-day or less break in service;

B. Random Testing

1. To meet regulatory requirements for CDL holders, two Random testing pools are established. The first is for employees in safety sensitive positions. Random testing will be administered to the average number of CDL holders at the annual rate of 25% for alcohol and 50% for controlled substances. The second Random testing pool is for employees in health and safety positions and volunteers. Only drug tests will be administered to this group unless there is reasonable suspicion of alcohol use evident to the test administrator.
2. Random tests will be performed on an unannounced basis throughout the year. An employee may be randomly tested for controlled substances and alcohol at the same or at different times during the year. Random testing pools for employees in safety sensitive positions and health and safety related positions are exclusive of one another. An employee cannot be in both pools.
3. Once notified that they should report for a random test, the employee must report to the testing site within three (3) hours. Employees who do not report and complete testing for the random test within three (3) hours will be considered to have refused to cooperate and will be subject to termination.

C. Reasonable Suspicion Testing

1. Employees are required to submit to alcohol and/or controlled substance abuse testing when a supervisor believes there is reasonable suspicion that the employee has violated the prohibitions of this policy.
2. Reasonable suspicion is a judgment made by the supervisor, or City Official, after reviewing an employee's physical, behavioral, speech, and performance

indicators associated with the probable misuse of alcohol or drugs. Testing must be authorized by the department head or designee in consultation with Employee Relations or the HR Director. The supervisor shall maintain a written record of the observations which led to the testing. This record shall be signed by the supervisor who made the observations. **Supervisor must complete** the Alcohol & Controlled Substance Reasonable Suspicion Checklist (See Attachment B).

3. Employees who have reasonable suspicion that their supervisor has violated the prohibitions of this policy should report this information to the next highest level of supervision. Employees may also report concerns to the departmental director or Human Resources.
4. Reasonable Suspicion Tests should be **administered** within two hours of the observance of the indicators of alcohol or drug use.
5. All incidents where tests are not promptly administered must be reported to the Department Head and Human Resources Department.
6. For Reasonable Suspicion Testing, the employee will be placed on Administrative Leave with Pay from the time the tests are administered until the test results have been provided to the City.
7. Where reasonable suspicion exists, but the test(s) cannot be administered, the employee will be placed on Administrative Leave with Pay for one shift. Return-To-Duty Breath Alcohol Tests will not be performed at the end of this period unless reasonable suspicion still exists. Forensic Urine Drug Tests should still be administered, based on the initial suspicions for up to 32 hours after the observation.
8. Procedures for testing employees after normal working hours are listed in "After Hours Testing Procedures." These procedures should be followed for Reasonable Suspicion Testing during the times noted.
9. Employees are required to complete the Vehicle/Equipment Post Accident Report Form if applicable. (See attachments).
10. When there is reasonable suspicion based on information that includes evidence that the employee has been tested by law enforcement for drugs or alcohol as part of a criminal process or treatment program the employee may be tested for the next twelve (12) months on a post-conviction or post rehabilitation treatment basis. In these circumstances, the additional testing will not be more than six (6) times in the twelve (12) month period and will follow the Random Testing Guidelines.

D. Post Vehicular/Equipment/Machine Accident Testing

Within two hours following an accident involving a vehicle used for City business, the driver must be tested for alcohol and drug when the accident meets any of the following guidelines:

Vehicular Accidents

Employees shall be tested for alcohol and drugs for pre-employment, on a random basis (safety sensitive), when there is reasonable suspicion or when any of the following apply:

1. The vehicle collision/accident involved bodily injury to any person who, as a result of the injury, immediately receives medical treatment at or away from the scene; or
2. If one or more vehicles incurred disabling damage as a result of the collision/accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle; or
3. If the collision/accident involved the striking of a pedestrian; or
4. If the collision/accident involved a human fatality; or
5. A citation is issued to the employee driver for a moving violation

Equipment/Machine Accidents

1. When the City employee failed to use the appropriate safety equipment or procedures in operating the equipment/machinery.
2. When there is injury to persons or property caused by the employee's failure to use appropriate safety equipment or procedures.
3. When supervisor at scene suspects drug or alcohol may have contributed to the accident.

Any other work related injuries not involving vehicles or machines are not drug tested; however, follow standard on the job injury protocols.

E. Return to Duty Testing

1. Before an employee can return to work following placement on Administrative Leave without Pay because of a positive Breath Alcohol Test indicating a BAC of 0.02 to 0.039, the employee must pass a Return-to-duty Test. Return-to-duty testing will consist of a breath alcohol test and must indicate a BAC of less than 0.02.

