

APPENDIX B



Drug and Alcohol Policy

SECTION 1. PURPOSE

In compliance with the Drug-Free workplace Act of 1988, the City of Newport Beach ("City") recognizes the important responsibility it shares in maintaining a safe and secure environment for those who live, work and play in the City. Further, the City is committed to providing its employees with a safe, productive and healthful workplace. An employee performing their normal or assigned duties while under the influence of alcohol and/or any drug poses a serious risk to the health, safety, security and image of the City, its employees and the public.

The City's Drug and Alcohol Policy ("Policy") is designed to promote a drug and alcohol-free workplace and to comply with applicable state and federal laws. In recognition of the public service responsibilities entrusted to City employees, and because drug and alcohol usage can hinder a person's ability to perform duties safely and effectively, the following Policy on drug and alcohol testing is hereby adopted by the City.

This Policy establishes the rules and procedures regarding the use of drugs and/or alcohol as it pertains to employment and the procedures to be used to test for drug and/or alcohol use.

The City provides reasonable accommodations as required by law to those employees whose drug or alcohol problem classifies them as disabled. While the City will be supportive of those who seek help voluntarily, the City will be equally firm in identifying and disciplining those whose continued substance abuse, even if enrolled in counseling or rehabilitation programs, results in performance deficiencies, danger to the health and safety of others and themselves, and/or violations of federal or state laws and/or City policies.

SECTION 2. VIOLATION OF POLICY

The City will not tolerate or excuse any violation of this Policy. Employees who violate this Policy will be subject to disciplinary action, up to and including termination. Applicants who violate or refuse to cooperate with this policy will not be hired and may not be allowed to reapply/retest in the future.

SECTION 3. INDIVIDUALS COVERED

A. External Applicants, City Employees and Independent Contractors

This Policy applies to all external applicants for employment, employees and independent contractors of the City. A copy of this Policy will be given to all employees. Notices of this Policy will also be posted on all departmental bulletin boards and copies are available in the Human Resources Department.

While this Policy applies to all employees, some of the prohibitions and testing procedures only apply to "Covered Employees," as defined below.

Employees should direct any questions regarding their rights and obligations under this Policy to their supervisors or to the Human Resources Department.

B. Covered Employees

This Policy also applies to "Covered Employees" as defined by DOT regulations. DOT regulations call for specific drug and alcohol testing of drivers who operate commercial motor vehicles requiring a commercial driver's license as well as employees who perform "safety-sensitive" functions, as defined in Section 6. Individuals who are required to have a commercial driver's license to operate commercial motor vehicles and those performing "safety-sensitive" functions are considered "Covered Employees." Covered Employees are prohibited from being under the influence of or in possession of illegal drugs, alcohol or other controlled substances while on-duty or on-call status.

A Covered Employee is considered to be performing a safety-sensitive function during any period in which that employee is actually performing, required to be in readiness to perform, or immediately available to perform any safety-sensitive function, including off-site lunch periods and breaks. An employee is no longer performing a safety-sensitive function once he or she is relieved from work and all responsibility for performing work.

SECTION 4. CONFIDENTIALITY

Any information about an employee's use of prescription or non-prescription medication, the results of any pre-employment or for-cause drug and/or alcohol testing, and/or an employee's past or present participation in rehabilitation or treatment for substance abuse shall be considered confidential medical information and shall not be disclosed except as expressly provided in this Policy. Information obtained pursuant to this Policy will only be disclosed to the City Manager, Human Resources Director, the Department Director and the Supervisor designated by the Department Director to implement any action necessary or appropriate pursuant to this Policy. Except for the Department Director and Human Resources Director, the information described in this Section shall be disclosed only as necessary to initiate disciplinary action, resolve legal issues or related to a medical emergency of an employee, when necessary. The employees authorized to receive the information described in this section shall consider all such information, including test results, to be confidential and not to be disclosed to any person or position other than as expressly provided in this Policy. Any reports or test results generated pursuant to this Policy shall be kept in a medical confidential file, accessible only by those authorized to receive the information and separate and distinct from the employee's personnel file.

SECTION 5. SENSITIVITY

All employees and supervisors shall be thoughtful and respectful when dealing with employees suspected of inappropriate use of drugs and/or alcohol. Allegations or reasonable suspicion of drug and/or alcohol use in violation of this Policy are to be handled with the utmost objectivity, confidentiality and within the guidelines of this Policy.

