

ADDENDUM C

DRUG AND ALCOHOL TESTING POLICY

1. POLICY STATEMENT

The City of Oklahoma City considers employees to be its most valuable resource. In this regard, the city is concerned about the health, safety, well-being and satisfactory work performance of all employees. Safety is a paramount concern of the City, and employees under the influence of illegal or controlled drugs and/or alcohol while at work constitutes a serious danger risk towards people and property and is in contradiction with the City's organizational values, which requires accountability to the residents of Oklahoma City.

The City will not tolerate substances in the workplace that interfere with or impair an employee's mental or physical capacity to perform their duties or cause risk to employees, property, or the public. Any employee found using, possessing, selling, distributing or under the influence of an illegal substance, alcohol, medical marijuana and/or a medical marijuana product, or other intoxicant during working hours, any time while on duty, or on city property, including buildings, parking lots and vehicles, will be subject to appropriate disciplinary action, up to and including termination.

An employee or knowing party shall report to a supervisor, Division Manager or Department Director any employee suspected of violating this policy and such supervisor or manager will take appropriate action.

The City of Oklahoma City will administer a program to educate employees regarding the hazards of substance abuse and to eliminate such abuse.

2. EFFECTIVE DATE

This addendum shall become effective ten (10) days following the date of this document.

3. AUTHORITY

This addendum is in accordance with OKLA. STAT. tit. 40, §551, et.seq.: The Oklahoma Standards for Workplace Drug and Alcohol Testing Act, OKLA. STAT. tit. 63, § 427.1, et. seq.: The Oklahoma Medical Marijuana and Patient Protection Act, 49 U.S.C. Sections 2717 and 1434 of the Federal Statutes and the Department of Transportation (D.O.T.) rules and regulations found at 49 CFR Part 40 and 49 CFR Parts 382, 391, and 392 and any amendments thereto. Drug or alcohol testing required by and conducted pursuant to federal law or regulation shall be exempt from the provisions of the Standards for Workplace Drug and Alcohol Testing Act.

4. SCOPE OF APPLICATION

This addendum shall apply to all employees covered by this collective bargaining agreement. Certain provisions of this addendum will apply specifically to employees who are under the Department of Transportation's commercial motor vehicle driver regulations and are directed at

those employees who are *required* to possess an Oklahoma Commercial Driver's License type A, B, or C.

5. POSTING REQUIREMENTS

In addition to its inclusion in the collective bargaining agreement, each department/division shall post a copy of this addendum in a prominent place, accessible to all employees and applicants. Each employee and applicant, upon receiving a conditional offer of employment, shall be provided a copy of this addendum.

6. EDUCATION

Employees have the right to know the dangers of substance abuse in the workplace, including the City's policy regarding substance abuse and available assistance concerning such abuse.

The City of Oklahoma City has an Employee Assistance Program available to its employees. Through the Employee Assistance Program (EAP), the City will institute an educational program for all employees concerning the dangers of substance abuse in the workplace. This education program will include the distribution of the Citywide policy regarding substance abuse, the danger of substance abuse in the workplace, and the penalties that will be imposed for substance abuse violations occurring while on duty and/or on City premises.

The City will also provide supervisory training to assist in identifying and addressing substance abuse in the workplace.

Employees who voluntarily participate in the EAP, or are required to participate as a condition of continued employment, will be referred on a *confidential basis*. Participation in an assistance program may be covered by the employee's health insurance plan. However, any costs associated with the employee's participation in an assistance/rehabilitation program which are not covered by the employee's insurance plan will be borne by the employee. Accrued leave may be used during the time an employee is participating in an in-patient treatment program. Leave without pay may be granted for those employees who have insufficient accumulated leave to complete the program.

7. DEFINITIONS

Alcohol - shall be defined as any beverage as defined by Oklahoma State Law, Title 37; including non-intoxicating beverages (i.e., 3.2 beer) as well as intoxicating beverages.

Alcohol Testing - shall mean the testing of the blood alcohol content by a breathalyzer instrument device or drawing or collecting a blood or serum sample and providing the laboratory analysis thereon.

