

POLICY 3-02 DRUG AND ALCOHOL FREE WORKPLACE

DISTRIBUTION: Departments/Divisions

SUBJECT: **DRUG AND ALCOHOL FREE WORKPLACE POLICY**

**TABLE OF CONTENTS Page**

PURPOSE 2

BACKGROUND 2

PUBLICATION AND NOTICE 2

**SECTION 1, GENERAL POLICY 3**

APPLICABILITY 3

DEFINITIONS 3

PROHIBITED ACTIVITIES 4

OFF-DUTY OFFENSES 5

USE OF MEDICATION 5

MEDICAL MARIJUANA 6

DRUG AND ALCOHOL TESTING 7

Applicant Testing 7

For-Cause Testing 7

Post-Accident Testing 8

Random Testing 8

Post-Rehabilitation Testing 9

SUBSTANCES TESTED 9

RULES AND PROCEDURES FOR COLLECTION AND TESTING 9

APPLICANT'S REFUSAL TO TEST OR POSITIVE RESULTS 11

EMPLOYEE'S INABILITY OR REFUSAL TO TEST 12

DISCIPLINARY ACTION AGAINST EMPLOYEES 12

EMPLOYEE ASSISTANCE PROGRAM 12

APPEAL PROCEDURES 13

CONFIDENTIALITY AND MAINTENANCE OF RECORDS 13

ORIENTATION AND TRAINING 13

NOTICE OF CONVICTION OF DRUG OFFENSES 14

**SECTION 2, POLICY FOR COMMERCIAL VEHICLE OPERATIONS 14**

PURPOSE 14

APPLICABILITY 14

DEFINITIONS 14

IDENTIFICATION OF SAFETY-SENSITIVE EMPLOYEES 15

RANDOM TESTING PROCEDURES 16

INITIAL TESTING FOR SAFETY-SENSITIVE POSITIONS 17

POST-ACCIDENT TESTING 17

RETURN-TO-DUTY TESTING 18

SPECIFIC RULES FOR ALCOHOL TESTING 18  
SUSPENSION OF EMPLOYEES FROM  
SAFETY-SENSITIVE DUTIES 19  
FOLLOW-UP (POST-REHABILITATION) TESTING 19  
ADDITIONAL RECORD KEEPING REQUIREMENTS 19  
REFERENCES 19  
REVISION AND EFFECTIVE DATE 20  
RESPONSIBLE DEPARTMENT 20  
APPENDIX A, DRUG AND/OR ALCOHOL TESTING CONSENT FORM 21  
APPENDIX B, FOR-CAUSE OBSERVATION CHECKLIST 23

**PURPOSE.** The City of Lawton considers its employees to be its most valuable resource and is concerned about the health, safety, well being, and satisfactory work performance of all employees. The use, abuse, and dependence on alcohol and/or drugs can seriously affect the health of employees, jeopardize their own safety and that of the general public, as well as impair job performance. It is, accordingly, the policy of the City that the unlawful manufacture, distribution, dispensing, possession or use of drugs or being under the influence of drugs or alcohol in circumstances that directly or indirectly affect job safety or performance, will not be tolerated. **Any employee determined to be in violation of this Policy, whether on or off duty, is subject to the full range of disciplinary action, which may include termination.**

**BACKGROUND.** Since 1989, the City has had a drug and alcohol free workplace policy in effect for its employees and applicants, with periodic changes having been made to reflect updated laws and procedures.

**PUBLICATION AND NOTICE.** The City shall post a copy of this Drug and Alcohol Free Workplace Policy and any changes to the Policy, on the City's website and shall distribute a copy of the Policy and any changes to the Policy to each department within the City. A copy of the Policy shall be given to each applicant upon his or her receipt of a conditional offer of employment with the City. Pursuant to the Oklahoma Standards for Workplace Drug and Alcohol Testing Act, the Policy shall be implemented upon the provision of an advance ten (10) days notice to City employees. At such time as changes to the Policy become necessary, the City will give employees at least ten (10) days notice before the changes shall take effect.

## **SECTION 1, GENERAL POLICY**

**APPLICABILITY.** This section is applicable to all City employees; provided, however, that (1) the provisions of this section on drug and alcohol testing do not apply to testing required by and conducted pursuant to federal law or regulation and (2) collective bargaining agreements entered into by the City may provide greater protection to employees or applicants than is provided by this Policy.

**DEFINITIONS.** As used in this Policy:

- a) "Alcohol" means ethyl alcohol or ethanol;
- b) "Confirmation test" means a drug or alcohol test on a sample to substantiate the results of a prior drug or alcohol test on the same sample and which uses different chemical principles and is of equal or greater accuracy than the prior drug or alcohol test;
- c) "Conviction" means any adjudication of a criminal offense that does not result in a finding of not guilty;
- d) "Drug" or "Controlled Substance" means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), hallucinogens, methaqualone, opiates, barbiturates, benzodiazepines, , synthetic narcotics, designer drugs, or a metabolite of any of the substances listed herein;
- e) "Drug or alcohol test" means a chemical test administered for the purpose of determining the presence or absence of a drug or its metabolites or alcohol in a person's bodily tissue, fluids or products;
- f) "Duty" means working regular or overtime hours for the City of Lawton in any capacity, or being in a "standby" or "on call" status;
- g) "Medical Review Officer (MRO)" means a person, qualified by the State Board of Health, who is responsible for receiving results from a testing facility which have been generated by the City's drug or alcohol testing program, and who has knowledge and training to interpret and evaluate an individual's test results together with the individual's medical history and any other relevant information;
- h) "Random selection basis" means a mechanism for selecting employees for drug or alcohol testing that:
  - 1. results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected, and

2. does not give the City discretion to waive the selection of any employee selected under the mechanism;

i) "For –cause testing "means a reasonable belief that an employee may be under the influence of drugs or alcohol, including, but not limited to, the following circumstances:

1. drugs or alcohol on or about the employee's person or in the employee's vicinity,
2. conduct on the employee's part that suggests impairment or influence of drugs or alcohol
3. a report of drug or alcohol use while at work or on duty,,
4. information that an employee or applicant has tampered with a drug or alcohol test,
5. negative performance patterns, or
6. excessive or unexplained absenteeism or tardiness;

j) "Sample" means tissue, fluid or product of the human body chemically capable of revealing the presence of drugs or alcohol in the human body;

k) "Substance Abuse Professional (SAP)" means a licensed physician (medical doctor or doctor of osteopathy) or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselor Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders. The SAP will be provided through the City's Employee Assistance Program; and

l) "Testing Facility" means any laboratory, hospital, clinic or other facility, either on or off the premises of the City, which provides laboratory services to test for the presence of drugs or alcohol in the human body.