SECTION 6. DEFINITIONS

- A. **“Alcohol”** shall mean the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol.
- B. **“Chain of Custody”** shall mean procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen at the certified laboratory.
- C. **“City Equipment”** shall mean all property and equipment, machinery and vehicles owned, leased, rented or used by the City.
- D. **“Collection Site”** shall mean a designated clinic/facility where applicants or employees may present themselves for the purpose of providing a specimen of their blood or urine to be analyzed as specified and defined in 49 CFR Part 40.

Collection Sites shall include the following or as otherwise designated by the Drug Program Manager (see definition below):

- 1. National Safety Compliance, Inc.
61 Argonaut
Aliso Viejo, CA, 92656
(949) 472-0645
- 2. Newport Urgent Care
1000 Bristol Street North, Suite 1-B
Newport Beach, CA 92660-2906
(949) 752-6300
- 3. After Hours/Weekend Testing:
Hoag Hospital Emergency Department
301 Newport Boulevard
Newport Beach, CA, 92663
(949) 760-2372

The Collection Site will comply with all methods of collection and Chain of Custody and provide documentation of compliance to the City.

- E. **“Covered Employee”** shall mean an employee who performs safety-sensitive functions or operates certain commercial motor vehicles or as defined by DOT Regulations.
- F. **“Drug or Drugs”** shall mean any controlled substance that is not legally obtainable under State or Federal law, or a prescription drug obtained or used without benefit of a prescription by a licensed physician or health care professional. Controlled substances are listed under Title 21 of the Code of Federal Regulations (“CFR”), Part 1308.
- G. **“Drug Program Manager (‘DPM’)** shall mean the Human Resources Director or designee.

- H. **“Medical Review Officer (‘MRO’)”** shall mean a licensed physician with knowledge of drug abuse disorders as well as appropriate training to interpret and evaluate an employee’s positive test results together with an employee’s medical history and any other biomedical information. A MRO reviews all negative and positive test results and interviews individuals who tested positive to verify the laboratory report before the employer is notified. Furthermore, a MRO recommends whether and when an employee who refused to take or did not pass a drug and/or alcohol test may return to work and schedules follow-up unannounced testing for a period of up to thirty-six (36) months from the date an employee tested positive.
- I. **“Prescription Drug”** shall mean any substance that can lawfully be obtained or possessed pursuant to a prescription by a licensed physician. “Prescription Drug” does not include medicinal or prescribed marijuana obtained at a dispensary, even if recommended by a licensed physician.
- J. **“Positive Test”** shall mean to have the presence of a drug or a drug metabolite and/or alcohol in a person’s system that is equal to or greater than the levels allowed by this Policy in the confirmation test as determined by appropriate testing of a blood or urine specimen and which is determined by the MRO to be the result of the use of drugs and/or alcohol.
- K. **“Safety-Sensitive”** shall mean any position in which drug or alcohol-affected performance could clearly endanger the health and safety of others. These positions have public safety implications, such as:
1. Driving a commercial motor vehicle;
 2. Spending time in a commercial motor vehicle;
 3. Loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a commercial motor vehicle being loaded or unloaded, remaining in readiness to operate the commercial motor vehicle or in giving or receiving receipts for shipments loaded or unloaded;
 4. Repairing, obtaining assistance, inspecting, maintaining, or attending to a commercial motor vehicle;
 5. Use of a firearm for security purposes; or
 6. Use of heavy equipment.

Such positions include the following functions:

- a. A greater-than-normal level of trust and responsibility for the health and safety of others, including the public;
- b. Where errors in judgment, inattentiveness, diminished coordination or dexterity or lack of composure while performing duties could clearly result in mistakes which would endanger the health and safety of others, including the public; and

- c. A level of independence when performing tasks which cannot be safely assumed that mistakes, such as those described above, could be prevented by a supervisor or another employee.

Employees working in “safety-sensitive” positions will be subject to pre-employment testing as the City has determined that a special need exists and may be subject to random, unannounced testing as permitted by this Policy and applicable law.

- L. **“Substance Abuse Professional (SAP)”** shall mean a licensed physician, social worker, psychologist, Employee Assistance Program (EAP) or certified National Association of Alcohol and Drug Abuse Counselors (NAADAC) with knowledge of and clinical experience in diagnosis and treatment of alcohol and controlled substance disorders.
- M. **“Testing Laboratory”** shall mean a Substance Abuse and Mental Health Services Administration (SAMHSA) certified testing laboratory.

SECTION 7. RESTRICTIONS ON THE USE OF ALCOHOL

Employees may not use, be under the influence, or possess alcohol under any of the following circumstances: while on City Property, while performing their duties (whether or not on City Property) or at any time when use of alcohol would impair, to any extent, the employee’s ability to perform his/her duties or operate any City Equipment.