2. Return-to-duty Tests must be scheduled at the time that a positive Breath Alcohol Test is administered. The BAT can provide specific instructions for scheduling. Return-to-duty Tests are administered during normal business hours only.
3. Any confirmed breath alcohol Return-to-Duty test indicating 0.02 or greater will lead to the immediate termination of employment for the employee with the exception of bona fide medical conditions protected under the ADA.

Testing Type	Testing Time Frame
Pre-employment, Promotion, Transfer and Demotion Testing	48 Hours
Random Testing	3 Hours
Reasonable Suspicion	2 Hours
Post Vehicular/Equipment Accident Testing	2Hours
Return to Duty Testing	Scheduled During Normal Business Hours

Supervisor Responsibility If Testing is NOT Administered in the Required Timeframe			
Drug Testing		Alcohol Testing	
2-32 hours	The supervisor shall prepare and maintain on file a record stating why the test was not promptly administered. Attempts to test the employee shall continue	2-8 hours	The supervisor shall prepare and maintain on file a record stating why the test was not promptly administered. Attempts to test the employee shall continue.
32+ hours	The supervisor will cease attempts to test the employee and will prepare and maintain a record explaining the delay.	8+ hours	The supervisor will cease attempts to test the employee and will prepare and maintain a record explaining the delay

This policy prohibits illegal drug and alcohol use by employees. Employees may be required to be tested for drug and alcohol use. Violations of this policy will result in consequences, up to and including termination of employment. For Safety Sensitive positions, a driver is prohibited from performing and supervisors are prohibited from using a driver to perform safety-sensitive functions after a positive drug test result or an alcohol test result indicating a Breath Alcohol Content of 0.02 (grams of alcohol per 210 liters of breath) or higher.

When the alcohol or drug was ingested and whether the driver is “under the influence” or “impaired” by legal definition has no bearing on the driving prohibition. A pre-duty abstinence period is also mandated by the program. Generally, employees are prohibited from using alcohol within four hours preceding the performance of safety-sensitive function.

“No Tolerance” means that the illegal use of drugs by employees will not be allowed. Employees who test positive for drug use will be terminated from employment. “No Tolerance” also means that the use of alcohol that produces a Breath Alcohol Content (BAC) test result of 0.04 or greater will not be allowed. Termination of employment will result from tests at this level. BAC tests that indicate a reading of 0.02 to 0.039 will result in the employee being placed on Administrative Leave without Pay for at least 24 hours. Second occurrences at this level will result in termination of employment; disciplinary actions are not mandated for BAC levels below 0.02.

When are you affected?

Employees are affected by this program both off the job and when they report for work. CDL holders are subject to the Safety Sensitive specific portions of this program any time they report to work for the purpose of driving, waiting to drive, on stand-by to drive, inspecting a vehicle, or repairing a vehicle. Off-the-job use that results in on-the-job impairment is prohibited.

Who performs the tests?

Testing is performed by a Third Party Administrator (TPA) contracted by the City. Twenty-four-hour service for the performance of Breath Alcohol Tests and collection of urine samples for Drug Tests is available. Samples collected for the Drug Tests are forwarded to a DBITS (Department of Health and Human Services) certified testing

laboratory for analysis. Split-sample collecting procedures, which allow for a second, independent test of the sample, apply to all urine samples.

Drug Use

The “No Tolerance” provision of this policy requires termination of employment for employees who test positive for any of the listed drugs. Drugs covered by this program include: marijuana, cocaine, amphetamines, opiates (including the specific heroin metabolite, 6-Acetylmorphine), opioids such as Fentanyl, Vicodin, and Oxycodone, MDMA (ecstasy), phencyclidine (PCP), etc. The City reserves the right to add additional drugs to this list. Employees are prohibited from using these controlled substances, except by a doctor’s prescription. The doctor must also advise the driver that the prescribed substance does not adversely affect the employee’s job performance.

What are the cutoff concentrations for drug tests?