**PROHIBITED ACTIVITIES.** Prohibited drug and alcohol related activities include, but are not limited to:

a) Controlled Substance or Alcohol Possession: Except for police officers when necessarily a part of their official duties, no employee shall have in his or her possession alcohol or drugs (controlled substances, or drug paraphernalia associated with the use of a controlled substance) while on duty with the City of Lawton.

b) Controlled Substance or Alcohol Use: Except for police officers when necessarily a part of their official duties, no employee shall use a controlled substance or alcohol while on duty.

c) Controlled Substance or Alcohol Impairment: No employee shall report to duty or remain on duty while impaired by alcohol or drugs. "Impaired" means under the influence of a substance such that the employee's motor senses (i.e. sight, hearing, balance, reaction, reflex) or judgment either are or may be presumed affected. If an employee records an alcohol concentration of .02 or greater, that employee will be considered impaired. Employees are prohibited from using alcohol at least 4 hours before reporting to work. An employee may use a substance administered by or under instructions of a physician. However, if the substance causes impairment, the employee will not be assigned driving or other safety sensitive duties, and may be relieved from duty if the impairment is significant, i.e. prevents the employee from working safely.

d) In addition to the above, the sale, dispensing, distribution, or manufacture of illegal drugs and narcotics or unauthorized alcoholic beverages at any City of Lawton facility or work site is prohibited.

e) Employees determined to have involvement in any of these prohibited activities will be subject to disciplinary action up to and including termination of employment.

f) Any of these activities which also are in violation of federal, state or local law will be reported to the Lawton Police Department. Further, any controlled substance or suspected controlled substance found in City facilities, work sites, or other public areas will also be reported to the Lawton Police Department or other law enforcement agency.

**OFF-DUTY OFFENSES.** Employees who are charged or arrested for off-the-job drug or alcohol related activity may be determined to be in violation of this Policy, whether or not a conviction results. The provision of Section 17-1-7-171 of the Lawton City Code will be followed in taking any administrative or disciplinary action while a charge(s) is pending. Conviction of any such offenses may result in disciplinary action up to and including termination, whether or not the offense is determined to be in violation of this Policy.

**USE OF MEDICATION.** It is not the intent of this Policy to prevent the legitimate use of prescription and over-the-counter (non-prescription) medication. However, the use of some such medications may cause impairment to an employee's motor skills or judgement. An employee who is taking prescription or over-the-counter medications, that may cause such impairment, is responsible for informing his/her supervisor of the medication being taken and the possible side effects as described by a physician, pharmacist, the medication container label or any other documentation provided with the medication. Supervisors are responsible for keeping this information confidential and for determining whether the employee can safely perform regular duties, should be assigned other duties temporarily, or if the employee cannot safely perform any job duties and should be placed on leave. It should be noted that the use of

prescription medication and over-the-counter medication in a manner not directed or intended may constitute drug abuse and a violation of this Policy. This may include using the medication in dosages greater than prescribed or continued use of the medication after there is no longer a legitimate medical reason to do so.

**MEDICAL MARIJUANA.** The City adheres to state law regarding medical marijuana use. The City may not refuse to hire, discipline, discharge or otherwise penalize an applicant or employee *solely* on the basis of a positive test for marijuana **unless:**

- a. the applicant or employee is not in possession of a valid medical marijuana license,
- b. the licensee possesses, consumes or is under the influence of medical marijuana or medical marijuana product while at work or fulfilling work obligations, or
- c. the position is one involving safety-sensitive job duties as outlined below.

As used in this section, safety sensitive means any job that includes tasks or duties that the City reasonably believes could affect the safety and health of the employee performing the task or others, including, but not limited to the following:

- a. the handling, packaging, processing, storage, disposal or transport of hazardous materials,
- b. the operation of a motor vehicle, other vehicle, equipment, machinery or power tools,
- c. repairing, maintaining or monitoring the performance or operation of any equipment, machinery or manufacturing process, the malfunction or disruption of which could result in injury or property damage,
- d. performing firefighting duties,
- e. the operation, maintenance or oversight of critical services and infrastructure including, but not limited to, electric, gas, and water utilities, power generation or distribution,
- f. the extraction, compression, processing, manufacturing, handling, packaging, storage, disposal, treatment or transport of potentially volatile, flammable, combustible materials, elements, chemical or any other highly regulated component,
- g. dispensing pharmaceuticals,
- h. carrying a firearm, or
- i. direct patient care or direct child care.

To determine if a position is safety sensitive, refer to the job description.

Safety sensitive employees with a confirmed positive test result, will be subject to the full range of disciplinary action, up to and including termination, as set forth in Section 17-1-7-173 of the Lawton City Code.

Non safety sensitive employees who have a valid medical marijuana license who consume, possess, or are under the influence of medical marijuana or medical marijuana product while at work or fulfilling work obligations shall be subject to the full range of disciplinary action, up to and including termination as set forth in Section 17-1-7-173.

Non safety sensitive employees who are not in possession of a valid medical marijuana license and are found to possess, consume, be under the influence of marijuana or a marijuana product while at work or fulfilling work obligations, or have a confirmed positive test result, shall be subject to the full range of disciplinary action, up to and including termination as set forth in Section 17-1-7-173 of Lawton City Code.