SECTION 8. PROHIBITION AGAINST THE USE OF DRUGS

No employee shall possess, use, sell, transfer, manufacture, purchase or transport drugs or attempt to do so or report to work with drugs in employee’s system. No employee shall possess, use, sell, transfer, manufacture, purchase or transport prescription drugs, or attempt to do so, or report to work with prescription drugs in employee’s system, unless the prescription drug has been lawfully prescribed to the employee.

SECTION 9. PROHIBITED CONDUCT APPLICABLE TO COVERED EMPLOYEES

Additionally, the City also prohibits Covered Employees from engaging in the following conduct:

- A. Reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration level of 0.01 or greater;
- B. Performing a safety-sensitive function while using alcohol or within four (4) hours after using alcohol;
- C. Using alcohol while performing a safety-sensitive function;
- D. Reporting for duty or remaining on duty requiring the performance of safety-sensitive functions when the employee has used any controlled substance, unless the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee’s ability to operate a vehicle safely;

- E. Reporting for duty or remaining on duty requiring the performance of safety-sensitive functions if the employee tests positive for any controlled substance;
- F. Consuming alcohol during the eight (8) hours immediately following an accident involving City Equipment or vehicle or before having undergone a post-accident alcohol test, whichever occurs first;
- G. Refusing to submit to any alcohol or controlled substances test required by the DOT regulations. A Covered Employee who refuses to submit to a required drug or alcohol test will be treated in the same manner as an employee who has tested 0.01 or greater on an alcohol test or tested positively on a controlled substances test.

SECTION 10. CRIMINAL DRUG STATUTE CONVICTIONS

To fulfill its obligations under the Federal Drug-Free Workplace Act of 1988, the City requires any employee who is convicted of any criminal drug statute, for a violation occurring in the workplace, to provide written notice of the conviction to the Department Director no later than five (5) days after the conviction. The City is also required, and will fulfill its obligations to, educate employees on the harmful effects of using and abusing drugs and/or alcohol.

As required by law, the City will notify federal contracting agencies within 10 days after receiving notice that an employee, directly engaged in performance of work on a federal contract, has been convicted of a criminal drug statute violation resulting from conduct occurring in the workplace.

Whenever the City has reason to believe that Federal, State or local drug laws are being violated, the City may refer the matter to the appropriate law enforcement agencies for investigation and possible criminal prosecution.

Independent contractors, or employees of independent contractors, working on City projects are required by law or contract to notify the City, Human Resources Director or Department Director of a drug and/or alcohol-related conviction or positive test for drugs and/or alcohol and will not be permitted to work on City projects.

SECTION 11. MEDICAL AND RECREATIONAL MARIJUANA

Although California law exempts use of marijuana (cannabis) by those individuals issued a California Department of Public Health Medical Marijuana Identification Card and by adults over the age of 21 under the Adult Use of Marijuana Act from criminal prosecution in state court, neither of these laws affect an employer's right and obligation to maintain an illegal drug and alcohol free workplace. Similarly, these laws do not require employers to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace or affect the employer's ability to have policies prohibiting the use of cannabis by employees and prospective employees. Marijuana remains an illegal drug under the federal Controlled Substances Act and California laws do not prevent employers from complying with federal law. Accordingly, employers in California can continue to enforce workplace substance abuse policies, test for controlled substances and refuse to hire applicants who test positive for controlled substances, even in instances where the employee or applicant was legally using marijuana under the state's Compassionate Use Act or under the Adult Use of Marijuana Act.

Therefore, both medicinal use and non-medicinal recreational use of marijuana that may be legal under state law does not constitute an acceptable explanation or excuse for a positive drug test under this Policy and does not hinder or affect the City's ability to fail or refuse to hire an applicant because of a positive drug test.

SECTION 12. MEDICATION REPORTING REQUIREMENTS

In the case of prescription drugs, employees shall ask the prescribing physician and/or in the case of medication available over-the-counter, employees shall review product packaging to determine whether the use of the prescription drug or over-the-counter medication may impair the employee's ability to perform the employee's normal job duties or to safely operate City Equipment. Any employee taking an over-the-counter medication or prescription drug marked "do not drive," "do not operate heavy equipment" or similarly labeled, shall inform the appropriate supervisor of this restriction. The City will engage with the employee in an interactive process meeting to determine if the employee can perform their essential functions with or without reasonable accommodation. In the event the employee's personal medical provider provides a written note that the use of the drug or medication will not impair the employee's ability to perform their essential job duties, the supervisor shall allow the employee to perform those duties. Notices or communications required by this section shall be confidential and disclosed only to the supervisor and the employees outlined in Section 4 who are specifically authorized to receive information pursuant to this Policy.