The cutoff concentrations displayed below are used for initial and confirmatory drug tests. All cutoff concentrations are expressed in nanograms per milliliter (ng/mL). The table follows:

Initial test analyte	Initial test cutoff concentration	Confirmatory test analyte	Confirmatory test cutoff concentrate
Marijuana metabolites	50 ng/mL.	THCA1	15 ng/mL.
Cocaine metabolites	300ng/mL.	Benzoylcegonine	150 ng/mL.
Opiate metabolites	2000 ng/mL.	Codeine	2000 ng/mL.
Codeine/Morphine	2000 ng/mL.	Morphine	2000 ng/mL.
6-Acetylmorphine	10 ng/mL.	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL.	Phencyclidine	25 ng/mL.
Amphetamines	1000 ng/mL.	Amphetamine Methamphetamine	500 ng/mL.
AMP/MAMP			250 ng/mL.
MDMA(1)	500 ng/mL.	MDMA	250 ng/mL.
		MDA(2)	250 /ng/mL.
		MDEA(3)	250 ng/mL.

1. Methylenedioxymethamphetamine (MDMA).
2. Methylenedioxyamphetamine (MDA).
3. Methylenedioxyethylamphetamine (MDEA).

Use of Prescription Medications

Employees actively working in safety sensitive positions should not take prescription or nonprescription drugs that may affect their ability to drive, operate equipment safely or that may result in on the job impairment. If a health condition necessitates taking such drugs, employees are required as a safety rule to disclose **any** prescription or over the counter medications that have an impairing effect on the performance of safety sensitive duties to HR. HR will confer with the medical provider to determine if there are applicable restrictions.

If the impairing medication is not disclosed prior to testing and the employee tests positive, that employee will be subject to termination for violation of this policy. The misuse of prescription drugs is treated as illegal drug use and is subject to testing and consequences under this policy. Employees should be aware that over-the-counter medications which contain alcohol may also be prohibited from use.

Employees may be removed from a position, if it is found that they are taking a drug that causes impairment. When an employee has driving responsibilities, they will be removed temporarily from driving status.

Effective January 1, 2018, per DOT guidelines the following opioids will be included in the testing program:

1. Hydrocodone
2. Hydromorphone
3. Oxymorphone
4. Oxycodone
5. Percocet
6. Fentanyl
7. Demerol

Alcohol Use

This policy prohibits employees from using beverage alcohol to the degree that it affects job performance. Job performance is affected when BAC levels are recorded at 0.02 or greater. Termination of employment will result from tests indicating levels at or above 0.04. BAC tests indicating a level of 0.02 to 0.039 will result in the employee being placed on Administrative Leave without Pay for at least 24 hours. Employees testing between 0.02 and 0.039 will be referred to the EAP and must pass a Return to Duty Test.

Second occurrences at or above this level will result in termination of employment. Specific actions are not required for BAC levels below 0.02 by this policy. Medication, food, and any other products containing alcohol are covered by this program.

Prohibited Conduct

All City of Durham employees are prohibited from engaging in the following alcohol and drug related activities:

1. The unlawful manufacture, distribution, dispensing, possession, or use of alcohol or drugs by employees during work hours or while employees are on City property, operating City equipment or are a driver/passenger in a City vehicle or any vehicle used for City business.
2. Possession of drug paraphernalia by employees during work hours or while employees are on City property, operating City equipment or are a driver/passenger in a City vehicle or any vehicle used for City business may make the employee subject to termination from the City,
3. Off-the-job use that results in a positive drug test or alcohol test that indicates a BAC of 0.02 or greater while on the job is also prohibited.
4. Being convicted of the illegal manufacture, sale or distribution of drugs or alcohol.
5. Operating a City vehicle while possessing any quantity of an alcoholic beverage or controlled substance unless it is properly manifested.
6. Using undisclosed prescription or over-the-counter medication containing alcohol or controlled substances that may adversely affect the employee's ability to safely perform work.
7. Refusing to submit to an alcohol or drug test required under the provisions of this policy.

Violation of these prohibitions is grounds for disciplinary actions up to and including termination of employment.

Responsibilities

A. Third Party Substance Test Administration

1. Shall perform drug and alcohol testing procedures.
2. Shall maintain the selection process for random testing in a truly random, unbiased manner.
3. Shall adhere to testing procedures described in applicable Federal and State regulations.
4. Shall maintain all documentation and chain of custody forms for all samples in an appropriate manner.

