



Drug and Alcohol-Free Workplace Policy and Procedure

The Drug-Free Workplace Policy constitutes notice of its provisions. A copy of this policy will be maintained in the Human Resources Division, located in City Hall, and a copy shall be distributed to all employees. Notices concerning the City's maintenance of a drug-free workplace shall accompany all job vacancies.

Effective October 1, 2018

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I. PURPOSE AND SCOPE

The Drug and Alcohol-Free Workplace Policy is established pursuant to the authority granted by 49 CFR Parts 40 and 655 and the Omnibus Transportations Testing Act of 1991, 49 U.S.C. § 31306, Chapter 440, Florida Statutes, as well as any and all Drug & Alcohol-Free Workplace Policies contained in any collective-bargaining agreements between the City of Cocoa (“City”) and any applicable bargaining unit employees.

The City is committed to providing a safe work environment for our employees, our guests, and the public. The abuse of alcohol and drugs is a national problem which impairs the safety and health of employees, promotes crime and harms our community. In order to maintain the highest standards of responsibility, productivity and safety in our operations, the City has instituted a Drug and Alcohol-Free Workplace Policy. Our Policy complies with the Florida Drug-Free Workplace Program, as provided in Section 440.101, et seq., Florida Statutes. The Drug and Alcohol-Free Workplace Policy requires all City employees to be free from the influence of drugs and alcohol while working or while on City property. The use, possession, sale, distribution, or manufacture of any drugs, and/or the unauthorized possession and/or use of alcohol, while working or while on City property is prohibited.

All job applicants shall be tested for drugs prior to beginning work at the City. All employees may also be subject to drug and alcohol testing upon reasonable suspicion or following an accident, as defined below.

Any employee who is a certified Police Officer through the State of Florida Police Standards and Training Commission must comply and be held accountable to the Florida Department of Law Enforcement’s “Zero Tolerance Substance Abuse Policy.”

Certain employees may also be subject to random drug and alcohol testing pursuant to federal law or collective bargaining agreements. For instance, any employee who is required to possess a Commercial Driver License will be subject to drug and alcohol testing in accordance with the Code of Federal Regulations – Title 49, Part 40 Transportation Workplace Drug and Alcohol Testing Programs.

Employees are responsible for ensuring that lawfully prescribed prescription medications (Rx) or In order to ensure the safety and well-being of all employees and the community, the following are hereby incorporated:

over-the-counter medications (OTC) do not adversely impact the employee's ability to safely perform their job functions. Employees have the personal responsibility to assess their fitness for duty while using an Rx or OTC medication. They should not report for or remain on duty while adversely affected by a RX or OTC medication or operate City vehicles/equipment if the medication taken has a warning label cautioning against it.

In order to ensure the safety and well-being of all employees and the community, the following are hereby incorporated:

- A. Employees are expected to be in suitable condition to satisfactorily and safely perform their jobs. It is City policy that employees report to work free of the influence of illegal drugs, or other intoxicants to include legally prescribed controlled substances and over-the-counter medications that may result in impairment at work. All employees are expected to conscientiously follow this policy and to demonstrate a responsible attitude towards the use of alcohol and drugs.
- B. Alcoholic beverages or other drugs cannot be brought onto City premises or consumed on City premises at any time, except as medically necessary, as determined by a medical doctor or doctor of osteopathic medicine, or as approved in accordance with a defined City function.
- C. Drugs shall be defined under this Policy as alcohol, including a distilled spirit, wine, a malt beverage, or an intoxicating liquor; an amphetamine; a cannabinoid; cocaine, phencyclidine (PCP); a hallucinogen; methaqualone; an opiate; a barbiturate; a benzodiazepine; a synthetic narcotic; a designer drug; or a metabolite of any substances listed in this paragraph (all substances listed in the paragraph, including alcohol, shall be collectively referred to as “drug” or “drugs”). The City may test job applicants and employees for any or all such drugs under this Policy.
- D. Use of “medical marijuana” by any employee is not permitted under this policy, even if such use is prescribed by a medical provider. Marijuana is a prohibited drug in Schedule I of the Controlled Substances Act and it remains a violation of City policy for any employee to use or be under the influence of marijuana while at work.
- E. Use of “medical marijuana” by CDL-covered employees is not permitted under DOT regulations as a valid medical explanation for an employee’s positive drug test result.