**DRUG AND ALCOHOL TESTING.** Employees of the City of Lawton and all applicants for employment are subject to drug and alcohol testing under the following circumstances:

a) Applicant Testing. The City will require all applicants, upon receiving a conditional offer of employment, to undergo drug and/or alcohol testing, and will use a refusal to undergo such testing or a confirmed positive test result as a basis for denial of employment provided that such testing does not violate the American with Disabilities Act of 1990, 42 U.S.C. §12101 et seq. (hereinafter referred to as ADA).

b) For-Cause Testing. The City may require an employee to submit to drug and/or alcohol testing if there is reasonable belief the employee has violated or is violating the City of Lawton Drug and Alcohol Free Workplace Policy. Before confronting the employee, the supervisor or department director will contact the Human Resources Director or designee and detail the observations and other evidence that form the basis of for-cause testing. If the Human Resources Director or designee, in consultation with the City Attorney, as necessary, agrees that reasonable belief exists, the director or designee will arrange for the employee to undergo drug and alcohol testing. Any disagreement as to the sufficiency of the evidence will be resolved by the City Manager.

Testing must be conducted as soon as possible after the behavior or conditions which gave rise to the reasonable belief are observed and documented, but no later than 8 hours for alcohol or 32 hours for controlled substances (drugs). If for-cause testing is based solely on the observation of behavior which may indicate an employee is under the influence of drugs or alcohol while on duty, the behavior shall be brought to the attention of a supervisor. The supervisor observing such behavior must have completed training on the detection of symptoms or manifestations of being under the influence of the substances listed in this Policy or the observations must be corroborated by supervisory or management personnel who have completed such training before referring an employee for testing. Supervisory personnel should not attempt to diagnose an employee's problem when confronting him/her concerning the decision to direct the employee to undergo drug and/or alcohol testing.

Supervisors may relate the specific circumstances that gave rise to the reasonable belief, but should not accuse the employee of being an alcoholic or drug abuser. Supervisors should also be familiar with the defenses that substance/alcohol abusers may use to avoid testing and should not be easily dissuaded from requiring an employee to undergo testing when the facts indicate for-cause testing is needed.

**An employee who is directed to undergo for-cause testing must be driven to the testing site by a supervisor or Human Resources personnel.** The employee may be granted leave with pay or be transferred to another position during the period of time between when a sample is provided and the date the final test results are received by the Human Resources Director or designee. The employee shall not be placed on administrative leave without pay or disciplined in any manner until after a "positive" test has been confirmed by the MRO unless the actions of the employee which gave rise to the for-cause testing are sufficient in and of themselves to warrant such disciplinary action.

**A written record shall be made of all the circumstances which resulted in an employee being directed to undergo for-cause testing (see Appendix B).**

c) Post-Accident Testing. The City may require an employee to undergo drug or alcohol testing if the employee or another person has sustained an injury while at work or property has been damaged while at work, including damage to equipment. An employee who is subject to post-accident testing shall remain readily available for such testing or the employee may be deemed to have refused to submit to testing. Nothing in this Policy, however, shall be construed to require the delay of necessary medical attention for injured persons following an accident or to prohibit a driver 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.

d) Random Testing. The City may require the following types of employees to undergo drug or alcohol testing on a random selection basis:

1. police or peace officers;
2. employees having drug interdiction responsibilities;
3. employees authorized to carry firearms;
4. employees engaged in activities which directly affect the safety of others; and
5. employees who work in direct contact with inmates in the custody of the Department of Corrections or work in direct contact with juvenile delinquents.

The City will use a method of random selection which is matched with the employee's employee number. Random testing shall be unannounced and spread reasonably throughout the calendar year. Upon being notified of selection for random testing, employees will proceed immediately to the designated testing site. In the event an employee who is selected for random testing is on leave or determined by the Human Resources Director to be unavailable based on circumstances beyond the employee's control, a substitute employee may be randomly selected for testing.



e) Post-Rehabilitation Testing. The City may require an employee who was not terminated to undergo drug or alcohol testing without prior notice for a period of up to two (2) years commencing with the employee's return to work, following a confirmed positive test or following participation in a drug or alcohol dependency treatment program. In all such cases, the employee shall be required to undergo testing immediately upon his or her return to duty. The frequency of follow-up testing during the two (2) year period shall be determined by the Human Resources Director, after consulting with the employee's Department Director.

**SUBSTANCES TESTED.** The substances test shall be for drugs and alcohol as defined herein.

### **RULES AND PROCEDURES FOR COLLECTION AND TESTING.**

#### a) General Rules.

1. Collection of samples and drug and alcohol testing will be conducted in accordance with state law and implementing regulations. Samples shall be collected and tested only by individuals deemed qualified by the State Department of Health and tested only at testing facilities licensed by the State Department of Health to perform such tests.
2. Drug or alcohol testing shall occur during or immediately after the regular work period of the employee and shall be deemed duty time for purposes of compensation and benefits.
3. The City shall pay all costs of testing for drugs or alcohol; provided, however, an applicant or employee who requests a retest of a sample in order to challenge the results of a positive test shall pay all costs of the retest, unless the retest reverses the finding of the challenged positive test. In such case, the City shall reimburse the applicant or employee for the costs of the retest.
4. Samples shall be collected and tested with due regard to the privacy of the individual being tested. In the case of urinalysis, no City employee or representative, agent or designee of the City shall directly observe an applicant or employee in the process of producing a urine sample; provided, however, collection shall be in a manner reasonable calculated to prevent substitutions or interference with the collection or testing of reliable samples.
5. At the time of collection, applicants and employees will be afforded the opportunity to provide any information which the applicant or employee considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant information.

b) Specific Procedures.