B. Medical Review Officer

1. The Medical Review Officer (MRO) is responsible for receiving laboratory results generated by the City's drug testing program. The MRO has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information. Specific duties regarding notifications and record keeping are described below.
2. Prior to verifying a positive result of a drug test, the MRO shall make every reasonable effort to contact the employee confidentially; this contact shall afford the employee the opportunity to discuss the test results. If unsuccessful, the MRO or TPA shall contact the Human Resource Dept. who shall direct the employee to contact the MRO as soon as possible (within 24 hours).
3. Following notification by the MRO of a positive drug test result, the employee shall have 72 hours to request that the second sample of the original specimen be analyzed. If requested, this second analysis may be done by the same or another DHHS (Department of Health and Human Services) certified testing laboratory under the split-sample testing procedures.
4. The cost of the second analysis will be borne by the employee or prospective employee and is payable at the time of the request. If the second test results are negative, the original test results will be canceled and the analysis cost will be

refunded. Those in or applying for Safety Sensitive positions who are unable to pay the analysis cost up front may request assistance through the BAPC.

5. Under the split-sample testing procedures, the second (split) sample will be analyzed only for the presence of the specific drug identified in the initial test, if a negative result is reached on the second test, the original test results will be canceled.

Notification to Employee Assistance Program Coordinator (EAPC)

1. The MRO or TPA shall immediately contact the EAPC in the Human Resources Department, to provide notice of positive drug test results that prohibit an employee from performing a health and safety related function or a safety-sensitive function. The employee will be referred to Employee Relations for disposition of his/her case relative to EAP referrals or disciplinary procedures. The EAPC is the City's authorized representative to receive the written notice of all test results. Administrative responsibility for maintenance of tests results will reside in the Human Resources Department.

2. For Breath Alcohol Tests, the employee supervisor will be the City's authorized representative to receive results at the time that the test is administered. The supervisor is charged with administering initial disciplinary procedures required by this policy, relative to the breath alcohol level of the tested employee. The employee's supervisor will be advised of the test results by the Breath Alcohol Technician (BAT). The BAT will then forward the appropriate documentation to the Human Resources Department. Based on this information, Employee Relations will initiate disciplinary or referral procedures for employees with positive test results.

3. If the initial contact with the EAPC is not in writing, the MRO or TPA shall deliver to the City, within three business days, a copy of the testing form. Minimally, this form will include the following information:

- a. That a controlled substance test is being reported in accordance with DOT regulations, if applicable;
- b. The names of the employee for who test results are being reported;
- c. The type of test indicated on the custody and control form;

- d. The date and location of the test collection;
- e. The identification of the persons or entities performing the collection and analysis of the specimens;
- f. The verified results of the drug test, and, if positive, the identity of the drug(s) for which the test was verified positive; and
- g. That the MRO has made every reasonable attempt to contact the employee.

Record Retention

The TPA shall maintain all dated records of verified positive controlled substance tests, alcohol tests results indicating a concentration greater than 0.02, and employee refusals to take the required tests, for a period of 5 years. Records shall be maintained for 1 year for all negative controlled substance and alcohol test results which indicate a concentration less than 0.02.

C. Independent Testing Laboratory

- 1. Shall adhere to testing procedures described in applicable Federal and State regulations.
- 2. Shall maintain all documentation and chain of custody forms for all samples in an appropriate manner.

D. Department Heads

- 1. Shall ensure that each person employed after implementation of this policy will receive information concerning the policy from the employee's supervisor as a part of employee orientation.
- 2. Shall provide accurate information to the Human Resources Department concerning employee's job duties, responsibilities, and eligibility for random testing procedures. This includes making determination of an employee's position as safety sensitive or health and safety related.
- 3. Shall ensure that employee supervisors receive adequate training to perform their required functions under this policy.

4. Report information when an employee is charged, arrested or convicted on criminal charges of a drug or alcohol related nature to the City Manager. These employees are subject to dismissal for serious misconduct.

E. Supervisors

1. Must consistently apply this policy to all employees under his/her supervision. A supervisor who fails to apply this policy when they believe, or reasonably should believe, that an employee under his/her supervision has committed a violation, and a supervisor who otherwise fails to carry out their responsibilities under this policy, will be disciplined up to and including termination.

2. Report information when an employee is charged, arrested or convicted on criminal charges of a drug or alcohol related nature to the Department Head. These employees are subject to dismissal for serious misconduct.

3. Supervisors are responsible for aiding in the full implementation of this policy. If, at any time, a supervisor knowingly allows an employee to work or operate a City vehicle while impaired from alcohol and/or drug use, that supervisor will be subject to disciplinary procedures up to and including termination.

4. Shall ensure that employees report for Random Testing within **3 hours** of notification.

5. Shall ensure that employees report for Reasonable Suspicion Testing within **2 hours** of observing suspicious behavior,

6. Shall ensure that employees report for Post-Accident Testing within **2 hours** of an accident involving any vehicle or motorized equipment used for City business.