Controlled Substances - shall be defined as those substances whose dissemination is controlled by regulation or statute (Oklahoma State Law, Title 63 and/or Section 202, Schedules I through V of the Federal Controlled Substance Act), including but not limited to, narcotics, depressants,

stimulants, hallucinogens, and cannabis.

Drug - shall be defined as any substance which impairs an employee's ability to perform his/her job or poses a threat to the safety of others. This definition includes over-the-counter drugs and/or drugs which require a prescription or other written approval from a licensed practitioner/physician or dentist for their use.

Drug Testing - shall normally be defined as the collection of a urine specimen by medical personnel and a laboratory analysis of that specimen. The initial drug screen will be a form of immunoassay identification with confirmation testing of any positive results with Gas Chromatography/Mass Spectrometry (GC/MS) or other reliable confirmation testing.

Employee Assistance Program - shall be defined as a professional counseling program designed to offer rehabilitative assistance to employees who need help in resolving their alcohol abuse or drug dependency problems. It shall be generally voluntary for the employee with inquiries limited to those persons who have a need to know as identified on the pre-enrollment waiver of confidentiality form.

Medical Marijuana Product – shall be defined as a product that contains cannabinoids that have been extracted from plant material or the resin therefrom by physical or chemical means and is intended for administration to a qualified patient including, but not limited to, oils, tinctures, edibles, pills, topical forms, gels, creams, vapors, patches, liquids, and forms administered by a nebulizer, excluding live plant forms which are considered medical marijuana.

Reasonable Belief- shall be defined as the quantity of proof or evidence that is more than a hunch, but less than probable cause. Reasonable belief must be based on specific, objective facts and any rationally derived inference from those facts about the conduct of an individual that would lead the reasonable person to suspect that an individual is or has been using drugs or coming to work under the influence. The types of objective facts may include, but are not limited to:

- (1.) Observable and articulable phenomena, such as physical symptoms or manifestations of being under the influence/impaired by drugs or alcohol while on duty or on City property (appearance, glassy or bloodshot eyes, slurred speech, odor of alcohol or marijuana, unsteady gait, poor coordination or reflexes, etc.), or the direct observation of such use while on duty or on City property;
- (2.) Reports of drug or alcohol use from reliable and credible sources which are independently corroborated;
- (3.) An accident in which there appeared to be negligence or carelessness;
- (4.) A flagrant violation of safety procedures;
- (5.) Two (2) consecutive days of AWOL (employee not reporting to work or calling in to the required authority to report his/her absence).

- (6.) Evidence that an individual has tampered with a drug or alcohol test.

Reliable Informant - shall be defined as one who has firsthand knowledge of an employee's alcohol, drug, or controlled substance problem, and who discloses this to the supervisor/manager.

Safety Sensitive – shall be defined as any job that includes tasks or duties that the City reasonably believes could affect the safety and health of the employee performing the task or others. Jobs within the City meeting the safety sensitive designation are noted as such in the official job description maintained by the Human Resources Department. Employees who hold a position defined as safety sensitive shall sign an acknowledgment that they are in such a position in which they can be subject to disciplinary action up to and including termination if they test positive for marijuana components or metabolites, even if they possess a valid medical marijuana license. Employees in safety sensitive positions who test positive for marijuana components or metabolites and have a valid medical marijuana license but have not signed an acknowledgment will not be subject to disciplinary action, but will be removed from any safety sensitive duties until completion of a mandatory referral to the EAP; such employees will be subject to random or periodic drug post-rehabilitation testing for two (2) years from completion of the EAP. City shall furnish AFSCME with a list of all job classifications in each Department that it has classified as safety sensitive.

Under the Influence or Impaired - shall be defined as behavior which may limit an employee's ability to safely and efficiently perform his/her job duties, or poses a threat to his/her safety or the safety of others.

8. DRUG/ALCOHOL TESTING

The City of Oklahoma City will administer testing in the following situations:

8.1. Pre-Placement Testing

All external applicants for regular full-time or part-time/temporary positions and employees who promote into positions that are involved in safety sensitive occupations, required to operate City equipment or vehicles and/or required to have a Class A, B, or C, commercial driver's license, shall undergo drug and/or alcohol testing prior to assignment. *Such notice shall be placed in each applicable job bulletin.*

- a. Job applicants shall only be tested after a conditional offer of employment is made.
- b. Refusal to undergo a test, or a confirmed positive test, shall result in a withdrawal of a conditional offer of employment.