SECTION 13. INDICATIONS FOR ALCOHOL AND DRUG TESTING

A. Pre-Employment Testing for Certain External Job Applicants

External job applicants who apply for certain jobs where a special need for pre-employment drug and alcohol testing exists, must take and pass a mandatory drug and alcohol test as soon as practical following their acceptance of a conditional offer of employment and prior to the first day of work with the City.

The categories of jobs subject to pre-employment drug and alcohol testing include, but are not limited to:

1. Safety-sensitive jobs that have public safety implications, such as operating heavy trucks to transport hazardous materials, protecting national security, enforcing drug laws, and/or operating natural gas pipelines; and
2. Jobs that involve the direct influence over children.

External job applicants who:

1. Test positive for drugs and/or alcohol or unauthorized prescription drugs shall not be hired and may not re-apply for the certain positions described above in Section 13.A.1 and 13.A.2 with the City for one (1) year from the applicant's last positive test; or
2. Refuse to submit to testing, or attempt to tamper with or adulterate a test sample, will be considered to have refused to participate in the testing process, shall not be hired and shall not be considered for employment for the certain positions described above in Section 13.A.1 and 13.A.2 with the City for one (1) year from the job applicant's refusal to participate in the testing process.

B. Reasonable Suspicion Drug and Alcohol Testing for All Employees

Reasonable suspicion drug and alcohol testing applies to all employees, not just Covered Employees.

1. Reasonable Suspicion Testing: For purposes of this Policy, “Reasonable Suspicion” is a belief based on objective factors sufficient to lead a reasonably prudent supervisor to suspect that an employee is using or under the influence of drugs or alcohol in violation of this Policy. Factors that may constitute reasonable suspicion alone or in combinations, the physical symptoms of which should be documented in writing by the supervisor as may be applicable, include, but are not limited to:
 - unusual behavior
 - slurred or altered speech
 - body odor
 - red or watery eyes
 - unkempt appearance
 - unsteady gait
 - lack of coordination
 - sleeping on the job
 - a pattern of abnormal or erratic behavior
 - a verbal or physical altercation
 - puncture marks or sores on skin
 - runny nose
 - dry mouth
 - dilated or constricted pupils
 - agitation
 - hostility
 - confused or incoherent behavior
 - paranoia
 - euphoria
 - disorientation
 - inappropriate wearing of sunglasses
 - tremors
 - an accident involving City property or equipment; and other evidence of recent drug or alcohol use
2. The City may require an employee to submit to a drug and/or alcohol screen test under the following circumstances:
 - a. When a supervisor has reasonable suspicion to believe that an employee is under the influence of alcohol and/or drugs while on duty, the supervisor may require the employee to submit to a drug and/or alcohol test, upon prior written approval by the City Manager or designee. See Exhibit A and Exhibit C.

Covered Employees may be subject to reasonable suspicion drug testing any time while on duty. Covered Employees may be subject to reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

- b. Following a work-related accident, incident or mishap that resulted in death, or injury requiring medical treatment, where drug and/or alcohol use by employee cannot be ruled out as a contributing factor. See Exhibit A and Exhibit C.
 - c. When a supervisor has reasonable suspicion to believe, based upon specific and articulable facts and observations, that the employee either possesses, uses, sells, transfers, manufactures, purchases or illegally transports alcohol, drugs and/or drug related paraphernalia or attempts to do so. See Exhibit A and Exhibit C.
 - d. For the follow-up testing of employees who hold jobs that are safety-sensitive or require driving. Their participation in a drug and/or alcohol rehabilitation program may be required.
 - If the drug screen is positive and the employee can provide to the laboratory or clinic conducting the test within 24 hours a valid prescription in the employee's name for the drug identified in the drug screen or any other relevant medical factors necessary to determine whether there is a legitimate medical explanation, the test results may be reported as negative.
 - e. When an on duty employee is contacted by a Police Officer who has reasonable suspicion to believe the employee is under the influence of alcohol or drugs or the employee has been involved in an on-duty vehicle-related incident and the officer suspects the employee is under the influence of drugs and/or alcohol.
3. Document and Analysis: In order to receive authority to test, the supervisor must record the factors that support reasonable suspicion in writing and analyze the matter with the City Manager or designee and any other experts the City deems necessary for consultation. The City Manager or designee must pre-approve any reasonable suspicion testing of a City employee. See Exhibit A.
 4. Consent: Prior to the administration of any drug or alcohol testing, the supervisor shall first obtain from the employee to be tested a completed and signed "*Acknowledgement of Submission to Drug and/or Alcohol Testing*" form. See Exhibit B.
 5. Testing Protocol: If the documentation and analysis show that there is a reasonable suspicion of drug or alcohol abuse at work and the City Manager or designee has approved testing, the employee will be relieved from duty, transported to the testing facility and to his or her home after the test. The City will place the employee on sick or other paid leave until it receives the test results.
- C. Positive Test or Refusal to Test

