

Drug-and Alcohol- Free Workplace

605.1 PURPOSE AND SCOPE

The purpose of this policy is to establish clear and uniform guidelines regarding drugs and alcohol in the workplace (41 USC § 8103).

605.2 POLICY

It is the policy of the City to provide a drug- and alcohol-free workplace for all employees.

The City is committed to providing a safe work environment and to fostering the well-being and health of its employees and the general public. That commitment is jeopardized when any City employee illegally uses drugs, abuses prescription drugs, or uses alcohol on the job; comes to work under the influence; or possesses, distributes, or sells drugs in the workplace. For these reasons the City has decided to implement an Alabama Drug-Free Workplace Policy. Adherence with this policy is a condition of employment at the City, and all employees, final applicants, and independent contractors/contractor employees working on the property of the City will be required to execute the applicable consent forms. An employee whose conduct violates this policy will be subject to discipline, up to and including termination. This policy is not contractual in any nature.

Elected and Appointed Officials of City of Fort Payne, who are not otherwise classified as employees of the City, are not subject to this policy. This includes the Mayor and City Council members, City Attorney, City Court Judge, City Prosecutor and City Public Defender. Other contracted professionals or consultants are also exempted.

Adherence to the City's policy on drugs and alcohol is a condition of employment for all employees. All employees will be required to sign the applicable acknowledgment form and to consent to this policy.

605.3 DEFINITIONS

ACCIDENT - Any reportable incident involving injury to person or persons, or damages to public or private property in excess of \$200 in total value, or such damage to public or private property, regardless of value; that in the opinion of the supervisor and at his/her discretion, the employee's judgment in the incident is questionable and testing is warranted. This includes incidents reportable to workman's compensation, even if medical attention is not required.

Safety-sensitive job classifications - those employees who discharge duties so fraught with risks of injury to themselves or others, or have financial responsibilities, that even a momentary lapse of attention can have consequences detrimental to personal well-being or to the public good. Factors which have been considered in determining whether a position is safety- sensitive include: handling of potentially dangerous machinery or equipment, performing emergency life-saving measures, administering medical treatment, having arrest powers and authorization to use injurious or deadly force, having mostly unsupervised responsibility for children, involvement in

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financial accounting or responsibility for sums of cash, and handling of hazardous substances in an environment where others could be injured, etc. The City has performed a review of the job duties for each job classification and determined that the following are classified as safety-sensitive for purposes of it's Alabama Drug- Free Workplace Program:

All City employment positions except:

- (a) **Administration:**
 - 1. License Inspector, part time.
 - 2. Fischer Senior Program Assistant, part time
- (b) **Terminal manager:**
 - 1. Inspections and Planning:
 - 2. Code Assistant, part time Receptionist/Secretary
- (c) **Recreation:**
 - 1. Concessions and gate workers, part time
- (d) **Street Department:**
 - 1. Dispatcher

605.4 GENERAL GUIDELINES

Alcohol and drug use in the workplace or on city time can endanger the health and safety of city employees and the public.

Employees who have consumed an amount of an alcoholic beverage or taken any medication, or combination thereof, that would tend to adversely affect their mental or physical abilities shall not report for work. Affected employees shall notify an appropriate supervisor as soon as they are aware of an inability to report to work. If the employee is unable to make the notification, every effort should be made to have a representative contact the supervisor in a timely manner. If the employee is adversely affected while at work, the employee shall be immediately removed and released from work (see the Work Restrictions section in this policy).

605.4.1 USE OF MEDICATIONS

Any employee taking a prescribed or over-the- counter narcotic or drug that contains any warning of side effects causing mental or physical impairment must advise his or her supervisor of its use if disclosure would be required by job-relatedness and consistent with business necessity. Such prescriptions brought to work should remain in the original labeled container and show both the prescribing doctor's name and the prescription's expiration date. An employee using such prescribed or over-the counter substances may remain on his or her job or may be required to take a leave of absence or other appropriate action as determined by supervision based upon job-relatedness and consistent with business necessity. An employee or job applicant shall be allowed to provide confidential notice to the Human Resources Department of currently or recently used prescription or nonprescription drugs. Such information shall be placed in writing upon the

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employee's personal copy of the lab's drug testing records form as a reference should HR contact the employee.