1. Every applicant who receives a conditional offer of City employment will be directed to report to the Human Resources Department where the applicant will be given a copy of this Policy and instructions to report to a designated medical facility within seventy-two (72) hours to provide a sample for drug and alcohol testing. Prior to doing so, the applicant shall complete a consent form documenting their willingness to undergo pre-employment drug and alcohol testing (See Appendix A).
2. The applicant or employee will report to the designated medical facility to provide a sample for testing. Employees undergoing for-cause or post-accident testing will be transported to the sampling facility by supervisory or Human Resources personnel.
3. The sampling facility will collect a breath, urine or blood sample as authorized by the State Department of Health. The collection of samples shall be performed under reasonable and sanitary conditions, and in sufficient quantity for splitting into two separate specimens to provide for any subsequent independent analysis in the event of challenge of the test results of the main specimen.
4. Prior to the collection, the sampling facility will begin a written record of the chain of custody of the sample which shall be maintained from the time of collection until the sample is no longer required. The sample will then be collected in an approved container with a label sufficient to unmistakably identify the donor of the specimen. Upon receiving the necessary quantity of a specimen, the container shall be sealed in such a manner as to reveal any unauthorized opening of the container.
5. Collected samples shall be stored in locked areas accessible only by individuals approved by the State Department of Health to collect or test samples. Samples that must be transported individually or collectively to a separate testing facility will be packaged in crush-resistant boxes with individual slots that will hold each sample upright.
6. Testing will be conducted using methods and equipment approved by the State Department of Health. Breath testing will be conducted by a certified Breath Alcohol Technician using an approved Evidential Breath Testing device. The technician shall conduct an initial (screening) test and a confirmation test twenty (20) minutes later, if necessary. Screening tests of urine or blood will be conducted using either the immunoassay or thin-layer chromatography methods. For urine samples, tests will be completed to determine any adulteration of the sample. Such tests include creatinine level, pH level, and specific gravity. Confirmation tests on urine or blood will be conducted using the combination gas-liquid chromatography/mass spectrometry method.
7. If the screening test result is negative for substances for which tested and for adulteration, no additional testing will be conducted unless directed by the Medical Review Officer (MRO).

8. Should the MRO report that the test is a “false negative” (negative for substances for which the test was conducted, but positive for adulteration of the sample), the applicant or employee providing the sample will be considered to have refused to undergo testing.

9. Should a confirmation test indicate the presence of substances or their metabolites above the cut-off levels established by the State Board of Health, the MRO will review all documentation and request an interview of the employee or applicant that recorded the positive result. During the interview, the employee or applicant will be afforded a full opportunity to explain, in confidence, the test results and provide any supporting documentation. The MRO will determine if the positive result was in fact related to drug or alcohol abuse or due to legitimate use of prescribed or over-the-counter medication, marijuana use as allowed by state statute, ingestion of foods that may cause a “false positive” or other factor.

10. If the applicant or employee provides information and/or documentation sufficient to satisfy the MRO that the presence of the substance is lawful or not otherwise prohibited, the result of the test will be reported by the MRO as negative. If the applicant or employee refuses to be interviewed by the MRO or fails to provide information and/or documentation within forty-eight (48) hours of the MRO’s request, the result of the test will be reported by the MRO as positive just as if the information and/or documentation were considered insufficient.

11. The testing facility will report the results of each test directly to the Human Resources Director or designee along with any recommendations of the MRO concerning any positive result. The Human Resources Director or designee will be informed only of the presence or absence of the substances or their metabolites listed under “Substances Tested” in this Policy and any evidence of adulteration or other tampering with a sample. The City will not be notified of the presence of other substances or given any information relating to the general health, pregnancy or other physical or mental condition of the applicant or employee that may be revealed by the testing.

**APPLICANT’S REFUSAL OF TEST OR POSITIVE RESULTS.** Any applicant who refuses to undergo drug and alcohol testing or has a positive final test result will be denied employment with the City. The Human Resources Department will notify the applicant that the conditional offer of employment has been withdrawn and the reason for the withdrawal. The applicant will be scheduled to discuss the reasons for denial of employment with the Human Resources Director should he/she elect to do so. The rejected applicant will not be eligible for employment with the City for a period of one (1) year after the date of refusal to test or the date the sample was provided which tested positive. If the test result is positive for cannabinoids only, the City Manager may on a case by case basis reduce the one (1) year period of employment ineligibility to six (6) months in his or her sound discretion after due consideration of the surrounding circumstances and the position being sought by the applicant.

**EMPLOYEE'S INABILITY OR REFUSAL TO TEST.** If an employee identified for testing is unable to provide an adequate sample for testing due to valid medical reasons, the reasons must be documented by a signed statement from the employee's treating physician. If the employee provides such documentation, he/she will be excused from current testing, but will be subject to being selected or identified for testing in the future. Failure of the employee to provide documentation of valid medical reasons will be considered a refusal to submit to testing. Other conduct of the employee designed to obstruct the testing process will also be considered a refusal to submit to testing. Examples include failure to comply with a directive to undergo testing, attempts to delay the testing process, substitution of or an attempt to substitute an invalid sample, contamination or adulteration of a sample, etc. An employee's refusal to submit to testing will be considered a positive test result and will subject the employee to the same disciplinary action as would a confirmed positive test. In addition, failure to submit to testing when so ordered will subject the employee to disciplinary action for insubordination.

**DISCIPLINARY ACTION AGAINST EMPLOYEES.** No disciplinary action may be taken against an employee required to undergo for-cause testing until there has been a confirmed positive test using gas-liquid chromatography/mass spectroscopy, or an equivalent scientifically accepted method of equal or greater accuracy as approved by the State Board of Health, at the cut-off levels determined by the Board. Confirmed positive test results will subject any employee of the City to the full range of disciplinary action set forth in Section 17-1-7-173 of the Lawton City Code, up to and including termination. An employee discharged on the basis of a refusal to undergo drug or alcohol testing or a confirmed positive drug or alcohol test conducted in accordance with the provisions of this Policy shall be considered to have been discharged for misconduct for purposes of unemployment compensation benefits as provided by state law. Nothing in this Policy is intended to restrict supervisory and management personnel from taking appropriate disciplinary action against employees who have exhibited improper behavior or substandard performance. This is true even if drug or alcohol use or abuse is the underlying problem or the employee has volunteered for drug or alcohol counseling and treatment through the Employee Assistance Program (EAP).