Employees who refuse to take a test after direction to do so, or who test positive, will be subject to discipline, up to and including termination. A refusal to test is defined as any of the following:

1. Not providing the City a written consent to take the test;

2. The applicant or employee does not supply enough quantity of the laboratory-required sample for alcohol or drug testing without sufficient or valid medical explanation;
3. Tampering with a specimen or collection process; or
4. Tardiness reporting to Collection Site after time allocated for applicant or employee to report without valid explanation.

D. Additional Drug and Alcohol Testing for Covered Employees

1. DOT Threshold Levels

This Policy adheres to and incorporates the minimum thresholds defined in DOT Regulations 49 CFR Part 40 for the cut-off levels used to determine when a drug test is positive.

2. Post-Accident Alcohol and Drug Testing for Covered Employees

A Covered Employee who is subject to post-accident testing must make themselves readily available for the test or they will be deemed to have refused the test. For purposes of this Policy, an accident does not include minor accidents where the vehicle does not incur "disabling damage". "Disabling damage" means damage that precludes a motor vehicle from driving away from the scene of the accident in its usual manner in daylight or after simple repairs. It includes damage to a motor vehicle that could have been driven, although it would have been further damaged if so driven. It does *not* include damage that can be remedied temporarily at the scene of the accident without special tools or parts, such as headlight or taillight damage, damage making the turn signals, horn, or windshield wipers inoperative or tire disablement without other damage even if no spare tire is available.

a. Post-Accident Alcohol Testing

Post-accident alcohol tests should be administered within two (2) hours following the accident, but in no case later than eight (8) hours. If alcohol testing is not administered within two hours following the accident, the City shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If alcohol testing is not administered within eight hours following the accident, the City shall cease attempts to administer an alcohol test and will prepare and maintain on file a record stating the reasons the test was not administered.

Following an occurrence involving a City commercial motor vehicle operating on a public road, the City shall require post-accident alcohol testing for each of its surviving City employees drivers and:

- Who were performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
- Who received a citation within eight (8) hours of the occurrence for a moving traffic violation arising from the accident, if the accident involved (a) bodily

injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or (b) one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

b. Post-Accident Drug Testing

If drug or controlled substance testing is not administered within thirty-two (32) hours following an accident, the City will cease attempts to administer a drug or controlled substance test and prepare and maintain on file a record stating the reasons the test was not promptly administered.

Following an occurrence involving a City commercial motor vehicle operating on a public road, the City shall require post-accident drug and controlled substances testing for each of its surviving City employee drivers and:

- Who were performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
- Who received a citation within thirty-two (32) hours of the occurrence for a moving traffic violation arising from the accident, if the accident involved (a) bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or (b) one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

3. Random Drug and Alcohol Testing for Covered Employees

Only employees performing “safety-sensitive” functions, as defined by this Policy, will be subject to random testing throughout the year for the purpose of determining the presence of alcohol, illegal drugs, or controlled substances. Random drug and alcohol tests for safety-sensitive employees are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year. Random testing will be conducted at all times of the day when safety-sensitive functions are performed.

Testing rates will meet or exceed the minimum annual percentage rate set each year within each DOT agency. The current year testing rate can be viewed online at <http://www.dot.gov/odapc/random-testing-rates>.

The selection of employees for random drug and alcohol testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator. Under the selection process used, each covered employee will have an equal chance of being tested each time selections are made.

A covered employee will only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing

such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

Each covered employee who is notified of selection for random drug or random alcohol testing must immediately proceed to the City's designated testing site.

Random testing may occur anytime an employee is on duty so long as the employee is notified prior to the end of the shift. Employees who provide advance, verifiable notice of scheduled medical or childcare commitments will be random drug tested no later than three hours before the end of their shift and random alcohol tested no later than 30 minutes before the end of their shift. Verifiable documentation of a previously scheduled medical or childcare commitment, for the period immediately following an employee's shift, must be provided within the first two (2) hours of the employee's shift.