605.4.2 MEDICAL CANNABIS

Possession, use, or being under the influence of medical cannabis during work hours is prohibited and may lead to disciplinary action.

605.5 EMPLOYEE RESPONSIBILITIES

Employees shall report for work in an appropriate mental and physical condition. Employees are prohibited from purchasing, manufacturing, distributing, dispensing, possessing, or using controlled substances or alcohol on city premises or on city time (41 USC § 8103). That also includes any equipment, products, and materials which are used, intended for use, or designed for use with non-prescribed controlled substances, while on the City's property or during work hours. The lawful possession or use of prescribed medications or over-the-counter remedies is excluded from this prohibition.

Employees shall notify a supervisor immediately if they observe behavior or other evidence that they believe demonstrates that a fellow employee is impaired during work hours due to drug or alcohol use.

Employees are required to notify their immediate supervisors of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction (41 USC § 8103).

Any employee who loses rights to perform his/her duties due to an alcohol-related conviction (such as revocation of CDL license) must report the conviction to the City within five calendar days after the conviction. Under no circumstances should the employee operate a City vehicle after notice of revocation of his/her license. A minimum result would be a demotion or transfer and a corresponding reduction in pay.

"On-call" employees are prohibited from using alcohol for the specific on-call hours of that employee. The City will provide an opportunity for each such on-call employee to acknowledge the use of alcohol at the time he/she is called to report for duty, and it is the employee's responsibility to inform his/her supervisor at the earliest possible time of any potential impairment from alcohol. Paid "standby" employees are considered on-duty employees, and all policy regulations governing drug or alcohol use fully apply during their standby period.

605.6 EMPLOYEE ASSISTANCE PROGRAM

There may be available a voluntary employee assistance program to assist those who wish to seek help for alcohol and drug problems (41 USC § 8103). Insurance coverage that provides treatment for drug and alcohol abuse also may be available. Employees should contact the Mayor or the Human Resources Department, their insurance providers, or the employee assistance program for

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additional information. It is the responsibility of each employee to seek assistance before alcohol or drug problems lead to performance problems.

Employees with drug or alcohol problems that have not resulted in, and are not the immediate subject of, disciplinary action may request approval to take unpaid time off to participate in a rehabilitation or treatment program through the City's health insurance benefit coverage. Leave may be granted if the employee agrees to abstain from use of the problem substance; abides by all the City policies, rules, and prohibitions relating to conduct in the workplace; and if granting the leave will not cause the City any undue hardship.

The City recognizes the value of its human resources and encourages employees to seek help for drug or alcohol problems. We believe that seeking help before the problem becomes a performance or disciplinary matter is beneficial for both the employee and the city.

Employees who notify the City that they have a drug or alcohol problem before their problem becomes a disciplinary matter will be granted, upon request, a personal leave of absence without pay for up to 30 days to undergo counseling, treatment, or rehabilitation. Normally only one leave of absence per employee will be granted over the course of employment.

During the leave of absence, employees will be entitled to use their earned sick leave and vacation leave benefits. The opportunity to enroll in a rehabilitation program will be limited to those who voluntarily request such assistance prior to being tested for drugs/alcohol under the provisions outlined in this policy. Employees may seek assistance independently or request appropriate referrals from their supervisor.

Employees choosing to participate in a rehabilitation or treatment program must notify their supervisor immediately upon their enrollment. Employees who notify the City of their drug or alcohol problem only after the City has begun investigating whether they are in violation of this policy will remain subject to discipline up to and including termination for policy violations.

