

CITY OF BRANSON, MISSOURI
ADMINISTRATIVE RULES

RULE NUMBER 10 REFERENCING ARTICLE 19 OF THE HUMAN RESOURCES MANUAL
AMENDED 7-13-2011, 7-10-2012, 1-22-2013

A RULE PERTAINING TO **SUBSTANCE ABUSE POLICY**

Section 1. Purpose and Application of Policy

The purpose of this policy is to set consistent and clear guidelines for the handling of circumstances which may involve or be the result of substance abuse by a City employee. Through implementation of this Policy, the City intends to provide a drug and alcohol free working environment for its employees, and thereby enhance the ability of City employees to deliver safe and efficient service to the community. In appropriate cases, disciplinary action will be taken in accordance with the provisions of this policy and other Human Resources rules and regulations.

The provisions of this Policy shall apply to all employees of the City and to all applicants for positions with the City. The City of Branson shall apply this policy in a manner which is consistent with its obligations under state and federal law.

Section 2. Responsibility of the Employee

It is the individual responsibility of each employee and applicant for employment to read, understand, and abide by the provisions of this policy. Any questions about the application of this policy may be directed to the Human Resources Director.

- A. Employees with substance abuse problems are personally responsible for seeking evaluation and undertaking rehabilitation. The City encourages employees to seek help through the Employee Assistance Program, which will be administered in a manner to provide confidentiality for those who seek treatment. Any employee who is aware that they may have an issue or problem with alcohol and/or drugs and who voluntarily discloses this to their supervisor, or the Human Resources Director, or voluntarily seeks treatment through the Employee Assistance Program for their problem shall not be subject to discipline for having admitted that they have a problem, nor for seeking treatment for such a problem.
- B. Those employees who use and/or abuse alcohol and/or drugs which result in job performance issues, safety issues, testing positive for drugs and/or alcohol, etc., will place their jobs in jeopardy. Employees who do not voluntarily seek help through the Employee Assistance Program place their employment with the City in jeopardy. In the event a concealed substance abuse problem adversely affects job performance, causes or contributes to misconduct either on or off duty, or causes the employee to become involved in criminal activity or proceedings, the employee will be subject to formal discipline as outlined in the Administrative Rule relative to corrective and disciplinary actions.

- C. Employees who are ordered to seek treatment for substance abuse problems through the Employee Assistance Program will still be held accountable for any violations of City policy and will be subject to formal discipline for actions which are in violation of City policy.

Section 3. Responsibility of the City

The official policy of the City shall be to encourage and assist City employees in voluntarily seeking treatment for substance abuse problems through the Employee Assistance Program. In appropriate cases, as an alternative to or in conjunction with formal disciplinary proceedings, an employee may be ordered by their Director, the Human Resources Director, and the City Administrator, to seek assistance for substance abuse problems through the Employee Assistance Program.

Section 4. Definitions

Alcohol Test: shall refer to testing of a sample of breath, saliva or blood to determine the percentage by weight of alcohol in the blood of the tested subject.

Accident*:

- A. An occurrence while driving on behalf of the City conducting City business, or involving a City-owned vehicle which results in:
 - 1. a fatality, or
 - 2. any person involved in the accident receives bodily injury which requires immediate medical treatment away from the scene of the accident, or
 - 3. any vehicle involved in the accident receives disabling damage requiring tow away.
- B. A workplace incident that results in property or environmental damage over \$250, or personal injury (including but not limited to a fatality or human injury requiring medical treatment). Any employee whose performance either contributed to the incident or cannot be discounted as a contributing factor to the incident.

* for DOT regulated employees, please see definition under Section 8.

Applicant: in connection with pre-employment testing, shall refer to an applicant who has been given a conditional offer of employment.

Controlled Substance, Deliver, Drug, Drug Paraphernalia, and Manufacture: as used herein, shall have the same meanings as set out in Chapter 195, RsMo.

Controlled Substance and Drug: as used herein, shall in all instances include prescriptive drugs, unless specifically excluded.

Drug Test: shall primarily refer to a urinalysis test, consisting of an initial screening test followed by a confirmation test if the results of the initial screening test are non-negative. Other testing methodologies (saliva, blood, etc.) may be used for non-DOT regulated tests.

Employee: any individual appointed and hired to a position in the City service.

CDL Position: shall include all positions in which the employee is required as a part of his duties to operate a commercial motor vehicle or motorized heavy equipment such as dump trucks, solid waste packer trucks, street sweepers, tank trucks, or any other type of heavy duty self-propelled equipment requiring a CDL to operate, excluding automobiles and pickup trucks.

