

## 12.11 DRUG-FREE WORKPLACE

The City of Melbourne is a drug-free workplace and complies with Section 440.102, Florida Statute, Drug Free Workplace Program Requirements as well as the Code of Federal Regulations – Title 49, Part 40, Transportation Workplace Drug and Alcohol Testing Programs.

### **Policy:**

The City of Melbourne is committed to providing a safe work environment and to fostering the well-being and health of its employees. That commitment is jeopardized when any City of Melbourne employee illegally uses drugs on the job; comes to work under the influence; possesses, distributes or sells drugs in the workplace; or abuses alcohol on the job. It is the policy of the City that the possession, distribution, sale, or use, by employees, of unlawful drugs, as well as the the abuse of controlled substances, and alcohol abuse, constitutes a danger to the employee, fellow employees, and the general public. Further, it is City policy that employees present themselves for duty 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.

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

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.

### **Comment:**

The use, consumption, possession, distribution, sale, or manufacturing of illegal drugs or controlled substances by employees while at work, is specifically prohibited. Employees are responsible for ensuring that lawfully prescribed prescription medications (Rx) or over-the-counter medications (OTC) do not adversely impact the employee's ability to safely perform his 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 an RX or OTC medication or operate City vehicles/equipment if the medication taken has a warning label cautioning against it.

### **Provisions:**

- A. **Confidentiality** - Except as otherwise provided by applicable laws or regulations, all information, interviews, reports, statements memoranda, and drug test results, written or otherwise, received or produced as a result of a drug-testing program are confidential unless the employee or job applicant authorizes the release by written consent.
- B. **Consequences of Applicant Refusal to Test** - All applicants recommended for hire will be subject to a mandatory drug test (urinalysis) to screen for the presence of drugs or illegal controlled substances. No applicant will be permitted to begin

work until a confirmed negative result has been received. Applicants who test positive will be ineligible for hire. If an applicant refuses to submit to a drug test, the applicant will be ineligible for hire.

C. **Consequences of Employee Refusal to Test** - If an employee refuses to submit to a drug or alcohol test conducted under this policy, it will be cause for termination of employment.

D. **Over-the-counter or prescription drugs which could alter or affect the outcome of a drug test** - The following list contains the most common drugs/medications by brand name, common name, or chemical name which may alter or affect the outcome of a drug test. All or some of these drugs may be tested for under the employer's drug testing policy. The Agency for Health Care Administration list of common drugs/medications are:

- **Alcohol:** All liquid medications containing ethyl alcohol (ethanol). Please read the label for alcohol content. As an example Vick's Nyquil is 25% (50 proof) ethyl alcohol, Comtrex is 20% (40 proof), Contac Severe Cold Formula Night Strength is 25% (50 proof) and Listerine is 26.9% (54 proof).
- **Amphetamines:** Obetrol, Biphphetamine, Desoxyn, Dexedrine, Didrex
- **Cannabinoids:** Marinol (Dronabinol, THC)
- **Cocaine:** Cocaine HCl topical solution (Roxanne)
- **Phencyclidine:** Not legal by prescription
- **Methaqualone:** Not legal by prescription
- **Opiates:** Paregoric, Parepectolin, Donnagel PG, Morphine, Tylenol with Codeine, APAP with Codeine, Aspirin with Codeine, Robitussin AC, Guiatuss AC, Novahistine DH, Novahistine Expectorant, Dilaudid (Hydromorphone), M-S Contin and Roxanol (morphine sulfate), Percodan, Vicodin, etc.
- **Barbiturates:** Phenobarbital, Tuinal, Amytal, Nembutal, Seconal, Lotusate, Florinal, Floricet, Esgic, Butisol, Mebaral, Butabital, Butabarbital, Phrenilin, Trian, etc.
- **Benzodiazepines:** Ativan, Axene, Clonopin, Dalmane, Diazepam, Librium, Serax, Tranzene, Valium, Verstran, Halcion, Paxipam, Restoril, Centrax, etc.
- **Methadone:** Dolophine, Methadose
- **Propoxyphene:** Darvocet, Darvon N, Doline, etc

\*\* Several of the above drugs have nicknames and trade names other than what is mentioned. If you are in doubt about a drug, please ask a medical professional.