7. Shall ensure that employees schedule Return-to-duty testing at the time a positive Breath Alcohol Test indicating a result of 0.02 to 0.039 is administered.

8. Shall prevent an impaired employee from driving himself or herself away from the work site. This restriction applies to sending the employee for testing or suspending the employee from work. Offer a ride or arrange for a ride.

9. Shall ensure that prospective employees and/or current employees receive training regarding pre-employment and promotional drug testing policy.

F. Employees

1. Must sign a Substance Abuse Policy Agreement (See Attachment titled "Substance Abuse Policy Agreement"). A copy will be maintained in the employee's Human Resources Department personnel file and the employee will retain a copy.
2. Must notify their Supervisor of any criminal drug or alcohol charge, arrest or conviction no later than the next business day following the event. Failure to do so may result in termination.
3. Must report to their supervisor a conviction for a drug statute violation occurring in the workplace, to the City of Durham, in writing, no later than five days after such a conviction.
4. Report the use of prescription drugs that result in on the job impairment to Human Resources for further evaluation and determination of fitness for duty. Supervisors shall not ask employees to disclose specific prescription drug information they are taking and shall comply with all HIPAA requirements regarding protected health information.
5. Must report for Drug and Alcohol Tests within the time limits specified in this policy.
6. Must schedule Return-to-duty testing at the time a positive Breath Alcohol Test indicating a result of 0.02 to 0.039 is administered.
7. Should report observed policy violations to supervisors to help maintain a safe work environment.

G. Human Resources Department

1. Shall perform a periodic review and update of the list of Health and Safety Related Positions.
2. Shall continually update the employee information in the MUNIS substance abuse database from which the random testing pool data is generated for the City's independent TPA.
3. Shall maintain the official employer's record of test results. These records shall be kept in a manner that allows tracking of an employee's positive test

results to ensure policy compliance with discipline procedures when an appropriate threshold is met.

4. Shall ensure that someone is on duty at all times to act as EAPC.
5. Maintains files of signed Substance Abuse Policy Agreements.
6. Shall provide the City's independent TPA, who conducts controlled substance testing, with monthly updates of the roster of employees in each of the random testing pools.

H. Employee Assistance Program Coordinator (EAPC)

1. Assists employees who enter an EAP treatment program.
2. Initiates disciplinary or referral procedures for employees with positive test results.
3. Performs as the City's authorized representative to receive the written notice of all test results from the MRO.
4. EAP Services are available to employees who have been terminated from City employment for up to six (6) months after their date of termination. This EAP coverage is also extended to the insurance eligible dependents of the terminated City employee for up to six (6) months of the employee's termination date.

Confidentiality

Every effort will be made to preserve the employee's confidentiality. Test results and other sensitive information may only be released to the City's Human Resources Department, the employee's supervisor and department head. Testing information will be released to other parties only upon the employee's written consent.

Drug Testing Standards

Any verified positive Forensic Urine Drug Test will result in immediate termination of employment. These employees will also be advised of the available resources for evaluation and treatment of drug problems, including the names, addresses, and telephone numbers of Substance Abuse Professionals, counseling centers, and treatment programs.

Breath Alcohol Testing Standards

When an employee is tested under any of the testing criteria, and registers 0.02 through 0.039 on the breath alcohol test, a second breath alcohol test will be given to confirm the results. This confirmation test will occur within 15-20 minutes of the initial test. If the employee again registers within the same range, he/she will be placed on Administrative Leave without Pay and prohibited from returning to work for at least 24 hours. The employee will also be subject to return-to-duty testing requirements. In addition, the employee may be referred to the City's Employee Assistance Program for evaluation and treatment. Through this referral, the employee will be advised of the available resources for evaluation and treatment of alcohol problems, including the names, addresses, and telephone numbers of Substance Abuse Professionals, counseling centers, and treatment programs.

If an employee's breath alcohol test indicates a level of 0.04 or greater on the confirmation test, employment will be immediately terminated. These employees will also be advised of the available resources for evaluation and treatment of alcohol problems, including the names, addresses, and telephone numbers of Substance Abuse Professionals, counseling centers, and treatment programs.