Intoxicants: shall include any beverage or substance containing alcohol.

Safety Sensitive Positions: shall include all (a) law enforcement officers; (b) police communications employees; (c) firefighting employees; (d) positions involved in the treatment and delivery of water to the customers and the treatment and delivery of quality wastewater effluent to Lake Taneycomo, i.e. Plant Operators; (e) lifeguards; and (f) the City Administrator.

Reasonable Suspicion: shall refer to a suspicion based upon objective facts and circumstances from which an ordinarily careful and prudent supervisor could conclude that an individual is in possession of or under the influence of drugs or alcohol while on City property or while on duty. Circumstances which constitute a basis for determining reasonable suspicion include, but are not limited to: (a) a pattern of abnormal or erratic behavior while on duty; (b) information provided by a reliable and credible source; (c) direct observation of drug or alcohol possession or use; (d) presence of the physical symptoms of drug and alcohol use, such as glassy or bloodshot eyes, odor of intoxicants on breath, slurred speech, poor balance, poor coordination, or impaired reflexes; (e) admission of possession or use of drugs or alcohol by the employee. For an employee to be tested under reasonable suspicion, two supervisors must agree on the objective facts and circumstances as outlined above.

Section 5. Prohibited Acts and Disciplinary Actions

- A. Grounds for disciplinary action or denial of employment: Applicants for employment may be denied employment, and employees may be subject to disciplinary action up to and including dismissal from employment, for commission of any of the following acts:
- (1) Reporting for work, performing work, or applying for work while under the influence of illegal drugs, prescription drugs, or intoxicants.
 - (2) Using, selling, possessing, manufacturing, or delivering controlled substances or drug paraphernalia at any time or place except in cases where such activity is permitted or required in the line of duty, whether on or off duty.

- (3) Consuming, under the influence of, or possessing intoxicants while on duty or on City property.
- (4) Providing or selling intoxicants to any other person while on duty, except in cases where such activity is permitted or required in the line of duty.
- (5) Testing positive for the presence of drugs or alcohol following completion of testing procedures authorized by this policy.
- (6) Failing or refusing to submit a test sample within a reasonable time but not more than three hours after the time a request for a test sample was made, causing or attempting to cause alteration of a test sample, submitting or attempting to submit a false test sample, or otherwise obstructing the process of testing for the presence of drugs or alcohol.

B. Termination is specifically authorized when:

- (1) Law enforcement has informed Human Resources that the employee has sold or attempted to sell controlled substances, whether on or off duty.
- (2) Law enforcement has informed Human Resources that the employee has possessed or has manufactured a controlled substance under circumstances that create reasonable inference that the employee intended to sell the controlled substance, whether on or off duty.
- (3) The employee has used, or has been found to be in unauthorized possession of, illegal drugs while on duty or on City property; or the employee has been found to be on duty or on City property while under the influence of illegal drugs, prescription drugs, or intoxicants.
- (4) The employee has failed or refused to submit a test sample within three hours after the time a request for a test sample was made, has caused or attempted to cause the alteration of a test sample, or has submitted or attempted to submit a false test sample following a request for submission of a test sample.
- (5) The employee has previously been ordered by the appointing authority to seek treatment for a substance abuse problem through the Employee Assistance Program or any treatment facility, and has subsequently committed a new offense involving substance abuse which would constitute grounds for discipline under the provisions of this policy.
- (6) The employee refuses or fails to attend or complete treatment as ordered by City Administration.

C. Disciplinary action shall be independent of all other proceedings:

Disciplinary action which may be undertaken pursuant to this policy and the provisions of the Human Resources Manual and Administrative Rules shall constitute an independent administrative action against the employee involved, and shall not be dependent upon or controlled in any manner by any other civil, administrative, or criminal proceedings which are or may be instituted against the employee.

Section 6. Testing for the Presence of Alcohol or Drugs; When Authorized and What Substances Will Be Tested For