605.7 WORKERS' COMPENSATION

Under Alabama Law, Section 2 5-51, et seq., of the Code of Alabama (1975), workers who are injured at the workplace or in the course of employment may be tested for drugs and alcohol and, if positive, may not be paid benefits under the Alabama Workers' Compensation Law if the injury is a result of an accident caused by drug and/or alcohol impairment. Section 2 5-51 reads in part:

•A positive drug test conducted and evaluated pursuant to standards adopted for drug testing by the U.S. Department of Transportation (DOT) in 49 C.F.R. Part 40 shall be a conclusive presumption of impairment resulting from the use of illegal drugs. No compensation shall be allowed if the employee refuses to submit to or cooperate with a blood or urine test as set forth above after the accident after being warned in writing by the employer that such refusal would forfeit the employee's right to recover benefits under this Chapter. •

Further, a positive drug test conducted and evaluated pursuant to the above provisions is evidence of willful misconduct so as to disqualify an employee from workers' compensation benefits.

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605.8 UNEMPLOYMENT COMPENSATION

Under Section 25-4-78, et seq., as amended, of the Code of Alabama (1975), Unemployment Compensation, provides that no unemployment compensation will be paid to an employee dismissed after testing positive for drugs or alcohol, refusing to submit to a test for drugs or alcohol, or knowingly altering or adulterating any test sample. Section 25-4-78 reads in part:

"A confirmed positive drug test that is conducted and evaluated according to standards set forth for the conduct and evaluation of such tests by the U.S. Department of Transportation in 49 C.F.R. Part 40 or standards shown by the employer to be otherwise reliable shall be a conclusive presumption of impairment by illegal drugs. No unemployment compensation benefits shall be allowed to an employee having a confirmed positive drug test if the employee had been warned that such a positive test could result in dismissal pursuant to a reasonable drug policy. Further, no unemployment compensation benefits shall be allowed if the employee refuses to submit to or cooperate with a blood or urine test as set forth above, or if the employee knowingly alters or adulterates the blood or urine specimen."

"An individual shall be disqualified for total or partial unemployment...if he was discharged or removed from his work for the use of illegal drugs after previous warning or for the refusal to submit to or cooperate with a blood or urine test after previous warning...'warning' shall mean that the employee has been advised in writing of the provisions of the employer's drug policy and that either testing positive pursuant to the standards referenced above or the refusal to submit to or cooperate with a blood or urine test as set out in the above referenced standards could result in termination of employment. This written notification as herein described shall constitute a 'warning'..." Alabama Code § 25-4-78(3) (Supp. 1996).

605.9 WORK RESTRICTIONS

If an employee informs a supervisor of having consumed any alcohol, drug, or medication that could interfere with a safe and efficient job performance, the employee may be required to obtain clearance from a physician before continuing to work.

If the supervisor reasonably believes, based on objective facts, that an employee is impaired by the consumption of alcohol or other drugs, the supervisor shall prevent the employee from continuing work and shall ensure that the employee is safely transported away from the workplace.

605.10 SCREENING TESTS

A supervisor may require an employee to submit to a screening under any of the following circumstances:

- (a) The supervisor reasonably believes, based upon objective facts, that the employee is under the influence of alcohol or drugs that are impairing the employee's ability to perform work safely and efficiently.
- (b) The employee uses property owned or approved by the City in a manner that results in injury, death, or substantial property damage.

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- (c) The employee drives a motor vehicle in the performance of the employee's work and becomes involved in an incident that results in bodily injury, death, or substantial damage to property. Employees are prohibited from using alcohol within eight (8) hours following an accident, until testing is completed. Any test for alcohol should be completed within two (2) hours of a work-related accident, or as soon thereafter as is practicable.
- (d) Fitness-for-duty - Any safety-sensitive employee whose job position requires him or her to undergo regular physical examinations will be screened as part of any such routine examination.
- (e) Random screening or testing of safety-sensitive employees, without notice. The frequency of, and safety-sensitive employee classifications subject to, such screening and testing will be determined by the City in accordance with safety-sensitive duty classifications and applicable regulatory mandatory drug and alcohol testing requirements.