Refusal to Submit to Tests

In the event an employee refuses to submit to an alcohol or controlled substance test, their employment shall be terminated. A refusal to submit to testing is defined as:

1. Failure to provide adequate breath for alcohol breath testing within the required time or without a valid medical explanation,
2. Failure to provide adequate urine for controlled substance testing within the required time or without a valid medical explanation,
3. Engaging in conduct that clearly obstructs the drug or alcohol testing procedure.
4. Lack of proper identification presented prior to the end of the applicable reporting period for testing.
5. Leaving the test facility prior to completion of testing.

Testing Guidelines

1. For all types of tests, employees will be notified of the pending test by their supervisor or designee.
2. All persons presenting themselves for testing must provide a photo - identification issued by state government, a driver's license, or military identification as proof of identity. Lack of proper identification presented prior to the end of the reporting period will be considered refusal to submit to testing.

3. Employees must report immediately to the test location within:

Forty-eight hours for Pre-employment Testing

Three hours for Random Testing

Two hours for Reasonable Suspicion Testing

Two hours for Post-Accident and Worker's Compensation Accident Testing

4. Employees must proceed with the prescribed test as directed by the person conducting the test.
5. Evidence of adulteration of urine samples, per Department of Transportation guidelines, will result in observed witnessed collection.
6. Breath Alcohol Test results are available immediately. Appropriate action shall be initiated based on those results.
7. Forensic Urine Drug Test results are not immediately available. Appropriate action shall be initiated pending receipt of those results. Employees who are tested because of reasonable suspicion will be placed on Administrative Leave with Pay pending the receipt of test results. All other employees will remain on active duty status pending the receipt of test results. When the test results are received, appropriate action shall be initiated based on those results.
8. Drug Test results will be reviewed by the City's Medical Review Officer (MRO). For positive test results, the MRO shall make every reasonable attempt to contact the employee confidentially. This contact shall afford the employee the

opportunity to discuss the test results. If they are unsuccessful after five days, the test results are relayed to the Human Resources Department for disposition.

9. **Supervisors shall be responsible for fully instructing prospective employees or current employees regarding pre-employment and promotional drug testing policy.**

Following notification of a positive controlled substance test result by the MRO, the employee shall have 72 hours to request that the second sample of the split sample be analyzed. If requested, this second analysis may be performed by the same or another DHHS certified laboratory.

The cost of the second analysis will be borne by the employee. in the case of an existing employee and by the applicant for pre-employment testing and is payable at the time of the request.

Effect of Negative Test Results

The employee will be returned to regular duty if test results are negative. However, if the testing was done because of reasonable suspicion, the job performance or other circumstances may be noted in the employee's Personnel file and disciplinary action may be taken.

Voluntary Request for Treatment

If employees voluntarily request treatment prior to selection for testing or prior to determination of reasonable suspicion, they will be referred to Employee Relations for initiation of the Employee Assistance Agreement and EAPC for subsequent referral to the EAP/SAP. Employees may request to use accrued vacation, sick leave, and/or unpaid leave for rehabilitation. If the request is approved, the employee must show proof of compliance with the recommended treatment program to Employee Relations. Any positive test administered under this program during treatment will result in termination of employment. Voluntarily requesting treatment does not eliminate the possibility of disciplinary action based on job performance and conduct.

Employee Assistance Agreement

Employees that voluntarily request treatment shall be given an opportunity to meet with Employee Relations and enter into an Employee Assistance Agreement. During this period of time, the employee is referred for SAP treatment and is required to

immediately seek rehabilitation through the EAP/SAP, is removed from the random testing pool for the period of rehabilitation and allowed to keep their job. Employees in safety sensitive positions may be assigned to alternative working during the period of rehabilitation; however, if no alternative work is available, the employee will be sent home. As-soon-as rehabilitation is completed, the employee will return to their normal job duties and be subject to all provisions of the policy including random and reasonable suspicion testing.

In addition, the employee must abstain from the use of alcohol, drugs or controlled substances and must actively participate in and follow all recommendations prescribed by the EAP/SAP provider regarding the treatment plan. Initial contact with the EAP/SAP to schedule the first appointment must be made no later than 24-hours from the date of the agreement. The employee must sign appropriate Medical Release Authorization to allow Human Resources to receive information from the medical professional to verify compliance with the treatment plan.

Costs of medical consultation and treatment not covered by the EAP/SAP service agreement are at the responsibility of the employee and his/her medical insurance carrier (as applicable). If absence from work is necessary as part of the treatment or rehabilitation and is connected to a clinical diagnosis of alcoholism, the City of Durham will designate the absence as Family Medical Leave (FMLA) as long as all FMLA requirements, including medical certification are met.

