

CITY OF CATHEDRAL CITY		HR-AP 10	
ADMINISTRATIVE POLICY			
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			Revised 11/23/2020

SUBJECT

POLICY AGAINST SUBSTANCE ABUSE IN THE WORKPLACE FOR EMPLOYEES IN SAFETY SENSITIVE POSITIONS

PURPOSE

The City of Cathedral City recognizes that the use of alcohol, drugs, and controlled substances in the workplace is not conducive to safe working conditions. In order to promote a safe, healthy, and productive work environment for all employees and the public, it is the City's objective to have a work force that is free from the influence of substance abuse.

This policy also is intended to comply with all applicable federal regulations governing workplace anti-drug programs and safety sensitive employees. The federal Drug-Free Workplace Act of 1988 and similarly, the California Drug-Free Workplace Act of 1990 requires the establishment of drug free workplace policies and the reporting of certain drug-related offenses to the federal Department of Transportation (DOT). Also, the Federal Transportation Administration and Federal Motor Carrier Safety Administration (FMCSA) of the DOT has enacted regulations that mandate urine drug testing and breathalyzer alcohol testing for safety sensitive positions and prevent performance of safety sensitive functions where there is a positive test result. The DOT also has set standards for the collection and testing of urine and breath specimens. On January 6, 2020 the FMCSA enacted the Drug and Alcohol Clearinghouse requiring carriers to report FMCSA failed testing and test refusals, along with requiring to query the Clearinghouse when making new hires/promotions and once annually for current drivers.

Employees shall be asked to sign a statement certifying that he/she has received a copy of this policy and understands its contents. Any questions regarding rights and obligations under this Policy shall be referred to the employee's supervisor, Department head, or Human Resources Manager.

Employees shall also be asked to consent for the City of Cathedral City to conduct a query of the Clearinghouse.

This policy complies with 49 CFR Part 655, as amended, 49 CFR Part 382, as amended, and 49 CFR Part 40, as amended. Copies of Parts 655, 382, and 40 are available in the drug and alcohol program manager's office and can be found on the internet at the Department of Transportation (DOT) Office of Drug and Alcohol Policy and Compliance website <http://www.dot.gov/odapc>.

All covered employees are required to submit to drug and alcohol tests as a condition of employment in accordance with these regulations.

COVERED EMPLOYEES

This policy applies to every person whose position requires the possession of a commercial driver's license (CDL); every employee performing a "safety-sensitive function" as defined below, and any person applying for such positions.

Under FMCSA (49 CFR Part 382), you are a covered employee if you operate (i.e., drive) a Commercial Motor Vehicle (CMV) with a gross vehicle weight rating (gvwr) of 26,001 or more pounds; or is designed to transport 16 or more occupants (to include the driver); or is of any size and is used in the transport of hazardous materials that require the vehicle to be placarded.

Safety-sensitive function under Part 382 means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

- Driving a commercial motor vehicle which requires the driver to have a CDL
- Waiting to be dispatched to operate a commercial motor vehicle
- Inspecting, servicing, or conditioning any commercial motor vehicle
- Performing all other functions in or upon a commercial motor vehicle (except resting in a sleeper berth)
- Loading or unloading a commercial motor vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloading, remaining in readiness to operate the vehicle, or giving or receiving receipts for shipments being loaded or unloaded
- Repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle

Under FTA (49 CFR Part 655), you are a covered employee if you perform any of the following safety-sensitive functions for an entity subject to Part 655:

- Operating a revenue service vehicle, in or out of revenue service
- Operating a non-revenue vehicle requiring a commercial driver's license
- Controlling movement or dispatch of a revenue service vehicle
- Maintaining (including repairs, overhaul and rebuilding) of a revenue service vehicle or equipment used in revenue service
- Carrying a firearm for security purposes

An employee is considered to be performing a safety sensitive function during any period in which that employee is actually performing, ready to perform, or immediately available to perform any safety sensitive function, including off-site lunch periods and breaks.

PROHIBITED CONDUCT

All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in Part 40.

- marijuana
- cocaine
- phencyclidine (PCP)
- opioids
- amphetamines

All covered employees are prohibited from performing or continuing to perform safety-sensitive functions while having an alcohol concentration of 0.02 or greater.

All covered employees are prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. If the on-call employee claims the ability to perform his or her safety-sensitive function, he or she must take an alcohol test prior to performance.

All covered employees are prohibited from consuming alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

All covered employees are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

Being under the influence of alcohol, drugs, or any controlled substances while subject to being called to duty, including stand-by time.