**EMPLOYEE ASSISTANCE PROGRAM.** An employee may self-refer or be referred by his/her supervisor to complete a program of counseling and treatment through the City's Employee Assistance Program (EAP). If the referral is mandatory, the employee must agree in a signed statement to undergo evaluation and the course of treatment prescribed by the EAP Substance Abuse Professional (SAP) and to allow the SAP to provide periodic reports to his/her employer, concerning the employee's progress and status of completion of the program of counseling or treatment prescribed by the SAP. Prescribed treatment may be on an in-patient or out-patient basis. Absences from work necessitated by evaluation or treatment will be charged against the employee's accrued leave balances, or leave without pay if the employee has no accrued leave. Treatment will be at the employee's expense except for such expenses that are covered under

the City's group health plan. Failure of an employee to submit to evaluation, cooperate with the SAP, conscientiously participate in a prescribed treatment program, or to successfully complete the prescribed program for mandatory referrals are grounds for disciplinary action up to and including termination of employment.

**APPEAL PROCEDURES.** In addition to the right to provide information and documentation to the MRO in explanation of a positive test result, an employee may appeal disciplinary action taken for violating this Policy to either the Employee Advisory Committee (EAC) or Personnel Board, depending on the nature and severity of the discipline. The EAC and Personnel Board may provide relief as set forth in Chapter 17 of the Lawton City Code. Police and Fire Department employees may grieve disciplinary action taken for violating this Policy in accordance with the procedures set forth in their respective bargaining agreements.

**CONFIDENTIALITY AND MAINTENANCE OF RECORDS.** All records pertaining to drug and alcohol testing will be maintained as confidential records in the Human Resources Department in a secure location and separate from other personnel records. Such records, including the records of the testing facility, shall not be used in any criminal proceeding, or any civil or administrative proceeding, except in those actions taken by the employer or in any action involving the individual tested and the employer or unless such records are ordered released pursuant to a valid court order. The records shall be the property of the City, but upon the request of the applicant or employee tested, shall be made available to the applicant or employee for inspection and copying. The City shall not release such records to any person other than the applicant, employee or the MRO, unless the applicant or employee, in writing following receipt of the test results, has expressly granted permission for the employer to release such records or pursuant to a valid court order. Except for records pertaining to negative drug or alcohol tests, all records maintained by the City, including records pertaining to notification and training of employees, shall be maintained for a minimum of five (5) years. In addition to their right to obtain records maintained by the City, applicants or employees shall have the right to obtain copies of their test results, and any analysis and information related thereto, directly from the testing facility upon the applicant's or employee's request.

**ORIENTATION AND TRAINING.** All employees must be informed of this Policy and sign a statement indicating they have reviewed and understand it, and that they understand as a condition of employment they must undergo drug and alcohol testing as required by this Policy in accordance with state law. New employees at the time of the initial orientation conducted by the Human Resources Department will be required to review the Policy and complete the required documentation. All supervisory personnel must be formally trained no less than once every two (2) years as to the effects on human behavior of alcohol and the various controlled

substances listed in this Policy, the proper documentation of employee behavior or job performance that serves as the basis for testing, the proper procedures for confronting an employee to receive for-cause testing, and proper procedures for referral of an employee for evaluation or treatment by the EAP.

**NOTICE OF CONVICTION OF DRUG OFFENSES.** As a participant in the Community Development Block Grant Program administered by the United States Department of Housing and Urban Development (HUD), the City is required to notify HUD within ten (10) days after receiving notice of any City employee convicted of committing a criminal drug offense. All City employees shall notify the Human Resources Department within five (5) days of being convicted of any such offense. Failure to do so will subject the employee to disciplinary action up to and including termination.

## **Section 2, Drug and Alcohol Testing Requirements for Commercial Vehicle Operations**

**\*SECTION 2 –UNDERGOING REVIEW/MODIFICATIONS FORTHCOMING\***

**PURPOSE.** The purpose of this section is to implement the drug and alcohol testing program for employees involved in commercial vehicle operations mandated by the U.S. Department of Transportation (DOT), Federal Highway Administration.

**APPLICABILITY.** The following section applies only to employees who perform safety-sensitive duties as defined by the DOT. This includes all employees who are required to hold a Class A, B, or C Commercial Drivers License (CDL) in order to operate commercial vehicles and mechanics and other employees who are involved in the repair and maintenance of commercial vehicles. Unless specific modifications to the general requirements or procedures are indicated in this section, the requirements and procedures in Section 1 will apply. This includes the substances for which tested, testing procedures, qualifications of collection and testing facilities and personnel, reasonable suspicion testing, training requirements, etc.

**DEFINITIONS.** In addition to the definitions contained in Section 1 of this policy, the following definitions apply in this section:

“Alcohol Concentration” means alcohol in a volume of breath (shown as grams of alcohol divided by 210 liters of breath) as indicated by an evidential breath test;

“Breath Alcohol Technician (BAT)” means an individual who instructs and assists individuals in the alcohol testing process operates an evidential breath testing (EBT) device. The BAT must be trained and certified as qualified to operate the EBT device;

“Commercial Vehicle” means a vehicle that requires that the operator hold a Class A, B, or C Commercial Drivers License (CDL). This includes City vehicles that have a gross vehicle weight (GVW) of over 26,001 lbs., those required to transport hazardous materials and must be placarded in accordance with DOT regulations, or those designed to transport more than 15 passengers. Fire apparatus are not considered commercial vehicles according to Federal law;

“Driver”, as used in this section, means a City employee who must maintain a Class A, B or C Commercial Drivers License due to job requirements to operate vehicles which have a GVW of 26,001 lbs. or more, is designed to carry 15 or more passengers, or is used to transport hazardous materials. It does not include fire apparatus drivers;

“Safety-sensitive Positions”, as used in this section, refers to drivers and mechanics and other employees who maintain, repair, dispatch, or operate commercial vehicles; and

“Substance Abuse” means patterns of use of drugs or alcohol that result in health consequences or impairment in social, psychological, and occupational functioning.

PROCEDURES: In addition to the general drug and alcohol testing requirements contained in Section 1 of this policy, City employees who are required to hold a Class A, B, or C Commercial Drivers Licenses for operation of commercial vehicles and employees involved in the maintenance and repair of such vehicles must undergo testing in accordance with Federal guidelines. Such employees are considered to be in safety-sensitive positions. In addition to specific requirements concerning post-offer, post-accident, and return-to-work testing, a random testing program must be conducted for these employees.