The City of Durham agrees to temporarily remove the employee from the random testing pool for the period of rehabilitation; however, the employee agrees that following the period of rehabilitation, they shall be subject to unannounced periodic follow-up drug/alcohol testing for a period of one year from the date of the signed agreement.

Normal Business Hours Testing Procedures

During normal business hours (weekdays between the hours of 8:00 am and 6:00 pm), when the need for alcohol or drug testing is determined, the following steps should be followed, based on the type of testing required. All persons presenting themselves for testing must provide a photo identification issued by state government, a driver's license, or military identification as proof of identity. **Exceptions can be made when no state issued ID is possessed if employee's supervisor presents their ID and will attest to the employee's identity. If an employee is under DOT age, a parent can provide ID.**

Pre-employment Testing

1. Supervisors must notify TPA of an applicant's selection for employment.
2. Supervisors must supply the following information to TPA:
 - a. name of the prospective employee;
 - b. hiring department;
 - c. supervisor's name;
 - d. phone contact; and
 - e. the prospective employee's deadline for appearing for the test.
3. Supervisors will notify the prospective employee of the deadline for completing the test and of the requirement for proper identification.
4. Employees must report to TPA for testing, within forty-eight hours of notification and proceed with the test as directed. **The 48-hour deadline will be adhered to and those that do not meet this guideline will not be considered for employment.**
5. Breath Alcohol Tests may be administered to the prospective employee based on Reasonable Suspicion at the time the Drug Test is being administered.
6. All test results will be sent to the Human Resources Department the following business day, via confidential mail.

Random Testing

1. Supervisors will be notified of the employee's selection for Random Testing.
2. Supervisors will notify the employee of the pending test and direct them to report immediately to test site. Supervisors must speak to the employee personally and not leave a voice message or e-mail. Supervisors must indicate to employee that they must appear and complete the required within the 3-hour period or it will be considered as a failure to test.
3. Employee must report to TPA for testing, within three hours of notification and proceed with the test as directed.

4. For Breath Alcohol Tests, employees will receive a copy of the results immediately following the test. Supervisors will be notified of test results.
5. For Drug tests follow instructions in the Testing Guidelines section of this policy to determine the status of the tested employee, pending evaluation of the test results.
6. All test results will be sent to Human Resources the following business day, via confidential mail.

Reasonable Suspicion Testing

1. Supervisors must confirm suspicion with their supervisor and call TPA at (919) 321-4355 to report the need for Reasonable Suspicion Testing.
2. **Supervisors must document the suspicion** and be able to supply the following information:
 - a. name of the employee
 - b. reason for test
 - c. supervisor's name
 - d. phone contact
3. Employees must report to TPA, accompanied by their supervisor, within two hours of the determination of Reasonable Suspicion.
4. Proceed with the test(s) as directed.
5. For Breath Alcohol Tests, employees will receive a copy of the results immediately following the test. Supervisors will be notified of test results.
6. For Drug tests follow instructions in the Testing Guidelines section of this policy to determine the status of the tested employee, pending evaluation of the test results.
7. All test results will be sent to the Human Resources Department.

Post Vehicular/Equipment/Machine Accident Testing1. Supervisors must call TPA at 919-321-4355 and report the need for Post-Accident Testing.

2. Supervisors must supply the following information:

- a. name of the employee
- b. reason for test
- c. supervisor's name
- d. phone contact

3. TPA will give instructions to proceed to facility, or will describe the procedure for hospital testing if necessary.

4. For employees who are injured and are receiving medical attention at a hospital due to injuries received in the accident, the TPA will dispatch testing personnel to perform Alcohol and Drug Tests at the hospital. Employees who are unable to be tested due to medical treatment should report to TPA at the beginning of the next business day for testing.

5. Employees not injured in the accident or injured without the need for emergency room treatment should report to TPA and proceed with the test as directed.

6. For Breath Alcohol Tests, employees will receive a copy of the results immediately following the test. Supervisors will be notified of test results.

7. For Drug tests, follow instructions in the Testing Guidelines section of this policy to determine the status of the tested employee, pending evaluation of the test results.

8. All test results will be sent to the Human Resources Department the following business day, via confidential mail.

Return-to-Duty Testing

1. Employees must report the need for Return-to-duty Testing to TPA and schedule an appointment for the test at the time that a positive test indicating a BAC of 0.02 to 0.039 is administered. For positive tests administered after normal business hours, the BAT will provide scheduling instructions. Return-to-duty Tests are administered during normal business hours only.
2. Employees must report to TPA, accompanied by their supervisor, at the appointed time.
3. Proceed with the test(s) as directed.
4. For Breath Alcohol Tests, employees will receive a copy of the results immediately following the test. Supervisors will be notified of test results.
5. All test results will be sent to the Human Resources Department the following business day, via confidential mail.