All employees are put on notice that a positive confirmed laboratory drug test following an on the job accident is evidence of "willful misconduct" under this policy and disqualifies the employee from receipt of workers' compensation benefits.

605.10.1 POST-ACCIDENT SAFETY-SENSITIVE EMPLOYEES

Safety-sensitive employees will be tested after any work-related injury or accident where:

- (a) an employee is injured beyond the need for simple first aid, or, because of the employee's actions, another employee or non-employee is injured beyond the need for simple first aid, or
- (b) property, equipment, or vehicles are damaged (over \$750.00 estimated), or
- (c) an employee has caused or contributed to an on-the-job injury which results in loss of work time, or
- (d) an injury that is a workers' compensation injury, or
- (e) if there is reasonable suspicion of drug or alcohol use.

Safety-sensitive employees (full or part-time) involved in accidents (or non-safety-sensitive employees whose acts or omissions contributed to the occurrence or severity of an accident) resulting in bodily injury beyond the need for simple first aid, damage to property, or damage to vehicles, either to themselves or that of others, are subject to drug and alcohol testing according to the following conditions. The HR Department should be notified immediately, and employees should report for drug and alcohol testing immediately after the accident or after required medical attention has been obtained. An employee who is hospitalized may be tested at the hospital by hospital personnel.

- (a) Employee testing is mandatory in all reportable City worker's compensation injuries, and on any occasion where there is bodily injury to others. Failure or refusal to submit to testing may jeopardize the employee's rights to any compensation benefits as well as employment status.

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- (b) Employee testing is mandatory in all on-duty, work-related accidents involving damages to City property, or to the property of others, in which total damages exceed an estimated value of \$750.00, and
 - 1. in which a City employee is actively involved, or
 - 2. in which a City employee's negligence or fault is indicated, even if the involved City vehicle or City equipment is parked or inactive.
- (c) Employee testing is also mandatory in any off- duty accident involving damages to City property, or damages to the property of others, caused by City vehicles or equipment in which total damages exceed an estimated value of \$750.00, and
 - 1. in which the City vehicle or City equipment is under the care, custody and control of the City employee, and
 - 2. in which a City employee's negligence or fault is indicated, even if the involved City vehicle or City equipment is parked or inactive.
- (d) In work-related accidents resulting in property damages of less than \$750, the supervisor may require a test at his/her discretion with reasonable suspicion. In instances where the value of damages is in doubt, a test should be required. In any instance, the Drug Officer should be notified so that the accident may be documented, regardless of whether testing is required

605.10.2 POST-ACCIDENT NON-SAFETY-SENSITIVE EMPLOYEES

Non-safety-sensitive employees will be tested after any work related injury or accident (as defined above) where a supervisor has a reasonable belief based on specific facts that the employee's acts or omissions contributed to the occurrence or severity of the accident as may be detailed on the "Confidential Work-Related Accident Report."

605.10.3 POLICE USE OF FIREARMS

Any police employee whose discharge of a firearm causes bodily injury or death during an incident shall be tested.

605.10.4 SUPERVISOR RESPONSIBILITIES

The supervisor shall prepare a written record documenting the specific facts that led to the decision to require the test, and shall inform the employee in writing of the following:

- (a) The test will be given to detect either alcohol or drugs, or both.
- (b) The result of the test is not admissible in any criminal proceeding against the employee.
- (c) The employee may refuse the test, but refusal may result in dismissal or other disciplinary action.