A. Pre-employment testing: Effective as of the date of the adoption of this policy:

- (1) A copy of this policy shall be provided to each applicant who has been given a conditional offer of employment, who shall sign and date the "receipt of Substance Abuse Policy and Consent to Drug and Alcohol Testing" form, which shall then be made a permanent part of the applicant's file. This form shall be competent evidence in any subsequent proceedings that the applicant who has been given a conditional offer of employment has received notice of the provisions of this policy and has consented to testing under the provisions stated herein. A refusal by any applicant who has been given a conditional offer of employment to execute this form shall constitute grounds for denial of employment. Alcohol and drug tests are considered to be medical examinations and, under the Americans With Disabilities Act, may only be conducted after an offer of employment has been extended.
- (2) All applicants who have been given a conditional offer of employment shall be subject to mandatory testing for the presence of drugs and alcohol in accordance with the testing procedures herein set out, except that City Employees who apply for such positions and who have successfully completed testing as a condition of employment with the City shall not be subject to retesting under this subsection. Those applicants shall be required to undergo drug and alcohol testing, and negative results from the testing must be received, before the conditional employee begins work as an employee. The testing provisions of this section shall not apply to the promotion or transfer of the safety sensitive position employee within his own department.
- (3) Applicants who test positive for the presence of drugs or alcohol will be denied employment pursuant to the provisions of this policy.

B. Testing of current employees: Effective as of the date of the adoption of this policy:

- (1) A copy of this policy shall be provided to every City employee, and each employee shall be required to sign and date a receipt form, which shall then be made a permanent part of the employee's personnel file. This form shall be competent evidence in any subsequent proceedings that the employee has received notice of the provisions of this policy.

- (2) Current employees in safety sensitive positions shall be subject to random drug and alcohol testing. Details regarding random drug and alcohol testing are located in Section 8 of this policy.
- (3) All current City employees not included in subsection (2) above shall be subject to testing for the presence of drugs, including prescription drugs, and alcohol upon reasonable suspicion that the employee is under the influence of drugs or alcohol while on duty, and post-accident. A request for the testing of an employee may be initiated by any supervisor who has a reasonable suspicion that the employee is under the influence of drugs or alcohol while on duty. Requests for testing shall be submitted to the Human Resources Director and testing shall be authorized if the request is approved by the Human Resources Director and the City Administrator, following review of the request.
- (4) An employee who has been ordered to access the Employee Assistance Program for possible drug and/or alcohol issues shall be subject to unannounced testing for the presence of drugs or alcohol during the twelve-month period following the date of the notice of referral to the EAP.

- C. Substances and levels to be tested for will be per current U.S. Department of Health and Human Services mandatory guidelines. Testing may be administered to detect the presence and concentration of any substance which acts on the central nervous system as a stimulant, a depressant, or has a dis-associative effect.

Drugs not otherwise included in the preceding categories will be tested to the concentration levels for which testing is customarily accurate, as stated in the manufacturer's specifications for the particular test kit or method to be used.

Section 7. Testing Procedures; Discipline Which May Be Imposed for Confirmed Positive Test Results; Mandatory and Voluntary Referral to Employee Assistance Program

- A. The Testing Agency: Drug testing shall be performed by an independent certified HHS laboratory of the City's choice. All testing shall be performed in accordance with currently accepted scientific standards. Due care shall be taken by the testing agency to respect the dignity and privacy of the individuals required to give test samples. The testing agency shall be responsible for maintaining appropriate chain of custody procedures for all test samples.
- B. Confidentiality of Testing Information: All information regarding the testing of applicants and employees shall be confidential. Testing information is authorized to be released only on a strict need-to-know basis to the Human Resources Director, City Administrator, City Attorney, and to the Board of Aldermen upon request of the Board; and the tested employee upon request. Disclosure without employee consent is authorized if: (a) production of the information is compelled by law, or

by judicial administrative process, (b) the information has been placed at issue in a formal dispute between the City and the employee, or (c) the information is needed by medical professionals for the diagnosis or treatment of the employee, and they are unable to authorize disclosure.

- C. Confirmation of Test Results: If the results of an initial laboratory screening of a donor's primary ("A") urine specimen is a non-negative, the laboratory will conduct a second test, referred to as a confirmation test, using Gas Chromatography/Mass Spectrometry (GC/MS). If the GC/MS test confirms a positive result, the positive result will be forwarded to the City's MRO. The MRO will follow standard MRO review protocol and make a final decision regarding the results of the test (positive or negative). If the MRO releases the result as positive, the donor may, at their own expense, request the "split" (or "B") specimen be sent to another qualified laboratory for additional testing..
- D. Consequences of a confirmed positive test result:
- (1) Job Applicants: Job applicants will be denied employment with the City if an initial positive test result has been confirmed by the GC/MS test.
 - (2) Current Employees: An employee whose positive GC/MS confirmation test is confirmed positive by the MRO is subject to disciplinary action up to and including termination in accordance with the provisions of this policy.
- E. Mandatory Referral to the Employee Assistance Program: As an alternative to, or in conjunction with, formal disciplinary proceedings which will be instituted against an employee for a violation of the provisions of this policy, an employee will be offered the opportunity to seek assistance for a substance abuse problem through the Employee Assistance Program. The City Administrator is authorized to suspend the imposition of formal discipline (dismissal, demotion, reduction in compensation, suspension without pay) for a period not to exceed one year, pending the successful completion of assessment, counseling, and rehabilitation by the employee. Written notice of mandatory referral to the Employee Assistance Program shall be given to the employee. In the event the employee does not complete assessment, counseling, and/or rehabilitation the appointing authority may, within the one-year period following the date of written notice of mandatory referral to the EAP, impose such formal discipline as is authorized under this policy and the Human Resources Manual.
- F. Expungement of Drug and Alcohol Testing Records: Upon written request by the tested employee, all records relating to a request for and the results of drug or alcohol testing may be expunged from an employee's file and destroyed if the results of the testing do not show a substance concentration at or above the levels set out in this policy. If the employee who has been tested has filed an appeal with the City Administrator through the Human Resources Director, the records shall be preserved until the conclusion of all proceedings arising out of the appeal.