Directly or through a third party, manufacturing, selling, distributing, dispensing, otherwise attempting to manufacture, sell, or distribute alcohol, drugs, or controlled substances during work hours, including rest breaks or while on City premises.

Use of City property or premises to manufacture, sell, or distribute alcohol, drugs, or controlled substances.

Absence or tardiness as a result of having been under the influence of alcohol, drugs, or controlled substances during non-work time.

CONSEQUENCES FOR VIOLATIONS

1. FTA Consequences

Following a positive drug or alcohol (BAC at or above 0.04) test result or test refusal, the employee will be immediately removed from safety-sensitive duty and referred to a Substance Abuse Professional.

Following a BAC of 0.02 or greater, but less than 0.04, the employee will be immediately removed from safety-sensitive duties for at least eight hours unless a retest results in the employee's alcohol concentration being than 0.02.

2. FMCSA Consequences

Following a positive drug or alcohol (BAC at or above 0.04) test result or test refusal, the employee will be immediately removed from safety-sensitive duty and referred to a Substance Abuse Professional (SAP).

Following a BAC of 0.02 or greater, but less than 0.04, the employee will be immediately removed from safety-sensitive duties until the start of the employee's next regularly scheduled duty period, but not less than 24 hours following administration of the test. (If any other consequence, ensure bold text is used)

CIRCUMSTANCES FOR TESTING

1. Pre-Employment Testing

Pre-employment alcohol tests are conducted after making a contingent offer of employment or transfer. All pre-employment alcohol tests will be conducted using the procedures set forth in 49 CFR Part 40.

A negative pre-employment drug test result is required before an employee can first perform safety-sensitive functions. If a pre-employment test is cancelled, the individual will be required to undergo another test and successfully pass with a verified negative result before performing safety-sensitive functions.

If a covered employee has not performed a safety-sensitive function for 90 consecutive calendar days, and has not been in the random testing pool during that time, the employee must take and pass a pre-employment test before he or she can return to a safety-sensitive function.

A covered employee or applicant who has previously failed or refused a DOT pre-employment drug and/or alcohol test must provide proof of having successfully completed a referral, evaluation, and treatment plan meeting DOT requirements.

FMCSA Drug Testing Exceptions - A driver is not required to undergo a pre-employment test if:

- (1) The driver has participated in a DOT testing program within the previous 30 days; and
- (2) While participating in that program, either:

- (i) Was drug tested within the past six months (from the date of application with City of Cathedral City), or
- (ii) Participated in the random drug testing program for the previous 12 months (from the date of application with City of Cathedral City); and
- (3) City of Cathedral City can ensure that no prior employer of the driver of whom City of Cathedral City has knowledge has records of a violation of this part or the controlled substances use rule of another DOT agency within the previous six months

2. Reasonable Suspicion Testing

All covered employees shall be subject to a drug and/or alcohol test when the City has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing will be made by a trained supervisor or other trained manager based on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee.

Covered employees may be subject to reasonable suspicion drug testing any time while on duty. Covered employees may be subject to reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

3. Post-Accident Testing

a. FTA Procedures

Covered employees shall be subject to FTA post-accident drug and alcohol testing under the following circumstances:

Fatal Accidents

As soon as practicable following an accident involving the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee operating the public transportation vehicle at the time of the accident. In addition, any other covered employee whose performance could have contributed to the accident, as determined by City of Cathedral City using the best information available at the time of the decision, will be tested.

Non-fatal Accidents

As soon as practicable following an accident not involving the loss of a human life, drug and alcohol tests will be conducted on each covered employee operating the public transportation vehicle at the time of the accident if at least one of the following conditions is met:

- (1) The accident results in injuries requiring immediate medical treatment away from the scene, and the covered employee may have contributed to the accident

- (2) One or more vehicles incurs disabling damage and must be towed away from the scene, and the covered employee may have contributed to the accident
- (3) The vehicle is a rail car, trolley car or bus, or vessel, and is removed from operation, and the covered employee may have contributed to the accident

In addition, any other covered employee whose performance could have contributed to the accident, as determined by the City using the best information available at the time of the decision, will be tested.

A covered employee subject to post-accident testing must remain readily available, or it is considered a refusal to test. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

b. FMCSA Procedures

Covered employees shall be subject to FMCSA post-accident drug and alcohol testing under the following circumstances:

Fatal Accidents

As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, and involving the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee who was performing safety-sensitive functions with respect to the vehicle.

Non-fatal Accidents

As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, and not involving the loss of a human life, an alcohol test will be conducted on each driver who receives a citation within eight (8) hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if:

- (1) The accident results in injuries requiring immediate medical treatment away from the scene; or
- (2) One or more motor vehicles incur disabling damage and must be transported away from the scene by a tow truck or other motor vehicle.