605.10.5 DISCIPLINE

An employee may be subject to disciplinary action by the City as allowed by law, up to and including termination if the employee

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- (a) Fails or refuses to submit to or cooperate with a substance screening by blood, urine, hair, or saliva, including an employer's initial screening..
- (b) After taking a screening test that indicates the presence of a controlled substance, fails to provide proof, within 72 hours after being requested, of having taken the controlled substance as directed, pursuant to a current and lawful prescription issued in the employee's name.
- (c) Refusal to sign a consent or chain of custody form
- (d) Knowingly submitting an adulterated, diluted, or otherwise altered blood or urine specimen; or submitting a specimen from another person
- (e) A positive confirmed laboratory test result for drugs or alcohol
- (f) Refusals will be classified as a positive test,

605.10.6 PRE-EMPLOYMENT

Pre-employment substance screening or testing will be performed on all final applicants seeking safety- sensitive positions as a condition of their employment at the City. Such screening or testing may be required on its own, or as part of a fitness- for-duty physical exam for those safety- sensitive job positions that would require such an exam. Present employees who transfer into another safety-sensitive position with the City may also be required to complete a pre-employment substance screen or test.

Applicants must sign a "Pre-Employment Substance Testing Consent and Release" form, which releases the City from liability, before voluntarily submitting to testing conducted by a certified lab chosen by the City. The City shall inform final applicants safety- sensitive positions that any offer of employment is conditioned upon passing a substance screen or test. The applicant will be informed that the specimen is subject to being tested for the presence of any or all of the following substances: Amphetamines, Cocaine, Cannabinoids, Opiates, Phencyclidine (PCP), Methadone, Methaqualone, Barbiturates, Benzodiazepines, or Propoxyphene in conformity with the Alabama Drug-Free Workplace Act.

Any job offer will be withdrawn if the applicant tests positive in a confirmed lab test; refuses to submit to a test; or refuses to execute the required consent/release form.

Applicants will also be provided with access to a copy of the City's Alabama Drug-Free Workplace Policy Statement. An applicant who decides not to cooperate in the pre-employment testing or who is unwilling to acknowledge this City's policy on drug and alcohol testing may withdraw his/ her application, and will not be considered for employment.

If the City representative, physician, official, or lab personnel has reasonable suspicion to believe that the applicant has tampered with the specimen, the applicant will not be considered for employment.

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605.10.7 DISCIPLINARY ACTIONS

Upon evidence of any violations of this policy, the employee will be immediately placed on administrative leave with pay. Other benefits will also remain in effect. The MAYOR AND CITY COUNCIL will hold an administrative hearing on the matter within twenty-one (21) calendar days to hear statements from the employee, and to determine that testing procedures, if applicable, were performed accurately and consistently with the policy. If, after hearing the matter and giving full consideration to the facts, the MAYOR AND CITY COUNCIL find no errors in testing procedures, if applicable, or no mitigating circumstances, the employee will be disciplined effective immediately with no further appeal or grievance rights. If errors or mitigating circumstances are discovered, the MAYOR AND CITY COUNCIL may reinstate the employee to full employment status, and may, at their discretion, impose a reduced penalty or no penalty at all. If there are aggravating circumstances, or evidence of repeated offenses, or if the amount of alcohol or illegal drugs found to be present are of a significant amount, or if the employee is operating a motor vehicle or heavy equipment, or is involved in employment of a safety-sensitive nature, the MAYOR AND CITY COUNCIL may take this into consideration and impose a penalty that exceeds those recommended below, up to and including termination of employment. The employee may waive his/her right to this administrative hearing by providing a written notice of waiver to HR.