8.2 For Cause Testing

- a. "For Cause" testing shall be initiated after the circumstances are properly reviewed and agreed upon by at least two (2) management level personnel. However, only one manager/supervisor is necessary to require an employee to submit to drug/alcohol testing if the

supervisor observes the employee ingest, smoke, or use what is reasonably believed to be a controlled dangerous substance or alcohol. Managers/supervisors are prohibited from demanding or encouraging drug or alcohol testing without reasonable belief.

b. The employee must be prohibited from working or continuing to work.

c. Written documentation of the manager/supervisor's observations leading to a drug and/or alcohol test shall be created within 24 hours after the observation and forwarded to the City's Human Resources Department. Additionally, whenever possible, the manager/supervisor should communicate the basis for the reasonable belief to an Assistant Municipal Counselor or the Chief Human Resources Officer/designee, prior to requiring such test. The employee shall have the right to notify their Union representative and have representation present at the testing facility.

d. The employee shall be transported immediately to the designated testing facility by a manager/supervisor. Prior to testing, the employee will be required to sign a drug/alcohol testing consent form at the sample collection site. Failure or refusal to sign the consent form and to submit to testing will be cause for a conclusion of an adverse inference relative to the employee being under the influence, as well as a charge of insubordination, and the appropriate disciplinary action, up to and including termination, will be administered.

The employee shall not be permitted to return to work prior to receiving the results of the drug/alcohol test. The manager/supervisor shall make arrangements for safe transportation to the employee's residence or a place selected by a relative or friend of the employee.

e. The Occupational Health Manager, located at the City's designated medical facility, shall receive and retain all drug and alcohol testing related information, and provide the results to the appropriate division within the Human Resources Department. Drug/alcohol test results will only be disclosed to those persons who have a "need to know".

Willful disclosure of test results to persons not involved in the disciplinary procedure or who do not have a need to know, may result in appropriate disciplinary action, up to and including termination.

f. If the results of the drug/alcohol test prove to be negative, any time off work without pay shall be returned to the employee. If the drug/alcohol test prove to be positive, any unpaid time off work will be assessed in the final disposition of discipline.

8.3 Random and Scheduled Period Testing

Certain classifications of employees, as delineated in Section 8.3 (b) below shall be required to undergo drug and/or alcohol testing on a random selection basis or on a scheduled periodic basis.

a. The City may not waive the selection of any employee who has been selected on a random selection basis or who is scheduled for periodic testing.

b. Random and/or scheduled periodic testing shall include those employees who:

1. Are employed in safety-sensitive positions as designated on an approved job description.
 2. Are required to participate in and complete a mandatory EAP referral as a condition of continued employment.
- c. Those employees subject to drug and alcohol testing as a commercial motor vehicle driver under Department of Transportation (D.O.T.) regulations shall be tested per those regulations:
1. the initial minimum yearly percentage rate for random alcohol testing shall be twenty-five percent (25%) of all drivers;
 2. the initial minimum yearly percentage rate for random controlled substances testing shall be fifty percent (50%) of the average number of drivers;
 3. yearly percentage standards shall be subject to change based on current D.O.T. regulations.
- d. Other City employees shall be tested at a frequency rate determined appropriate by the City in consideration of State law, other legal requirements, or administrative regulations.
- e. Each employee selected for random drug or alcohol testing shall proceed to or be transported to the testing facility immediately upon notification to the manager/supervisor, unless the employee is engaged in a safety sensitive function, as determined by management, at the time of notification, which will not reasonably allow their replacement. In such cases, the manager/supervisor shall ensure the employee proceeds to the testing facility as soon as reasonably possible.

8.4 Post-Accident Testing

Post-accident drug or alcohol testing shall be conducted on City employees only in situations where there has been damage to property, an actual (work-related) injury to an employee or third party, or there exists reasonable belief (as defined in Section 7 above) that the accident, injury or damage was a direct result of the employee's use of drugs or alcohol (except as noted in subsections 8.4 (a) and (b)).