E. **The following is a list of all drugs (described by brand name, common name and/or chemical name) for which the City of Melbourne may test:**

- **Alcohol** (booze, wine, liquor, drink)
- **Amphetamines** (Binphetamine, Desoxyn, Dexedrine)
- **Cannabinoids** (marijuana, hashish, hash, hash oil, pot, joint, roach, spleaf, grass, weed, reefer)
- **Cocaine** (coke, blow, nose candy, snow, flake, crack)
- **Phencyclidine** (PCP, angel dust, hog)
- **Methaqualone** (714s, quaaludes, ludes, sporos)

- **Opiates** (opium, dover's powder, paregoric, parepectolin)
  - **Barbiturates** (Phenobarbital, Tuinal, Amytal)
  - **Benzodiazophines** (Ativan, Azene, Clonopin, Dalmane, Diazepam, Halcion, Librium, Poxipam, Restoril, Serax, Tranxene, Valium, Vertron, Xanax)
  - **Methadone** (Dolophine, Methadose)
  - **Propoxyphene** (Darvocet, Darvon N, Dolene)
- F. **Employee Assistance Program** – The City's Employee Assistance Program provider is available by calling the Personnel Division or visiting the employee benefit website [www.melbourneflorida.org/employee/personnel/index.htm](http://www.melbourneflorida.org/employee/personnel/index.htm) . A list of local drug and alcohol rehabilitation programs and substance abuse professionals is available through the City's Employee Assistance Program provider.
- G. **Administrative or Civil Action** – Any applicant or employee pursuing administrative or civil action pursuant to this section has the responsibility of notifying the testing laboratory.
- H. **Employees Covered by Collective Bargaining Agreements** – Employees covered by collective bargaining agreements have a right to appeal as established by the Public Employees Relations Commission or applicable court.
- I. **Right to Consult with Medical Review Officer** – All applicants or employees tested under this section have the right to consult with a medical review officer for technical information regarding prescription or non-prescriptions.
- J. **Right to Contest Results** - An employee or job applicant who receives a positive confirmed test result may contest or explain the results to the medical review officer within 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 to rules adopted by the Agency for Health Care Administration or the Code of Federal Regulations for CDL drug and alcohol testing, or the applicable collective bargaining agreement.

#### **Types of Testing:**

The City of Melbourne conducts the following types of drug and alcohol testing:

- **Pre-Employment** - All job applicants recommended for hire by the City of Melbourne are required to submit to pre-employment drug testing. Applicants with a confirmed positive test result will be ineligible for hire.
- **Post-Employment** - Employees of the City of Melbourne will be subject to the following drug and alcohol testing in accordance with applicable laws and regulations:

- Reasonable suspicion drug and alcohol testing
- Routine fitness for duty drug testing
- Post-accident drug and alcohol testing
- Follow-up drug and alcohol testing
- Random CDL drug and alcohol testing

**Procedures for Reasonable Suspicion Testing:**

Current employees will be required to submit to a drug and/or alcohol test upon reasonable suspicion that they have reported for duty under the influence. A member of management and at least one additional person must witness and confirm that the employee appears to be impaired at work. The decision to require the employee to submit to a drug and/or alcohol test, will require the approval of the employee's Department Director prior to any test taking place.

1. A supervisor may suspect that an employee is under the influence of alcohol or controlled substances by observing, but not limited to, the following:
  - a) Excessive absenteeism or chronic lateness
  - b) Drowsiness or sleepiness
  - c) Alcohol on the breath
  - d) Slurred or incoherent speech
  - e) Unusually aggressive behavior
  - f) Unexplained change in mood
  - g) Lack of manual dexterity
  - h) Lack of coordination
  - i) Unexplained work related accident or injury
2. Supervisors should not attempt to provide counseling services to suspected alcohol or drug users/abusers, since diagnosis and rehabilitation are the functions of qualified experts.
3. Employees who are using a drug lawfully prescribed by a physician are encouraged to notify the Employee Health Nurse of that situation. The use of a lawfully prescribed medication or over-the-counter medication that results in observed impairment while at work may result in progressive disciplinary action regarding the impact to job performance or safety concerns.
4. All test samples will be collected at the Employee Health Services office or a designated laboratory. Testing of the samples will be performed by an independent laboratory contracted by the City. An appropriate chain of custody will be established and maintained to ensure the accuracy of test results. While awaiting the results of the test, the employee will be removed from active duty, and placed on either sick leave, vacation leave, or leave without pay and the employee will be required to return City keys and access cards to equipment or buildings.
  - a. Where practical, all test samples will be picked up by the laboratory courier on the same day as collected.