- (a) It is recommended that the following violations of this policy result in a minimum one (1) week suspension without pay, but may include harsher discipline up to, and including, termination depending on past employee disciplinary actions and other circumstances:
 - 1. Positive drug result from testing under random, post-accident, or reasonable suspicion circumstance, or police use of a firearm resulting in bodily injury or death, if the drug indicated could have been legally prescribed and there was a failure to inform a supervisor or the City of this legally-prescribed medication.
 - 2. Failure to report an accident as defined in this policy
 - 3. Failure to report a drug or alcohol-related charge or conviction within five days as defined in this policy
 - 4. Positive alcohol result from testing under random, post-accident or reasonable suspicion circumstance, or police use of a firearm resulting in bodily injury or death.
 - 5. Failure to report for testing within the specified time frame
- (b) It is recommended that the following violations of this policy result in a minimum two (2) week suspension without pay, but may include harsher discipline up to, and including, termination depending on past employee disciplinary actions and other circumstances:
 - 1. Positive result from testing under random, post-accident, or reasonable suspicion circumstance, or police use of a firearm resulting in bodily injury or death, if marijuana, cocaine, Phencyclidine (PCP) or methamphetamine is indicated or if employee failed to inform their supervisor or the City of legally prescribed medication taken improperly
 - 2. Positive result from test conducted as a result of an off-the-job drug activity.

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PLUS: The employee will be required to go to a certified counselor for assessment (at the employee's expense) and will be subject to additional testing during the next six (6) months of evaluation; The counselor will give a positive or negative assessment which will determine further disciplinary action; The employee may utilize any unused employee assistance program sessions provided by the City.

Any employee who is referred to a drug or alcohol rehabilitation program through work, who was referred to a rehab program after testing positive in a confirmed lab test for drugs or alcohol while at work, or who has been suspended from work for any other violation of the drug and alcohol policy, must complete intense follow-up testing to be determined by the MAYOR AND CITY COUNCIL when he/she returns to work.

An employee terminated under this policy may be considered for re-hire only after a successful completion of a certified rehabilitation program at the employee's expense.

605.11 COMPLIANCE WITH THE DRUG-FREE WORKPLACE ACT

No later than 30 days following notice of any drug statute conviction for a violation occurring in the workplace involving an employee, the City will take appropriate disciplinary action, up to and including dismissal, and/or requiring the employee to satisfactorily participate in a drug abuse assistance or rehabilitation program (41 USC § 8104).

605.12 CONFIDENTIALITY

The City recognizes the confidentiality and privacy due to its employees. Disclosure of any information relating to substance abuse treatment, except on a need-to-know basis, shall only be with the express written consent of the employee involved or pursuant to lawful process.

The written results of any screening tests and all documents generated by the employee assistance program are considered confidential medical records and shall be maintained in the employee's confidential medical file in accordance with the Personnel Records Policy.

All information, interviews, reports, statements, memoranda, and test results, written or otherwise, received by the City through a substance abuse testing program are confidential communications, but may be used or received in evidence, obtained in discovery, or disclosed in any civil or administrative proceeding, except as provided below.

The City, laboratories, medical review officers, employee assistance programs, drug or alcohol rehabilitation programs, and their agents who receive or have access to information concerning test results shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the person tested, unless the release is compelled by an agency of the state or a court of competent jurisdiction or unless deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form shall contain at a minimum all of the following:

- (a) The name of the person who is authorized to obtain the information.
- (b) The purpose of the disclosure.

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- (c) The precise information to be disclosed.
- (d) The duration of the consent.
- (e) The signature of the person authorizing release of the information.

Information on test results shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this subsection shall be inadmissible as evidence in the criminal proceeding.

605.13 TRAINING

605.13.1 EMPLOYEE EDUCATION

The City shall provide all employees with an annual education program on substance abuse, in general, and its effects on the workplace, specifically. An education program for a minimum of one hour will include, but is not limited to, the following information:

- (a) The explanation of the disease model of addiction for alcohol and drugs.
- (b) The effects and dangers of the commonly abused substances in the workplace.
- (c) The policies of the City and procedures regarding substance abuse in the workplace and how employees who wish to obtain substance abuse treatment can do so.

605.13.2 SUPERVISOR TRAINING

In addition to the education program provided above, the City shall provide all supervisory personnel with a minimum of two hours of supervisor training, which includes, but is not limited to, the following information:

- (a) How to recognize signs of employee substance abuse.
- (b) How to document and collaborate signs of employee substance abuse.
- (c) How to refer substance abusing employees to the proper treatment providers.