**IDENTIFICATION OF SAFETY-SENSITIVE EMPLOYEES:** An initial survey will be conducted by all departments to identify employees working in safety-sensitive positions in accordance with DOT guidelines. Department Directors will provide a list of all so identified employees to the Human Resources Department. The Human Resources Department will update the list as modifications are required due to hiring, promotions, transfers, or terminations. In January of each year, the Human Resources Director will forward a list of each departments safety-sensitive employees to the affected departments. The department directors will certify the accuracy of the list or make appropriate corrections and return it to the Human Resources Department.

## **RANDOM TESTING PROCEDURES:**

1. The list of safety-sensitive employees will be used in the random selection process. The employee numbers of employees listed will be entered into computer software designed for random number selection.

2. During the initial calendar year of this program, a minimum of 50 percent of the listed employees will be selected at random to undergo testing for drugs (controlled substances). A minimum of 25 percent will be selected at random to undergo the Evidential Breath Test for alcohol. The percentages of the employees selected may change from year to year in accordance with Federal guidelines based on the percent of failures ("positive" tests).

3. On random dates selected throughout the year, the Human Resources Director and a representative from the Public Works Department will conduct the random selection process and generate the list of employees selected for testing. The selection process must occur no less than four times per year and the total number of employees selected during the year must equal the required annual percentage goals. The random selection process may cause an employee to be selected and required to test more than once during a particular year.

4. The names of the selected employees will be kept confidential. The Human Resources Director will provide department directors the names of their employees randomly selected for testing no sooner than 72 hours in advance of the selected test date. The division supervisors will be notified by the department director of division personnel selected no sooner than 3:00 p.m. of the last workday before the scheduled testing date. Selected employees will not be notified until immediately before being instructed to report to the testing facility or being escorted to the testing facility by supervisory personnel.

5. The Human Resources Department will schedule the tests with the designated facility. Supervisors will normally accompany the selected employees to the collection or testing facility, but are not required to remain at the site during sampling or testing.

6. If an employee selected for testing is off-duty due to being sick or on vacation or personal holiday, the employee's supervisor will notify the Human Resources Director. The Human Resources Director may excuse the employee from testing, or, if the employee is expected to be absent for no more than two days, may direct that the employee be tested upon return to work.

7. All test results will be reported to the Human Resources Director by the testing facilities. The Human Resources Director will contact department directors concerning any positive results on employees in their departments. At the end of the year, the Human Resources Department will review all reports to determine the failure rates of employees tested and use this information to determine the percentage of employees to test the following year. The Human Resources Department will be responsible for providing any required reports related to this program to DOT or other government organization.



8. Any employee who records a confirmed "positive" drug test or a "positive" alcohol test with a concentration of 0.04 or more indicated, will immediately be suspended from duty and will be required to undergo the evaluation of a Substance Abuse Professional (SAP), submit to the treatment or rehabilitation program prescribed, and complete "return-to-duty" and "follow-up" testing. Safety-sensitive employees who record a "positive" alcohol test with concentration of 0.02 to 0.039 will not be required evaluation by an SAP and will not be required to undergo follow-up testing. However, drivers must be suspended for at least 24 hours, and other safety-sensitive employees for at least 8 hours and must complete return-to-duty testing with a negative result before being allowed to return to work.

**INITIAL DRUG AND ALCOHOL TESTING FOR SAFETY- SENSITIVE POSITIONS:** Applicants for safety-sensitive positions who are not currently employed by the City will be required to undergo applicant drug and alcohol testing as described in Section 1 of this policy. City employees who are selected for promotion or transfer into safety-sensitive positions from positions not considered safety-sensitive, must successfully complete drug and alcohol testing before such changes in assigned job duties become effective. Employees transferred from one safety-sensitive position to another safety-sensitive position, from a safety-sensitive position to a non-safety-sensitive position, or from one non-safety-sensitive position to another will not undergo drug and alcohol testing in conjunction with the change in assigned duties.

**POST ACCIDENT TESTING:**

1. Post accident testing is mandatory for the operator of a commercial vehicle if the accident involves loss of life or if the operator received a citation under Federal, state, or local law for a moving traffic violation arising from the accident. Otherwise, the operator may be tested if evidence causes reasonable suspicion that alcohol or drugs may have been a contributing factor to the accident.

2. Alcohol (EBT) testing should be completed within two hours of the accident. It must be completed within 8 hours or it is not to be completed at all. If not completed within 2 hours, or not completed at all, the employee's department director will report to the City Manager that the testing was not completed, or was not completed in a timely manner and the reasons it was not. This report will be forwarded to and filed in the Human Resources Department.

3. Employees (drivers) who are involved in vehicle accidents are not allowed to use alcohol within 8 hours after the accident or until the EBT is completed, whichever is the shorter period of time. Violation of this provision will result in disciplinary action up to, and including, termination.

4. Drug (controlled substance) testing should be completed as soon as possible, but not later than 32 hours after the accident. If not completed within 32 hours, the test will not be

conducted and the department director will report to the City Manager that the testing was not completed and the reason it was not. The City Manager will forward this report to the Human Resources Department for filing.

5. The immediate supervisor of the driver involved in an accident will be responsible for insuring that post accident drug and alcohol testing is conducted as required by this policy. If the driver is treated for injuries that occurred in the accident, the supervisor may direct the facility treating the injuries to conduct the testing should the appropriate equipment and qualified personnel be available. If not, the supervisor will escort or direct the employee to the designated facility for the testing unless injuries prevent the employee from undergoing the tests.

**RETURN-TO-DUTY TESTING:** An employee in a safety-sensitive position who has had a confirmed positive test for alcohol (concentration of 0.04 or above) or controlled substances, if employment has not been terminated, will be evaluated by a Substance Abuse Professional through the City's Employee Assistance Program, must successfully be complying with the SAP's recommended treatment program, and must undergo a controlled substance test, an alcohol (EBT) test, or both, with negative results prior to resuming duties as a driver. A driver who has been terminated may also be evaluated by the SAP on a voluntary basis. A driver who has been suspended for 24 hours or more (8 hours or more for other safety-sensitive positions) following an alcohol test result in the 0.02 to 0.039 range will also be administered a return-to-duty test and must record test results of less than 0.02.