- b. When a test sample is not able to be delivered to the laboratory on the same day as collected, appropriate steps to preserve chain of custody will be followed.
5. A positive test result will result in an interview with the Division Manager or Department Director and the Employee Health Nurse. The employee shall immediately be referred by the Employee Health Nurse to representatives of the City's Employee Assistance Program (EAP). The employee shall be required to complete any actions, including completion of a recognized rehabilitation program, as may be recommended by the EAP. Failure to successfully complete the actions recommended by the EAP will result in immediate termination. Rehabilitation costs will be the responsibility of the employee.
  - a. Following a positive test result, the employee has the right to request that a portion of the sample be provided to a laboratory of his choice for an independent confirmatory test. The costs of the independent test will be borne by the employee, except where it can be shown that the results of the City's test were in error.
  - b. In the event that the sample produces different results from the laboratory contracted for by the City and the one determined by the employee, a third confirmation will be sought by another independent laboratory mutually agreed to by the City and the employee. The cost of the third independent test will be borne by the employee, except where it can be shown that the results of the test from the laboratory contracted by the City were in error.
6. The City desires to assist employees to overcome any dependency on alcohol, drugs, or controlled substances they may have. When in the best interests of the City and the employee, and in order to ensure the safety of the general public and other employees, any employee testing positive will be removed from active duty and will be placed on either sick leave, vacation leave, or an authorized leave of absence without pay until they have successfully completed a rehabilitation program. However, when circumstances warrant, the City reserves the right to impose appropriate disciplinary action, up to and including dismissal. If the employee refuses to follow the recommended rehabilitation program, the City will proceed with termination of employment.
7. Those employees who successfully complete a rehabilitation program will be randomly tested upon completing the program in accordance with the recommendations of the EAP/Substance Abuse Professional. A positive test within a two-year period after completion of treatment will result in immediate termination.

**Procedure for Handling an Impaired Employee:**

- A. If there is reasonable suspicion that an employee is impaired at work, the supervisor should notify the Department Director of his concern. The Department

Director will then contact the Personnel Manager or designee to decide whether the process should be initiated.

- B. The employee should not be allowed to operate any equipment or drive a vehicle. Explain to the employee the behavior that has been observed and that he will be taken to the Employee Health Nurse for testing for “reasonable cause”. Do not attempt to provide a diagnosis or counseling.
- C. Transport the employee to the Employee Health Nurse. In her absence, contact the Personnel Division for further direction.
- D. Following the administration of reasonable suspicion drug and/or alcohol tests, the Employee Health Nurse will schedule an appointment with the Employee Assistance Program (EAP), and the Employee Health Nurse will explain to the employee that he will be placed on sick leave until the results of the test are received. The employee will also be required to return City keys to equipment or buildings. This process will be handled in a confidential manner. A supervisor or designee will take the employee home.
- E. Employees who test positive for drug and/or alcohol will generally be provided the opportunity to enter a rehabilitation program as recommended by the EAP; however, when circumstances warrant, the City reserves the right to impose appropriate disciplinary action, up to and including dismissal.
- F. Once the Substance Abuse Professional/EAP Counselor releases an employee to work, the Employee Health Nurse will administer the appropriate drug and/or alcohol test. The employee is permitted to return to work following a negative test result. As a condition of employment, the EAP will require the employee sign a return to work agreement. All records regarding this agreement will be kept in a medical file and will remain confidential. They are not a part of the employee's Personnel File. If the employee fails to fulfill the agreement, he will be subject to disciplinary action up to and including dismissal. Disciplinary actions are a part of the employee's Personnel File.