As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, and not involving the loss of a human life, a drug test will be conducted on each driver who receives a citation within thirty-two (32) hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if:

- (1) The accident results in injuries requiring immediate medical treatment away from the scene; or

- (2) One or more motor vehicles incur disabling damage and must be transported away from the scene by a tow truck or other motor vehicle.

A covered employee subject to post-accident testing must remain readily available, or it is considered a refusal to test. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

4. Random Testing

Random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year. Random testing will be conducted at all times of the day when safety-sensitive functions are performed.

Testing rates will meet or exceed the minimum annual percentage rate set each year within each DOT agency. The current year testing rates can be viewed online at <http://www.dot.gov/odapc/random-testing-rates>. If a given driver is subject to random testing under the rules of more than one DOT agency, the driver will be subject to random drug and alcohol testing at the annual percentage rate established by the DOT agency regulating more than 50% of the driver's function.

The selection of employees for random drug and alcohol testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator. Under the selection process used, each covered employee will have an equal chance of being tested each time selections are made.

A covered employee will only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

Each covered employee who is notified of selection for random drug or random alcohol testing must immediately proceed to the designated testing site.

Random testing under the FTA may occur anytime an employee is on duty so long as the employee is notified prior to the end of the shift. Employees who provide advance, verifiable notice of scheduled medical or child care commitments will be random drug tested no later than three hours before the end of their shift and random alcohol tested no later than 30 minutes before the end of their shift. Verifiable documentation of a previously scheduled medical or child care commitment, for the period immediately following an employee's shift, must be provided at least [City decides how far in advance they must be notified] hours before the end of the shift.

5. Return to Duty Testing

Any employee who is allowed to return to safety-sensitive duty after failing or refusing to submit to a DOT drug and/or alcohol test must first be evaluated by a substance abuse professional

(SAP), and provide a negative drug and/or alcohol test result. All tests will be conducted in accordance with 49 CFR Part 40, Subpart O.

6. Follow-up Testing

Employees returning to safety-sensitive duty following leave for substance abuse rehabilitation will be required to undergo unannounced follow-up alcohol and/or drug testing for a period of one (1) to five (5) years, as directed by the SAP. The duration of testing will be extended to account for any subsequent leaves of absence, as necessary. The type (drug and/or alcohol), number, and frequency of such follow-up testing shall be directed by the SAP. All testing will be conducted in accordance with 49 CFR Part 40, Subpart O.

TESTING PROCEDURES

All FTA drug and alcohol testing will be conducted in accordance with 49 CFR Part 40, as amended. The procedures regarding alcohol and drugs testing will be provided upon employee request to the Human Resources Manager. Analytical urine controlled substance testing and breath testing for alcohol will be conducted as required under the DOT guidelines.

TEST REFUSALS

As a covered employee, you have refused to test if you:

- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the City.
- (2) Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
- (3) Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
- (4) In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
- (5) Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
- (6) Fail or decline to take a second test as directed by the collector or City for drug testing.
- (7) Fail to undergo a medical evaluation as required by the MRO or City's Designated Employer Representative (DER).
- (8) Fail to cooperate with any part of the testing process.
- (9) Admit to the adulteration or substitution of a specimen to the collector or MRO.
- (10) Fail to remain readily available following an accident.

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

As a covered employee, if you refuse to take a drug and/or alcohol test, you incur the same consequences as testing positive and will be immediately removed from performing safety-sensitive functions, and referred to a SAP.

PRESCRIPTION DRUG USE

No prescription drug shall be possessed or used by an employee other than the employee for whom the drug is prescribed by a licensed medical practitioner. A prescription drug shall be used only in the manner, combination, and quantity prescribed. An employee must advise his/her supervisor of the use or influence of any prescription drug prior to beginning work, when taking the medication or drug could interfere with the safe and effective performance of duties, or the operation of a City vehicle or heavy machinery, such that the employee poses a direct threat to the health and safety of himself/herself or others.

An employee's failure to provide this notice in a timely manner can result in discipline, up to and including termination. In the event there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from a qualified physician may be required.

NOTIFYING THE CITY OF ANY CRIMINAL DRUG STATUTE CONVICTION

In accordance with the Drug-Free Workplace Act of 1988, an employee must immediately notify the City of any criminal drug statute conviction of a violation that occurred in the workplace no later than five days after such conviction. Any employee who fails to provide this notice will be subject to discipline, up to and including termination.