**SPECIFIC RULES FOR ALCOHOL TESTING:**

1. A qualified Breath Alcohol Technician (BAT) operating an approved Evidential Breath Testing (EBT) device must conduct the testing. If the initial test result reveals an alcohol concentration of less than 0.02, the test is considered negative for alcohol. If the concentration is 0.02 or above, a confirmation test will be conducted 20 minutes after the initial test.

2. If the test result is confirmed to be between a concentration of 0.02 and 0.039, the employee, if a driver, must be suspended from driving duties for at least 24 hours. Other safety-sensitive employees must be suspended from safety-sensitive duties for at least 8 hours. All safety-sensitive employee must record a negative result (below 0.02) on a return-to-duty test before being allowed to resume safety-sensitive duties.

3. If the test result is confirmed to be a concentration of alcohol in excess of 0.04, employees will be suspended from all safety-sensitive duties until they have been evaluated by a Substance Abuse Professional (SAP), undergone any prescribed treatment or rehabilitation, and recorded a negative result on return-to-duty testing. Follow-up testing must be completed as prescribed by the SAP.

**SUSPENSION OF EMPLOYEES FROM SAFETY-SENSITIVE DUTIES:** Employees will not be allowed to operate commercial vehicles or to perform other safety-sensitive duties during the following periods:

1. From the time the employee is identified for reasonable suspicion testing until confirmed test results are received by the Human Resources Director.
2. From the time of an accident that requires the driver to undergo post-accident testing until confirmed test results are received by the Human Resources Director.
3. From the time the City is informed of a confirmed positive test result for an employee from any type of testing until the employee records a negative test result on return-to-duty testing.
4. From time any employee refuses to test until appropriate disciplinary action is completed.

Until test results are received by the City for reasonable suspicion or post-accident testing, the employee may be temporarily transferred to duties not considered safety-sensitive or may be suspended from duty with pay unless the actions of the employee which gave rise to the testing were sufficient to warrant disciplinary action. Should test results be negative for drugs or alcohol, the employee may immediately return to performing safety-sensitive duties. Any situation where the employee has recorded a confirmed positive test or has refused to test is cause for disciplinary action up to, and including, termination of employment.

**FOLLOW-UP (POST REHABILITATION) TESTING:** For up to five years after the "positive" test result for drugs or alcohol (concentration of 0.04 or above) or for up to five years after the employee returns to work after completing a treatment or rehabilitation program, the employee is subject to random, unannounced drug and/ or alcohol testing as scheduled by the SAP assigned to assist the employee. The first test must be completed within the first 60 days after the employee returns to work and a minimum of six must be completed during the first year.

**ADDITIONAL RECORD KEEPING REQUIREMENTS:** In addition to the record keeping requirements contained in Section 1, the Human Resources Department will maintain records of identified safety-sensitive employees, lists of such employees selected for random testing, summaries of random testing test results, and copies of reports concerning the testing programs provided to the Department of Transportation or other entity for a period of five years.

REFERENCES: Oklahoma Standards for Workplace Drug and Alcohol Testing Act, 40, Okla. Statutes §§551 et seq.; The Federal Omnibus Transportation Employee Testing Act of 1991, and Department of Transportation rules (49 CFR part 40); and Chapter 17, Lawton City Code, 1995.

RECISION: This policy rescinds Administrative Policy 3-2 dated May 15, 2019 and will remain in effect until rescinded.

EFFECTIVE DATE: October 1, 2019

RESPONSIBLE DEPARTMENT: Human Resources

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Michael Cleghorn

City Manager

APPENDIX A

**CITY OF LAWTON**

**Drug and/or Alcohol Testing Consent Form**

Employee/Applicant Name: \_\_\_\_\_ Date: \_\_\_\_\_

Department: \_\_\_\_\_ Department Head: \_\_\_\_\_

Name of City Representative Requesting Test: \_\_\_\_\_

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Medical Consent: The undersigned hereby consents to a drug screen/alcohol test to be administered by a testing facility, as requested by the City.

Authorization To Release Test Results As Positive or Negative, To the City: I authorize the testing facility to release the results of the alcohol test and/or drug screen, as being positive or negative, to the City Human Resources Director or his/her designate.

( ) Applicant: I understand that refusal to consent to a drug screen and/or alcohol test shall be sufficient reason for the refusal to hire. I understand that upon a drug screen and/or alcohol test result of positive, my application for employment with the City shall be deemed withdrawn.

( ) Employee: I understand that refusal to consent to a drug screen and/or alcohol test shall be ground for discipline. I further understand that a drug screen and/or alcohol test result of positive shall be grounds for discipline, which may include termination.

( ) I give my consent to the drug screen and/or alcohol test with the understanding that the result of a drug screen test shall be reported to the City Human Resources Department as positive or negative and the results of the test(s) shall remain and be kept confidential unless I direct otherwise.

EMPLOYEE/APPLICANT SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

CITY REPRESENTATIVE: \_\_\_\_\_ DATE: \_\_\_\_\_

APPENDIX B

**CITY OF LAWTON**

**DRUG AND ALCOHOL FREE WORKPLACE POLICY**

**Appendix B**

**FOR-CAUSE OBSERVATION CHECKLIST**

**(Confidential)**

When a drug test is ordered based on reasonable belief that an employee may have abused drugs or alcohol, the actions and behavior leading to the belief must be documented. Actions which result in for-cause testing will occasionally be single actions, although for many employees there is a pattern of behavior which indicates a problem. In either case, the supervisor is required to complete this or a similar checklist, giving specific information on what was done, the date it occurred, etc.

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EMPLOYEE NAME	PERIOD OF EVALUATION
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SUPERVISOR (Name and Title)

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SUPERVISOR (Name and Title)

Has the employee manifested any of the following behaviors? Indicate "D" if documentation exists.