4. Procedure after a Positive Drug and/or Alcohol Test

If a Covered Employee holding a safety-sensitive position is not terminated after a positive drug and/or alcohol test, the Covered Employee:

- a. Must be removed from performing any safety-sensitive function;
- b. Must submit to an examination by an SAP and may be required to undergo treatment for alcohol or illegal drug abuse. If the Covered Employee follows a prescribed course of rehabilitation, they *may* be able to return to the safety-sensitive position after the SAP determines they have successfully completed the program. The City is not required to pay for this treatment;
- c. May not return to the former safety-sensitive position until the Covered Employee has been:
 - Evaluated by an SAP
 - Complied with any recommended treatment and/or education
 - Re-evaluated by an SAP, who has determined successful compliance with the SAP's recommended treatment and/or education
 - Submitted to a return-to-duty and follow-up testing for controlled substances and/or alcohol which indicates an alcohol concentration level of less than 0.02 or a negative result on a controlled substance test;
- d. Must submit to unannounced follow-up testing after the Covered Employee has returned to the safety-sensitive position; and
- e. May perform any duties for the City that are not considered "safety-sensitive functions." This may include handling of materials exclusively in a warehouse, regardless of whether the materials are considered hazardous as long as safety-sensitive functions are not performed.

NOTE: The decision to return the employee to his or her job duty functions ultimately belongs to the City. The SAP's function is to advise the City as to whether the employee has complied with any recommended program of treatment.

5. Return-to-Duty and Follow-Up Testing for Covered Employees

a. Return-to Duty Testing

Any Covered Employee who is allowed to return to safety-sensitive duties after failing or refusing to submit to a DOT drug and/or alcohol test must first be evaluated by a DOT-qualified SAP and provide a negative drug and/or alcohol test result.

Covered Employees must submit to a return-to-duty test before returning to their safety-sensitive duties. All testing will be conducted in accordance with 49 CFR Part 40, Subpart O.

A positive test result will indicate the problem has not been resolved and requires referral to the SAP for further assessment.

b. Follow-Up Testing

Any Covered Employee returning to a safety-sensitive position following leave for substance abuse rehabilitation will be subject to unannounced follow-up alcohol and/or drug testing for a period of one (1) to five (5) years, as directed by the SAP. The type of testing (drug and/or alcohol), number, and frequency of such follow-up testing shall be directed by the SAP. All testing will be conducted in accordance with 49 CFR Part 40, Subpart O.

SECTION 14. DRUG AND ALCOHOL TESTING

A. Administration

1. The Human Resources Director or designee is the DPM and shall be responsible for overseeing implementation of this Policy and the testing procedures in Exhibit C. The Human Resources Director will be responsible for reviewing all disciplinary actions resulting from violations of this Policy to ensure that the action proposed or taken is consistent with this Policy and the Manual.
2. The DPM shall be responsible for the following:
 - a. Communicating directly with the MRO and/or SAP and SAMHSA regarding any drug and/or alcohol tests;
 - b. Overseeing test programs; and
 - c. Providing supervisor and employee training;

B. Procedure

1. **Mandatory Reporting** - Any employee who has reason to believe that another employee may be in violation of this Policy shall immediately notify their immediate supervisor. The supervisor should take whatever immediate action is deemed prudent to ensure the safety of the public and employees. Should the supervisor have reasonable suspicion to believe, based upon specific and articulable facts and observations, that the employee may be under the influence of drugs and/or alcohol, the employee should immediately be removed from the workplace and placed on leave with pay until such time as testing results confirm or refute the presence of drugs and/or alcohol. The supervisor shall use the Reasonable Suspicion Evaluation Form (Exhibit A) to assist in making this determination. Should an employee be found in violation of this Policy and after appropriate notice and a final decision after any hearing on appeal, leave with pay may be discontinued.
2. **Acknowledgement** - No drug and/or alcohol test may be administered, sample obtained, or drug and/or alcohol test be conducted on any sample without the written acknowledgment (Exhibit B) of the person being tested. Refusal to submit to testing, or attempt to adulterate or evade the testing process, will be viewed as insubordination and will subject the person to disciplinary action up to and including discharge. The City will pay the cost of all drug and/or alcohol tests required by this Policy used to determine test results. Should an employee test positive, the costs of any tests needed to return to work or tests required as part of follow-up testing for Covered Employees who hold a safety-sensitive position will be paid by the Covered Employee.
3. **Collection, Integrity and Identification**
 - a. After the job applicant or employee has been advised about the reason for the test by the supervisor, the job applicant or employee will be properly identified, and the Collection Site personnel will explain the mechanics of the collection process.
 - b. Procedures for urine collection will allow for individual privacy unless there is reason to believe the individual may alter or substitute the specimen to be provided. Samples will be tested for temperature and subject to other validation procedures as appropriate.
4. **Chain of Custody**
 - a. Procedures for the storage and transportation of test specimens shall conform to the Mandatory Guidelines for Federal Workplace Drug Testing Programs promulgated by the Department of Health and Human Services as amended from time to time. These guidelines currently require that:
 - Specimen bottles shall be under the direct control of collection site personnel.
 - Specimen bottles shall be identified only by the Specimen Identification Number.