CONSEQUENCES FOR VIOLATION OF THIS POLICY

1. Discipline

Any violation of this Policy may result in discipline, up to, and including termination. Discipline may be imposed regardless of whether or not an employee is convicted of any crime related to any violation of this Policy.

Any violation of this Policy that may constitute criminal conduct or violation of the DOT regulations may be reported to the appropriate law enforcement agencies and/or subject the employee to civil penalties.

2. Removal from Work Site

Employees reasonably believed to be under the influence of alcohol, drugs, or controlled substances shall be immediately prevented from engaging in further work and shall be detained for a reasonable time until they can be safely transported from the work site.

3. Removal of Safety Sensitive Functions

An employee whose alcohol test indicates an alcohol concentration level between .02 and .04 will be removed from his/her safety sensitive position for at least 24 hours. An employee whose alcohol test indicates an alcohol concentration level greater than .04 will be removed from his or her safety sensitive position for a period to be determined by the Department head, or Human Resources Manager.

If an employee tests positive for drugs or controlled substances, the employee may not perform safety sensitive functions until satisfying the following requirements:

- a. The employee must be retested and receive a verified negative result; and
- b. When referred to a Substance Abuse Professional, the employee must complete any course of rehabilitation and submit to a return-to-duty test, as developed with the assistance of the Substance Abuse Professional. The City is not required to pay for this type of treatment. [Note to Employer: this is subject to any existing management labor agreements and health care benefits. 49 C.F.R. § 40.289.]

A Substance Abuse Professional is a licensed physician, psychologist, social worker, or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol, drug, and controlled substance abuse disorders.

4. Termination for Inability to Perform Essential Functions

After the City has complied with any legal obligation to reasonably accommodate an employee's protected disability, the City may terminate an employee who is unable to perform the essential functions of the job.

RECORDS KEEPING AND CONFIDENTIALITY

The City is obligated to maintain records of the administration, including violations, of this Policy for a period of five years.

Any laboratory reports and test results shall not appear in an employee's general personnel folder but will be contained in a separate, confidential medical folder that will be securely kept under the control of the Human Resources Manager. The report or test results may be disclosed to City management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur under the following situations:

1. When the information is compelled by law or by judicial or administrative process;
2. When the information has been placed at issue in a formal dispute between the employer and employee;
3. When the information is to be used in administering an employee benefit plan; or

4. When the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.
5. When requested by the DOT or any state or local officials with regulatory authority over the City or any of its safety sensitive employees.

REHABILITATION

The City encourages employees to use City-sponsored employee assistance programs voluntarily to assist them in resolving any alcohol, drug, or controlled substance abuse problems. Employees should contact their supervisor, Department head, or Human Resources Manager for additional information, including further information concerning the dangerous effects of alcohol misuse and drug use on an employee's health, work, and personal life. The City is committed to providing reasonable accommodation to those employees whose alcohol or drug abuse problem classifies them as disabled under federal and/or state law.

While the City will be supportive of those who seek help voluntarily, the City will be firm in identifying and disciplining those who continue to be substance abusers and who do not seek help or continue substance abuse even while enrolled in counseling or rehabilitation programs. Therefore, the City may require employees to use employee assistance programs, and in addition to mandatory referrals to a Substance Abuse Professional where applicable.

**ACKNOWLEDGMENT OF RECEIPT OF
POLICY ON ALCOHOL POLICY PURSUANT TO THE DEPARTMENT OF TRANSPORTATION
REGULATIONS**

Name of Employee: _____

I hereby certify receipt of The City of Cathedral City's Policy on Alcohol Policy Pursuant to The Department of Transportation Regulations, I fully understand and agree to comply with its provisions. I further understand that my refusal to sign this statement and/or agree to comply with said Policy may subject me to disciplinary action, up to and including termination.

Employee's Signature: _____ Date: _____

**GENERAL CONSENT FOR QUERIES OF THE FEDERAL MOTOR CARRIER SAFETY
ADMINISTRATION (FMCSA) DRUG AND ALCOHOL CLEARINGHOUSE**

I, _____, hereby provide consent to the City of Cathedral City to conduct annual queries.

I understand that if the query conducted by the City of Cathedral City indicates that drug or alcohol violation information about me exists in the Clearinghouse, FMCSA will not disclose that information to City of Cathedral City without first obtaining additional specific consent from me.

I further understand that if I refuse to provide consent for the City of Cathedral City to conduct a query of the Clearinghouse, the City of Cathedral City must prohibit me from performing safety-sensitive functions, including driving a commercial motor vehicle, as required by FMCSA's drug and alcohol program regulations.

Employee's Signature: _____ Date: _____

(To be placed in employee's personnel file)