**QUALITY AND QUANTITY OF WORK**

YES NO

- \_\_\_ \_\_\_ 1. Clear refusal to do assigned tasks
- \_\_\_ \_\_\_ 2. Significant increase in errors
- \_\_\_ \_\_\_ 3. Repeated error in spite of increased guidance
- \_\_\_ \_\_\_ 4. Reduced quantity of work
- \_\_\_ \_\_\_ 5. Inconsistent, "up and down" quantity and quality of work
- \_\_\_ \_\_\_ 6. Behavior that disrupts workflow
- \_\_\_ \_\_\_ 7. More than usual supervision necessary
- \_\_\_ \_\_\_ 8. Procrastination on significant decisions or tasks
- \_\_\_ \_\_\_ 9. Frequent, unsupported explanations for poor work performance
- \_\_\_ \_\_\_ 10. Noticeable change in written or verbal communication
- \_\_\_ \_\_\_ 11. Other (please specify):

**INTERPERSONAL WORK RELATIONSHIPS**

YES NO

- \_\_\_ \_\_\_ 1. Significant change in relations with co-workers, supervisors, others
- \_\_\_ \_\_\_ 2. Frequent or intense arguments
- \_\_\_ \_\_\_ 3. Verbal abusiveness
- \_\_\_ \_\_\_ 4. Physical abusiveness
- \_\_\_ \_\_\_ 5. Persistently withdrawn or less involved with people
- \_\_\_ \_\_\_ 6. Intentional avoidance of supervisor



- \_\_\_ \_\_\_ 7. Expressions of frustration or discontent
- \_\_\_ \_\_\_ 8. Change in frequency or nature of complaints
- \_\_\_ \_\_\_ 9. Complaints by co-workers or subordinates
- \_\_\_ \_\_\_ 10. Cynical, "distrustful of human nature" comments
- \_\_\_ \_\_\_ 11. Unusual sensitivity to advice or critique of work
- \_\_\_ \_\_\_ 12. Unpredictable response to supervision
- \_\_\_ \_\_\_ 13. Passive-aggressive attitude or behavior, doing things "behind your back"

**GENERAL JOB PERFORMANCE**

YES NO

- \_\_\_ \_\_\_ 1. Excessive unauthorized absences – number in last 12 months \_\_\_\_\_
- \_\_\_ \_\_\_ 2. Excessive authorized absences – number in last 12 months \_\_\_\_\_
- \_\_\_ \_\_\_ 3. Excessive use of sick leave in last 12 months – number of days \_\_\_\_\_
- \_\_\_ \_\_\_ 4. Frequent Monday/Friday absences or other pattern
- \_\_\_ \_\_\_ 5. Frequent unexplained disappearances from the work site
- \_\_\_ \_\_\_ 6. Excessive "extensions" of breaks or lunch periods
- \_\_\_ \_\_\_ 7. Frequently leaves work early – number of days per week or month \_\_\_\_\_
- \_\_\_ \_\_\_ 8. Increased concern about, or incidents of, safety violations involving the employee
- \_\_\_ \_\_\_ 9. Experiences or cause job accidents
- \_\_\_ \_\_\_ 10. Major change in duties or responsibilities
- \_\_\_ \_\_\_ 11. Interferes with or ignores established procedures
- \_\_\_ \_\_\_ 12. Inability to follow through on job performance recommendations

## PERSONAL MATTERS

YES NO

- \_\_\_ \_\_\_ 1. Changes in or unusual personal appearance (Dress, Hygiene)
- \_\_\_ \_\_\_ 2. Changes in or unusual speech (incoherent, stuttering, loud)
- \_\_\_ \_\_\_ 3. Changes in or unusual physical mannerisms (gestures, posture)
- \_\_\_ \_\_\_ 4. Changes in or unusual facial expressions
- \_\_\_ \_\_\_ 5. Changes in or unusual level of activity – much reduced\_\_\_ or increased\_\_\_
- \_\_\_ \_\_\_ 6. Changes in or unusual topics of conversation
- \_\_\_ \_\_\_ 7. Engages in detailed discussions about death, suicide, or harming someone
- \_\_\_ \_\_\_ 8. Increasingly irritable or tearful
- \_\_\_ \_\_\_ 9. Persistently boisterous or rambunctious
- \_\_\_ \_\_\_ 10. Unpredictable or out-of-context displays of emotions
- \_\_\_ \_\_\_ 11. Unusual fears
- \_\_\_ \_\_\_ 12. Lacks appropriate caution
- \_\_\_ \_\_\_ 13. Engages in detailed in discussion about obtaining or using drugs or alcohol
- \_\_\_ \_\_\_ 14. Has personal relationship problems (spouse, girl/boyfriend, children, in-laws)
- \_\_\_ \_\_\_ 15. Has received professional assistance for emotional or physical problems
- \_\_\_ \_\_\_ 16. Makes unfounded accusations toward others, i.e. has feeling of persecution
- \_\_\_ \_\_\_ 17. Secretive or furtive
- \_\_\_ \_\_\_ 18. Memory problems (difficulty recalling instructions, data, past behavior)
- \_\_\_ \_\_\_ 19. Frequent colds, flu, or other illnesses
- \_\_\_ \_\_\_ 20. Comes to work with the odor of alcohol on breath
- \_\_\_ \_\_\_ 21. Excessive fatigue

- \_\_\_ \_\_\_ 22. Makes unreliable or false statements
- \_\_\_ \_\_\_ 23. Unrealistic self-appraisal or grandiose statements
- \_\_\_ \_\_\_ 24. Temper tantrums or angry outbursts
- \_\_\_ \_\_\_ 25. Demanding, rigid, inflexible
- \_\_\_ \_\_\_ 26. Major change in physical health
- \_\_\_ \_\_\_ 27. Concerns about sexual behavior or sexual harassment

Other information/observations (Please, be specific and attach additional sheets as needed):

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\_\_\_\_\_  
Signature of Supervisor      Date

\_\_\_\_\_  
Signature of Supervisor      Date