- a. Employees subject to D.O.T. commercial motor vehicle driver regulations who suffer a vehicle accident during operation of a commercial motor vehicle, shall be tested for alcohol and controlled substances as soon as possible after an accident if:
1. the accident involved the loss of human life; and/or
 2. the driver receives a citation within 8 hours of the occurrence under state or local law for a moving traffic violation arising from the accident, if the accident involved:
 - a) bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - b) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

b. If such testing cannot be administered within two hours of an accident, the manager/supervisor shall prepare and maintain a written record of the reasons. After eight (8) hours, such efforts to administer testing shall cease and a copy of the written record shall be forwarded to the City's Occupational Health Manager.

8.5 Post Rehabilitation Testing

The City of Oklahoma City may require an employee to undergo drug or alcohol testing without prior notice for a period of two (2) years after the employee's return to work following a confirmed positive test, or following participation in a drug or alcohol dependency treatment program attended on a mandatory basis as a condition of continued employment.

a. Post-rehabilitation testing shall be conducted in addition to any other testing the employee is subject to under this policy.

9. CHALLENGING TEST RESULTS

Employees wishing to challenge the results of the City's test must:

- a. Do so at their own expense;
- b. Do so in accordance with the Oklahoma Standards for Workplace Drug and Alcohol Act.

10. SUBSTANCES FOR WHICH TESTS MAY BE GIVEN (INCLUDES THE RELATED METABOLITES)

- a. Ethyl Alcohol or Ethanol (beer, liquor, etc.)
- b. Cannabinoids or Marijuana
- c. Cocaine (including crack)
- d. Amphetamines, Methamphetamines (including speed and MDMA)
- e. Opioids (including morphine, codeine, heroin, hydrocodone, hydromorphone, oxycodone, oxymorphone, dilaudid, percodan)
- f. Phencyclidine (PCP)

Threshold reporting levels shall be those established and maintained by the Federal Department of Transportation and as utilized by the National Institute for Drug Abuse (NIDA) or Oklahoma law. Any positive levels below those established reporting levels shall not be reported to the Medical Review Officer by the testing laboratory.

11. DRUG OR ALCOHOL TESTING METHODS AND DOCUMENTATION

Collections, storage, transportation, and testing procedures shall be conducted in accordance with rules established by the Oklahoma State Board of Health and applicable Federal Statutes and regulations including the following:

- a. Employees must present a picture I.D. (Oklahoma Driver's License or City identification card, etc.) or be accompanied by an exempt supervisor/manager who can provide identification as the employer representative to the Medical testing personnel representative prior to testing, as required by NIDA regulations.
- b. Testing facilities shall meet the qualifications and standards of and be licensed by the State Department of Health.
- c. Samples shall be collected only by those persons "*deemed qualified*" by the State Board of Health and appropriate labeling of samples shall occur so as to reasonably preclude the probability of erroneous identification of test results.
- d. Body component samples that are appropriate for drug and alcohol testing shall be collected with due regard to the privacy of the individual being tested. In no case shall the City's representative directly observe the collection of a urine sample.
- e. A written record of the chain of custody of the sample shall be maintained until the sample is no longer required.
- f. An applicant or employee shall be given the opportunity to provide notification of any information which they consider relevant to the test, including currently or recently used drugs or other relevant information, at the time the sample is taken.
- g. Reporting levels utilized for identification of positive substance abuse results shall be those levels established by the Federal Department of Transportation.

An employee who is found to have a positive drug test may designate an appropriate testing facility to which the split sample shall be sent for repeat testing. Such testing facility must also meet the standards of this section.

12. COSTS ASSOCIATED WITH TESTING

The City of Oklahoma City is responsible for costs associated with drug or alcohol testing. However:

- a. If an employee requests a retest to challenge the findings of a confirmed positive test, the employee is responsible for the cost of the test, unless that test reverses the findings of the previous positive test, in which case the City of Oklahoma City is responsible for the cost.
- b. Any test of a current employee must be performed during or immediately after the employee's scheduled work period and is deemed as compensable work time as applicable under the Fair Labor Standards Act (FLSA).