Rehiring of Employees Discharged for Violation of Policy

Any employee that is discharged for violation of the Substance Abuse Policy will not be eligible for rehire for at least six months from date of discharge. The former employee must also provide documentation of satisfactory completion of an Alcohol or Drug Treatment Program to the ERA All other recruitment and selection criteria must also be met. Completion of the six month wait or completion of the treatment process does not guarantee employment. No special consideration will be given to former employees wishing to be considered for rehiring.

After Hours Testing Procedures

Normal business hours are Monday-Friday 8:00 am – 6:00 pm and Saturdays 9:00 am - 2:00 pm. After normal business hours, holidays, and other days that City offices are closed the Department Director can authorize Reasonable Suspicion Testing without consultation with Human Resources. After normal business hours, holidays, and other days that City offices are closed, when the need for drug or alcohol testing is determined, for Reasonable Suspicion and Post-Accident Testing only, the following steps should be followed.

The contact information for our Third Party Administrator (TPA), Any Lab Test Now (ALTN,) is as follows:

Homestead Market

105 West NC Hwy 54, Suite 245

Durham, North Carolina 27713

Normal Business Hours Phone: 919-321-4355

Fax: 919-636-5777

www.anylabtestnow.com/rdu

After Hours Phone Numbers: Primary: 919-427-8185 Secondary 919-321-4355.

Use primary number first and if no response try secondary number.

Call Any Lab Test Now and be ready to supply the following information:

- a. name of the employee
- b. reason for test
- c. supervisor's name
- d. phone contact
- e. if medical attention is required

Any Lab Test Now will give instructions to proceed to their facility unless employee requires medical attention in which case they will proceed to Durham Regional Hospital or Duke Hospital Emergency Rooms.

- Meet the ALTN at the specified location and proceed with the test(s) as directed.
- For Breath Alcohol Tests, employees will receive a copy of the results immediately following the test. Supervisors will be notified of test results.
- For Drug tests follow instructions in the Testing Guidelines section of this policy to determine the status of the tested employee, pending evaluation of the test results.
- Drug Screen Request Forms and Forensic Urine Drug Kits will be provided by ALTN.

All test results will be sent to the Human Resources Department the following business day, via confidential mail.

V. Other

Supervisor and Employee Training

All employees in safety sensitive positions will receive training on the requirements of this policy and the City procedures utilized to implement the DOT regulations. In addition, supervisors of CDL holders will receive additional training to enable them to determine whether reasonable suspicion exists for the administration of controlled substance tests. This training will focus on the physical, behavioral, speech, and performance indicators of probable alcohol misuse and drug abuse.

In addition, similar education and training will be offered to all supervisors on a periodic basis. General information on drug and alcohol use and abuse will also be offered to all employees periodically.

Departmental Policies

All departmental policies concerning substance abuse must be approved in writing by the City Manager's Office, in consultation with the City Attorney's Office and the Human Resources Department prior to implementation. Departmental policies may be more stringent than this policy if there is a job-related reason for additional requirements. Departmental policies may not be less stringent than this policy and must not conflict with this policy.

Americans with Disabilities Act

Employees are not covered by the ADA while they are actively using drugs and/or alcohol, except for a clinical diagnosis of alcoholism. The City will comply with ADA as it relates to rehabilitating and rehabilitated employees.

VI. Use of Cannabis (medical marijuana), Recreational marijuana and CBD Oil

Despite recent changes in state level marijuana laws, the federal government regulates drugs through the Controlled Substances Act (CSA) (21 U.S.C. §811), which does not recognize the difference between medical and recreational use of cannabis. As such, the City of Durham maintains the right to prohibit the use, manufacture, dispensation, possession or distribution of all controlled substances and marijuana derived

Cannabidiol (CBD). CBD remains a Schedule I drug under the CSA as it is a “marijuana extract.” No prescriptions can be written for it in the United States; except for Epidiolex.

VI. Attachments

[Post-Accident Form](#)

[Substance Abuse Rehabilitation](#)

[Substance Abuse Policy Agreement](#)

[Reasonable Suspicion SOP](#)

[Reasonable Suspicion Checklist](#)

[Random Testing Positions](#)