- The City shall prepare no writings about the contents of the specimen bottles or the employee identities.
- b. The test laboratory shall maintain custody of the specimens.
5. Testing Methods – All tests will be screened using an immunoassay technique and for alcohol an evidential breath testing (“EBT”) device. All presumptive positive tests will be confirmed at an independent laboratory using gas chromatography/mass spectrometry (GC/MS). The City will test for cannabinoids (marijuana), cocaine, amphetamines, opiates, barbiturates, benzodiazepines, and phencyclidine (PCP) as well as alcohol. Tests will seek only information about the presence of drugs and/or alcohol in an individual’s system and will not test for any medical condition.
 6. Notification – Any employee who tests positive will be notified by the MRO and will be given an opportunity to provide the MRO any reasons he or she may have that would explain the positive drug and/or alcohol test, other than the presence of alcohol or the illegal use of drugs. If the employee provides an explanation acceptable to the MRO that the positive drug or alcohol test result is due to factors other than the presence of drugs and/or alcohol in the test specimen, the positive test result will be disregarded and reported to the City as negative. Otherwise, the MRO will report the positive test result to the DPM or Human Resources Director. The explanation of the use of prescription medical marijuana is not an acceptable explanation and the MRO will report the test as a positive test result. Test results will be disclosed only to the extent expressly authorized by this Policy.
 7. Split Sample Testing – An employee who has been subjected to drug and/or alcohol screening may request a split sample test be conducted at a certified laboratory chosen by the employee. All costs associated with an employee’s decision to pursue split sample testing will be the full responsibility of the employee. The employee must adhere to the following procedures to maintain strict Chain of Custody of the sample and validity of the split sample test results:
 - a. To request a split sample test to be conducted, the employee must submit a written request on the required Chain of Custody release form provided by the City’s testing laboratory to the DER.
 - b. The request will be forwarded to the testing laboratory used by the City facility. They will release the split sample to the certified lab chosen by the employee provided they have received the properly executed Chain of Custody release form.
 - c. The laboratory selected by the employee must be a certified laboratory per State regulations and authority and be able to conduct GC/MS method of testing for validation of testing results. Any method of testing performed on the split sample that is not the GC/MS method will be considered invalid.
 - d. The split sample test results will not be released to the City without the employee’s written consent.

SECTION 15. REHABILITATION

- A. Voluntary Disclosure – The City encourages any employee who believe they may have a drug and/or alcohol problem to take initiative in voluntarily seeking confidential assistance to resolve the problem. Such employees may disclose the problem to the Human Resources Director (or DPM) who shall refer the employee to the Employee Assistance Program (EAP). An employee requesting this assistance will not be disciplined solely due to the request but may, with the employee’s consent, be transferred, given work restrictions, or placed on leave while receiving treatment and until the employee is drug and/or alcohol free. An employee’s voluntary disclosure of a substance or alcohol abuse problem will not terminate any investigation, criminal or administrative, or disciplinary process initiated prior to the disclosure. An employee subject to this Policy and making a voluntary disclosure shall receive immunity one time only during their employment with the City.

Each employee is encouraged to seek professional assistance before the employee’s drug and/or alcohol problem leads to a violation of this Policy, or before the employee is asked to submit to a drug and/or alcohol screen test.

- B. Leave Time – Employees must use available personal paid leave or request a leave of absence without pay if time off from work is necessary for any treatment or rehabilitation program. The costs of long-term rehabilitation or treatment services, whether or not covered by the employee's medical plan, are the ultimate responsibility of the employee.
- C. Return-to-Duty Testing – Employees returning to safety-sensitive duty following leave for substance abuse rehabilitation may be required to submit to a return-to-duty test before returning to their position.

SECTION 16. EXCEPTIONS

This Policy shall not prevent a safety employee of the Newport Beach Police Department from using or possessing drugs or alcohol as part of their official job duties and when in furtherance of the mission of the Police Department.