II. TYPES OF DRUG TESTING

The City conducts the following types of drug testing:

- A. **Pre-Employment** - Employment with the City shall be contingent upon an applicant’s ability to pass a drug test. All applicants to whom offers of employment have been extended shall be required to pass a drug test prior to beginning of their employment with the City. Pre-employment drug testing must occur within 48 hours of a verbal or written job offer by the City, except or unless, in the sole discretion of the City, an additional amount of time is warranted or required. Any such job offer shall be contingent upon successfully passing the pre-employment drug test. Refusal or failure to report for a drug test within the allotted time shall automatically constitute

rescission of the job offer and the applicant shall be ineligible for hire with the City for a period of six (6) months.

B. **Post-Employment** – Employees of the City may be subject to the following drug testing in accordance with applicable laws and regulations:

1. Reasonable suspicion drug and alcohol testing;
2. Post-accident drug and alcohol testing;
3. Follow-up drug and alcohol testing; and
4. CDL drug and alcohol testing

III. TESTING PROCEDURES

A. **General Testing Procedures** - When drug testing is required under this policy, these general procedures shall be followed, unless otherwise proscribed by law or stated herein:

1. An employee injured on duty will receive appropriate medical treatment for the injury prior to drug testing. When it is determined that testing is appropriate, the employee shall be tested at a designated collection site as soon as medically feasible, or within twenty-four (24) hours, where specimens shall be obtained. In order to maintain chain of custody, the employee shall remain in the custody of a supervisor or designee until such specimen is obtained, and when appropriate, until such testing is completed.
2. The City shall pay the costs of initial and confirmation drug tests which are required of employees. An employee shall pay the costs of any additional drug tests not required by the City.
3. As defined in the Drug-Free Workplace Standard (59-A-24), an appropriate specimen will be collected by a physician, a physician's assistant, a nurse practitioner, a registered professional nurse, a licensed practical nurse, a certified paramedic (does not include CFR paramedics) who is present at the scene of an accident for the purpose of rendering emergency service or treatment, or by a qualified person employed by a licensed laboratory as authorized by law.
4. At the time of testing, the employee shall be provided with a form for the purpose of providing any information the employee considers relevant to the test, including identification of currently or recently used medications. The form shall also provide a list of most common medications by brand name, common name, and/or chemical name, which may alter or affect a drug test result. Such information provided will be reviewed by a medical review officer in interpreting any positive confirmed results.
5. The results of the drug test shall remain confidential as provided by law. However, upon request, the applicant or employee shall be provided with

a copy of the test results. With the exception of Safety Sensitive Position and CDL tests, an employee or job applicant who receives a positive confirmed test result may contest or explain the results to the medical review officer within five (5) working days after receiving written notification of the test result. For CDL tests, the employee has 72 hours after receiving notification from the medical review officer to contest the results. If the employee's or job applicant's explanation of the challenge is unsatisfactory to the medical review officer, the medical review officer shall report a positive test result back to the City. An employee or job applicant may contest the drug test result pursuant to law or the rules adopted by the Agency for Healthcare Administration or the Code of Federal Regulations for CDL drug and alcohol testing, or the applicable collective bargaining agreement, if any.