**Commercial Drivers License (CDL) Random Drug & Alcohol Testing:**

The City is required by federal law to administer random drug and alcohol testing for employees required to possess a Commercial Drivers License. The federal guidelines state that 25% of affected employees will be randomly tested for alcohol and 50% will be randomly tested for drugs on a quarterly basis.

Post accident testing will be conducted if the accident involved a fatality, an injury treated away from the scene, a towed vehicle, and/or the driver is cited for a moving violation.

No employee shall refuse to submit to a post accident, random, reasonable suspicion, follow up alcohol or controlled substance test. The following will constitute refusal:

- Failure to provide adequate breath or urine without a valid medical explanation from a medical physician.

- Engaging in any conduct that clearly obstructs the testing process.
- Refusal to sign the appropriate forms.
- Verbal/written refusal to consent to the testing.

Refusal to submit to testing shall result in termination.

1. A positive test result will result in an interview with the Division Manager or Department Director and the Employee Health Nurse. The employee shall immediately be referred by the Employee Health Nurse to representatives of the City's Employee Assistance Program (EAP). The employee shall be required to complete any actions, including completion of a recognized rehabilitation program, as may be recommended by the EAP. Failure to successfully complete the actions recommended by the EAP will result in immediate termination. Rehabilitation costs will be the responsibility of the employee.
  - a. Following a positive test result, the employee has the right to request that a portion of the sample be provided to a laboratory of his choice for an independent confirmatory test. The costs of the independent test will be borne by the employee, except where it can be shown that the results of the City's test were in error.
  - b. In the event that the sample produces different results from the laboratory contracted for by the City and the one determined by the employee, a third confirmation will be sought by another independent laboratory mutually agreed to by the City and the employee. The cost of the third independent test will be borne by the employee, except where it can be shown that the results of the test from the laboratory contracted by the City were in error.
2. The City desires to assist employees to overcome any dependency on alcohol, drugs, or controlled substances they may have. When in the best interests of the City and the employee, and in order to ensure the safety of the general public and other employees, any employee testing positive will be removed from active duty and will be placed on either sick leave, vacation leave, or an authorized leave of absence without pay until they have successfully completed a rehabilitation program. However, when circumstances warrant, the City reserves the right to impose appropriate disciplinary action, up to and including dismissal. If the employee refuses to follow the recommended rehabilitation program, the City will proceed with termination of employment.
3. Employees who test positive for drug and/or alcohol will generally be provided the opportunity to enter a rehabilitation program as recommended by the EAP; however, when circumstances warrant, the City reserves the right to impose appropriate disciplinary action, up to and including dismissal.
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medical file and will remain confidential. They are not a part of the employee's Personnel File. If the employee fails to fulfill the contract, he will be subject to disciplinary action up to and including dismissal. Disciplinary actions are a part of the employee's Personnel File.

5. Those employees who successfully complete a rehabilitation program will be randomly tested upon completing the program in accordance with the recommendations of the EAP/Substance Abuse Professional. A positive test within a two-year period after completion of treatment will result in immediate termination.

**Self Reporting of Drug, Alcohol, or Controlled Substance Dependency:** Employees are encouraged to seek assistance if they have concerns regarding drug, alcohol or controlled substance dependency. Employees who self report will be provided the opportunity for rehabilitation. All records related to the self reporting of drug, alcohol or controlled substance dependency will be confidentially maintained. Employees seeking assistance are encouraged to contact the Employee Assistance Program or the Employee Health Nurse for assistance. Employees who self report will be subject to reasonable suspicion drug and alcohol testing if there is reasonable suspicion that the employee is impaired at work. A positive test result will be treated in accordance with a positive test result under the provisions of this policy.

**Conviction of a Drug Related Crime:** Any City employee who is convicted of any drug crime is required to notify the City within 48 hours after such conviction. These employees will be subject to disciplinary action, up to and including dismissal.

**Consequences of Failing to Comply with This Policy:** As a condition of continued employment, all City employees will abide by the terms of this Policy statement.

Employees who refuse to comply with any provision of this Policy by:

- a. refusing to be tested,
- b. attempting to manipulate the outcome of the test, or
- c. not being available for testing within the appropriate time limits as determined by the professionals conducting the test

shall receive immediate disciplinary action up to and including immediate discharge from employment.