13. REFUSAL TO UNDERGO TESTING/TAMPERING WITH SAMPLE

Employees refusing to undergo testing according to the terms of this policy shall be subject to disciplinary action, up to and including termination. Employees found supplying or attempting to supply an altered sample or a substitute sample, not their own, by alternative means, shall be subject to disciplinary action, up to and including termination.

14. MEDICAL REVIEW OFFICER

The City of Oklahoma City shall engage the services of a State Board of Health qualified Medical Review Officer.

- a. The Medical Review Officer shall receive test results from the testing facility and evaluate those results in conjunction with the subject employee and/or applicant.
- b. Upon receiving a confirmed positive test result the Medical Review Officer shall contact the applicant or employee prior to notification of City officials. The applicant or employee shall be given the opportunity to explain the test results such as possession of a medical marijuana license or drug prescription.

15. CONFIDENTIALITY

The City of Oklahoma City shall comply with all provisions of the Workplace Drug and Alcohol Testing Act, including confidentiality and shall treat all tests and all information related to such tests, including interviews, memoranda, reports, and statements as confidential.

- a. All records relating to drug/alcohol testing shall be kept separated from personnel records.
- b. Such records may not be used in any criminal proceeding or civil or administrative action, except in actions taken by the City of Oklahoma City or otherwise involving the subject employee and the City, unless there is a valid court order authorizing the release of such records.
- c. Records shall be the property of the City of Oklahoma City and will be made available to the affected applicant or employee for inspection and copying upon request.
- d. Records may not be released to any person other than the applicant or employee without the applicant or employee's expressed written permission, or if otherwise required by law.
- e. Employees within supervisory or management positions shall be responsible for compliance with this policy. They shall also ensure that employees seeking treatment or within rehabilitation processes are treated fairly and appropriately as concerns their job rights and job security. Additionally, supervisors/managers shall ensure that all reasonable efforts are made to allow for confidential handling of diagnosis and treatment of employees with substance abuse problems.

16. DISCIPLINARY ACTION

The City of Oklahoma City shall not take disciplinary action against an employee who tests positive for drugs or alcohol unless the test results are confirmed by a second test performed on the same sample, using one of the methods prescribed by the Oklahoma Standards for Workplace Drug and Alcohol Testing Act.

a. A non-probationary employee with a previously satisfactory work record may be given only one opportunity to continue employment after an initial occurrence of a positive drug or alcohol test, where such testing was required by the City of Oklahoma City.

b. Continued employment, if offered, shall be contingent upon the employee agreeing, in writing, to undergo random or periodic drug and/or alcohol post-rehabilitation testing for two (2) years and satisfactorily participating and completing the Employee Assistance Program. If in-patient rehabilitation treatment is required, the employee may be permitted to use leave permitted under the Family and Medical Leave Act (FMLA), which includes accrued vacation leave, sick leave, and compensatory time.

c. If an employee tests positive for drugs or alcohol, said employee may be subject to suspension, demotion, or termination following a pre-determination hearing. In addition to the alleged offenses, 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.

17. PROHIBITIONS

a. No employee shall report for duty within four (4) hours after using alcohol or remain on duty while having a blood alcohol concentration of 0.02 or greater, and no supervisor/manager shall knowingly permit any employee to perform any work duties if the supervisor/manager is aware the employee has an alcohol concentration of 0.02 or greater. No employee shall be on duty or operate a City vehicle or perform job duties while under the influence of alcohol nor shall the employee be in possession of alcohol during such duty time or while on City premises.

b. No employee shall report for duty, drive a City owned vehicle or equipment, or remain on duty when the employee has used any drug or controlled substance, except when the use is pursuant to the instructions of a licensed practitioner/physician or dentist, and the licensed practitioner/physician or dentist has advised the employee that the substance will not adversely affect his/her ability to perform his/her job duties. It is the employee's responsibility to notify his/her supervisor that he/she is taking a drug or controlled substance which may impact his/her ability to operate a vehicle or other City equipment. No manager/supervisor possessing such knowledge shall permit an employee to drive/operate any City equipment or vehicle.

c. No employee required to take a post-accident test shall use alcohol for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.