Section 8. Random Drug and Alcohol Testing for Certain Employees

The purpose of this section is to define testing procedures for employees involved in an accident, and random testing for those employees in safety sensitive positions, and to establish compliance with the Federal Highway Administration and the United States Department of Transportation regulations by requiring random drug and alcohol testing for those employees holding a Commercial Driver's License (CDL). This section sets forth additional requirements as they relate to the substance abuse policy, and testing and reporting, as regulated by the above agencies.

A. Definitions: The following definitions are offered as a part of this attachment in addition to any definitions included in Section 4 of this Administrative Rule:

Accident (for DOT regulated employees): means a vehicular accident involving a City-owned Commercial Motor Vehicle (GVW of 26,001# or greater) which results in:

(1) a fatality; or

(2) the driver of the CMV is issued a citation, AND:

a. any person involved in the accident receives bodily injury which requires immediate medical treatment away from the scene of the accident, or

b. any vehicle involved in the accident receives disabling damage requiring tow away.

CDL Driver/Operator: includes all employees whose positions may involve driving or operating a commercial motor vehicle and require possession of a CDL.

Commercial Motor Vehicle: is one that either: (1) has a gross vehicle weight of over 26,001 pounds (including combined weight if towed unit weighs over 10,000 pounds); (2) is designed to transport 16 or more persons, including the driver; or (3) is used to transport hazardous materials.

Drugs: for the purposes of this section, "drugs" refers to any drugs referred to in Section 6.C. of this policy.

Medical Review Officer: is a licensed physician (Doctor of Medicine or Osteopathy) who meets the requirements of 49, CFR, Part 40.121. The responsibilities and procedures of the MRO are detailed in 49 CFR, Part 40, Subpart G.

Substance Abuse Professional (SAP): is a licensed physician, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor, as defined by the Department of Transportation regulations, with the knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders. The SAP is responsible for evaluating employees with positive test results.

B. Additional Prohibited Conduct: The following conduct regarding alcohol and drug use or abuse is prohibited for employees covered by this section, in addition to the requirements of Section 5:

(1) An employee may not operate a commercial vehicle or report for duty in a safety sensitive position within four hours after using alcohol.

- (2) An on-call employee who consumes alcohol within four hours of being called in must acknowledge the use of alcohol and may not report for duty.
- (3) An employee required to take a post-accident alcohol test may not use alcohol for eight hours following the accident, or until a post-accident alcohol test is given, whichever comes first.
- (4) If an employee is taking prescription or over-the-counter medication that may impair their ability to perform their duties safely and effectively, they must seek the advice of a physician to insure that the substance does not adversely affect their ability to safely operate a commercial vehicle or perform in a safety sensitive position. If the employee's ability to perform their duties may be impaired, a written notice from the physician must be provided with respect to the effects of such substances.
- (5) Alcohol testing may only be conducted before, during or after the performance of a safety-sensitive function. Reporting to work and being available to perform a safety-sensitive duty is considered "before" for the purpose of this part. If removed from duty based on reasonable suspicion of alcohol use and an alcohol test is not administered within eight hours, the employee will not be allowed to perform or continue to perform covered functions until: (1) an alcohol test is administered and the breath alcohol concentration measures zero; or (2) 24 hours have elapsed following determination that there is reasonable suspicion to believe that the employee has violated this policy concerning the use of alcohol.
- (6) Following an accident, as defined above, the driver is required to submit to alcohol and drug tests. Testing should occur **as soon as possible, preferably within two hours**. If alcohol testing is not conducted within 2 hours of the accident, the City shall continue to attempt an alcohol test, but shall also prepare and maintain a record stating the reason the test was not conducted promptly. An attempt to conduct the alcohol test must cease if the alcohol test is not conducted within 8 hours of the accident. An attempt to conduct a drug test must cease if the drug test is not conducted within 32 hours of the accident.
- (7) An employee subject to post-accident testing must remain readily available for such testing and may not take any action to interfere with testing or the results of testing. Employees who do not comply with post-accident testing requirements will be considered to have refused to submit to testing and will be subject to sanctions for refusal to test as provided in this policy.
- (8) Employees covered by this section will be subject to random, unannounced alcohol and drug testing.
- (9) Employees who have violated this policy, including those who have tested positive on a drug or alcohol test, and who under discipline policy are allowed