6. An employee or job applicant who receives a positive confirmed drug test result may contest or explain the result to the Human Resources Manager within five (5) working days after receipt of written notification of the positive confirmed test result. The employee or job applicant may submit information explaining or contesting the test result or describing why the results do not constitute a violation of the City's policy. If an employee's or job applicant's explanation or challenge is unsatisfactory to the Human Resources Manager, a written explanation as to why the explanation is unsatisfactory, along with the report of positive results, shall be provided by Human Resources to the employee or applicant within five (5) days.
 7. If, pursuant to law, rule, or regulation, an employee elects to have a sample retested, the employee is responsible to comply and conform to the applicable law, rule or regulation, concerning handling and payment of the retest. This could apply, for instance, where retesting of a sample is permissible under AHCA, Florida Statutes, or the Omnibus Transportations Testing Act of 1991, or other law, rule or regulation, whichever is/are applicable.
- B. Reasonable Suspicion Testing** – The City reserves the right to test an employee who is reasonably suspected of using or has used drugs, including alcohol, in violation of this policy. Such a reasonable suspicion must be drawn from objective and articulable facts and reasonable inferences drawn from those facts in light of experience. The suspicion must be upon the recommendation of a supervisor who is at least one level of supervision higher than the immediate supervisor of the employee in question, or upon the recommendation of the Human Resources Manager, or designee. Among other things, such facts and inferences may be based upon:

- a. Direct observation of drug use or possession or of the physical symptoms or manifestations of being under the influence of a drug;
- b. Abnormal conduct or erratic behavior while at work or a significant deterioration of work performance;
- c. A report of drug use, provided by a reliable and credible source, which has been independently corroborated;
- d. Evidence that an individual has tampered with a drug test during his or her employment with the City;
- e. Work related accident/Injury resulting in excessive damage or that is unexplained;
- f. Evidence that an employee has used, possessed, sold, solicited or transferred drugs while working or while on the City's premises or while operating a vehicle, machinery, or equipment of the City;
- g. Arrest or conviction for a drug related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or distribution.

A written report or statement shall be utilized to document the circumstances that warrant reasonable suspicion drug testing. A copy of such report or documentation shall be given to the employee upon request. The employee who is required to undergo reasonable suspicion drug testing should not be allowed to operate any City equipment or drive a City vehicle. The employee should be notified of the observed behavior or incident that gave rise to the referral for a reasonable suspicion drug test and that a drug and/or alcohol test will be conducted. This should be handled in a discreet manner. The employee's supervisor or a member of the Human Resources Department shall escort the employee to the approved testing facility where the reasonable suspicion drug testing shall occur.

1. The employee shall be required to return their employee access card and vehicle/facility keys pending the results of a reasonable suspicion drug test. As a precaution, in the event of a positive test, it is also advisable that the employee arranges for a ride to his/her residence from the testing site, or be driven to his/her residence from the testing site. Administrative Leave shall be granted for the period of time while the drug test results are pending.
2. Failure to consent to a reasonable search of lockers, or other items on City property when there is reasonable suspicion, may result in discipline up to and including termination.

3. Following the administration of a confirmed reasonable suspicion drug test, Human Resources shall initiate a management referral to the Employee Assistance Program (EAP). Such referral should be in writing and identify the confirmed positive drug test, the time and location of the scheduled EAP appointment, the consequences, if any, of not complying with the EAP referral, that the EAP process is considered and treated as confidential, and where applicable, the work assignment or leave status going forward for “safety sensitive” or “special risk” employees.

C. Commercial Drivers License (CDL) Random Drug & Alcohol Testing – In addition to the policies and procedures set forth above, it is the City’s policy that City employees who are connected with the operation of commercial motor vehicles and are considered safety-sensitive transportation employees are subject to drug and alcohol testing as required by the Omnibus Transportation Testing Act of 1991, 49 U.S.C. § 31306, and pursuant to all applicable procedures and regulations promulgated by the Department of Transportation, the Federal Highway Administration and the Federal Transit Administration, as well as additional policies adopted by the City, if any. In cases where the requirements of both federal and state drug and alcohol laws and regulations and the City’s Drug and Alcohol-Free Workplace Policy are applicable or otherwise conflict, the requirements of federal drug and alcohol laws and regulations will control. The following are among the highlights of the federal laws referenced in this Section:

1. The Omnibus Transportation Employee Testing Act of 1991, Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration (FMCSA) Part 382.305 mandates random alcohol and drug testing for employees in positions requiring a commercial driver’s license (CDL). Therefore, an employee who transfers or is promoted from a non-CDL job function to a CDL job function will be required to submit to a drug screening. CDL drivers are subject to unannounced random testing in accordance with 49 CFR Part 382.
2. Random testing rates are set by federal regulation. Random drug and alcohol test selections are determined by a non-biased computer program. An employee could be tested multiple times in one year. Human Resources will be responsible for tracking the testing rate compliance and for notifying the employee to report for random testing.
3. Once notified to report for random testing, a CDL driver must report to the collection site immediately. Delaying arrival may be considered a refusal to test (see 49 CFR 40.191), which is equivalent to a positive test. Leaving the collection site before the testing process has been completed may be declared a “refusal” to test.

4. Failure to pass a drug test will subject the employee to disciplinary action, up to and including termination of employment.

D. **Post-Accident Drug Testing** – Drug testing is required whenever an employee has caused or is believed to have caused an accident at work that led to damage exceeding \$1000. The following should be noted:

1. Employees who refuse or otherwise fail to be tested within the allotted time will be subject to disciplinary action, up to and including termination of employment.
2. Employees found to be in violation of this policy may be denied workers' compensation benefits, and/or reemployment assistance benefits as provided by law.
3. Employees shall be escorted to the approved drug testing facility by a Supervisor/Manager. The employee may be returned to work, if applicable, to complete the remaining shift if the employee does not exhibit signs of reasonable suspicion. Managers should follow the reasonable suspicion section of this policy and complete the Reasonable Suspicion Observation Form to determine whether the employee can report to work pending the drug test results (III.B.).

E. **Follow-up Testing** – This type of testing is usually performed following a return-to-work by an employee who has entered the employee assistance program for drug-related problems or an alcohol and drug rehabilitation program. Follow-up drug and/or alcohol testing shall be conducted routinely and/or on a random basis. Its frequency shall be determined by a process of random selection among the pool of affected employees.

F. **Other Testing** – The City reserves the right to require a drug test under any other circumstances permitted by law.

IV. CONFIDENTIALITY

Except upon the written consent of the Employee or his or her authorized representative, or as otherwise required or permitted by law, the City, laboratories, employee assistance programs, drug and alcohol rehabilitation programs, and their agents who receive or have access to information concerning drug test results shall keep all such information confidential. Nothing herein shall be construed to prohibit the City, its agents, or the laboratory conducting a drug test, from having access to employee drug test information when consulting with legal counsel in connection with actions

brought under or related to this section or when the information is relevant to its defense in a civil or administrative matter.

V. EMPLOYEE ASSISTANCE PROGRAM

- A. The City offers an Employee Assistance Program (EAP) benefit for employees and their covered dependents. The City's Employee's Assistance Program (EAP), administered by CIGNA, is available by calling-1-800-538-3543. The EAP provides confidential assessment, referral and short-term counseling. Employees who recognize that they have a drug or alcohol problem are encouraged to utilize the City's EAP. Referrals may be made to the EAP on a voluntary or self-referral basis or under a management referral. When a management referral to the EAP is made, the employee's participation is considered mandatory, and the employee should be held accountable for his/her conduct/performance. More information and resources concerning the City's EAP is shall be made available by contacting Human Resources.

- B. The City shall not discharge, discipline, or discriminate against an employee solely upon the employee voluntarily seeking treatment for a drug-related problem if the employee has not previously tested positive for drug use, entered an employee assistance program for drug-related problems, or entered an alcohol and drug rehabilitation program¹.

¹ See F.S. 440.102. Page | 10