to return to work, must test negative prior to being released for duty. A return to duty test following alcohol misuse must yield a negative test result..

- (10) An employee who is referred for assistance related to alcohol misuse and/or use of drugs is subject to unannounced follow-up testing for a period not to exceed 60 months as directed by a Substance Abuse Professional and the City. The number and frequency of follow-up testing will be determined by the SAP, but will not be less than six tests in the first 12 months following the employee's return to duty.
- (11) If a person is to be hired into a CDL position subject to this section and during the previous 3 years has worked in a position subject to this section, the person must authorize a request of all employers of the person within the last 3 years to release information on (1) positive alcohol or drug tests; and/or (2) refusal to be tested. This information must be requested before the person is employed by the City. However, if the information has not arrived by the anticipated start date, and if the person has passed the pre-employment drug test, the person may be hired. If the information has not been received within 30 calendar days, and a documented good faith effort to obtain the information has been made, the Human Resources Department will go ahead and allow the person to function in the covered duties. If the information obtained from previous employers indicates either a positive test or that a refusal to be tested occurred within the past 3 years, that person will not be permitted to perform covered duties unless subsequent information indicates that an evaluation by a SAP was made and return to duty testing was administered.
- (12) Records relating to drug and alcohol testing for employees covered by this section shall be retained on the following schedule:
 - a. Records of negative and canceled drug test results and alcohol test results with a concentration of zero shall be maintained for a minimum of 1 year.
 - b. Records related to alcohol and drug collection process and training shall be maintained for a minimum of 2 years.
 - c. Records of alcohol tests indicating an alcohol concentration of greater than zero; records of verified positive drug test results; documentation of refusal to take required alcohol and/or drug tests; evaluations and referrals; and copies of annual reports, shall be kept for a minimum of 5 years.
- (13) Records for employees covered by this section shall not be released except (1) upon written request of the employee; (2) upon written authorization by the employee, records will be disclosed to a subsequent employer subject to use as specified by the employee; (3) upon specific, written authorization by the employee, records will be released to an identified person, for use only as

specified by the employee; or (4) records may be disclosed to a decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee, including, but not limited to, a worker's compensation, unemployment compensation or other proceeding relating to a benefit sought by the employee.

- (14) Any employee covered under this section engaging in prohibited conduct, receiving a confirmed and/or verified positive drug test, or receiving an alcohol test result of .02 or greater, shall be subject to the full range of disciplinary action, including termination, depending on the seriousness of the prohibited conduct.
- (15) If the employee is not terminated for policy violations, and the employee had a breath alcohol concentration of .02 -.039, then the employee shall be removed from covered duties for at least 24 hours.
- (16) If the employee is not terminated for policy violations, and the employee was confirmed and or verified positive for drugs or had an alcohol test that indicated a blood level alcohol of 0.04 or greater from a random, reasonable suspicion, return-to-duty, follow-up, or post-accident test, or engaged in prohibited conduct, the employee shall be immediately removed from performance of the covered duties. The employee will not be permitted to return to work unless they (1) have been evaluated by a qualified SAP; and (2) if recommended by the SAP, has properly followed any rehabilitation prescribed; and (3) have a verified negative result on a return-to-duty alcohol and/or drug test.
 - (a) While the employee is off work during the rehabilitation prescribed by the SAP, they will be required to utilize any accrued time they have accumulated. Please refer to Article 17, Section 13 in regards to suggested utilization of accrued time. When/if that accrued time is all utilized, then the remainder of the time they are off work shall be unpaid.

Section 9. Appeal Rights

An employee who receives formal discipline (dismissal, suspension without pay, demotion, or reduction in compensation) for violation of the provisions of this policy is entitled to the appeal rights granted in the Human Resources Manual and Administrative Rules.