4/12/2021 – Amended to specify follow-up testing for Covered Employees

10/25/2022 – Amended to include legislation changes effective January 1, 2021

**EXHIBIT A
DRUG AND ALCOHOL POLICY
REASONABLE SUSPICION EVALUATION FORM**

Employee Name: _____

Observation Date and Time: _____

Location of Employee: _____

Location of Supervisor(s): _____

Others present during activities or observations: _____

Incident(s) observed which give cause for reasonable suspicion: _____

(Factors that may be considered in combination with those listed in 1 – 6 below include: takes needless risks, accident(s), disregard for others safety, unusual/distinct pattern of absenteeism/tardiness, increased high/low periods of productivity, lapses of concentration or judgment, etc.)

1. Presence of alcohol, alcohol containers, drugs, and/or drug paraphernalia (specify):

2. Appearance:
 Flushed Inappropriate Disheveled
 Bloodshot Eyes Puncture Marks Tremors
 Profuse Sweating Runny Nose/Sores Smell of Alcohol
 Dry-mouth Symptoms Dilated/Constricted Pupils
 Inappropriate Wearing of Sunglasses
 Other: _____

3. Behavior/Speech:
 Incoherent Slurred Unconscious
 Confused Slowed Hostile/Confrontation
 Agitated Sleeping on the job
 Other: _____

4. Awareness:
 Confused Mood Swings Euphoric
 Lethargic Paranoid Disoriented
 Lack of Coordination
 Other: _____

5. Motor Skills/Balance:
 Unsteady Swaying Falling
 Staggering Stumbling Reaching for Support
 Arms Raised for Balance
 Other: _____

6. Other observed Actions or Behaviors: _____

Supervisor's Comments: _____

Supervisors Name: _____

Signature: _____ Date: _____

Supervisors Name: _____

Signature: _____ Date: _____

Witness(es) Name: _____ Date: _____

Signature: _____ Date: _____

**EXHIBIT B
DRUG AND ALCOHOL POLICY
ACKNOWLEDGEMENT OF SUBMISSION TO DRUG AND/OR ALCOHOL TESTING
BY THE CITY OF NEWPORT BEACH (“CITY”)**

I, _____ [PRINT NAME], understand and acknowledge that I have reviewed a copy of the City’s Drug and Alcohol Policy (Policy). I hereby acknowledge that I am required to submit to drug and/or alcohol testing pursuant to the Policy.

I understand and acknowledge that information regarding the test results will be released to the City and that such information may be used as grounds for disciplinary action, up to and including discharge.

I further understand and acknowledge that:

1. The City will pay the cost of all drug and/or alcohol tests required or requested by the City, except those costs associated with return work and follow-up testing associated with a positive test result;
2. I may request in writing a copy of the results of any such test;
3. I may request that a split sample test be sent to a certified Testing Laboratory of my choice, consistent with the procedures outlined in the City’s Drug and Alcohol Policy, and that I will bear all of the costs associated with the split sample testing;
4. By signing this form, I hereby acknowledge that the test results will be released to the City; and
5. I have the right to refuse to submit to such testing; however, refusal by me to submit to or cooperate at any stage of the testing shall be considered equivalent to a confirmed “positive” test for purposes of disciplinary action, up to and including discharge from my employment with the City.
6. I may also be required to execute forms at the Collection Site of Testing Laboratory.

With full understanding and knowledge of the foregoing, I hereby acknowledge my obligation to submit to drug and/or alcohol testing conducted by the clinics and/or Testing Laboratory selected by the City.

I have read the above acknowledgement and certify that I have signed this document with full knowledge and understanding of its contents.

Signature: _____

Date: _____

**EXHIBIT C
DRUG AND ALCOHOL POLICY
REASONABLE SUSPICION TESTING PROCEDURES**

A. Testing Procedures

1. Drug and/or alcohol testing will be conducted when a Supervisor has a reasonable suspicion that an Employee is under the influence of drugs and/or alcohol. Reasonable suspicion must be based on specific, contemporaneous, articulate observations concerning the physical symptoms or behaviors of being under the influence of drugs and/or alcohol. A Supervisor must establish reasonable suspicion of drug and/or alcohol use during or just preceding the Workday. If conditions permit, the Supervisor will request the assistance of another Supervisor to observe the actions or behavior of the employee. The Supervisor shall, prior to testing, permit the employee to attempt to contact, and consult with, a representative. The Supervisor is encouraged to make reasonable efforts (defined as actions that would not, in the opinion of the Supervisor, unreasonably delay the test, affect the reliability of the test, or harm the safety of the employee or the public) that would allow the employee to consult with a representative prior to the test. Examples of performance indicators of probable drug and/or alcohol abuse sufficient to lead a Supervisor to suspect that an Employee is under the influence of drugs and/or alcohol, include, but are not limited to, those on the attached Reasonable Suspicion Evaluation Form, (Exhibit A).
2. The Reasonable Suspicion Evaluation Form and other documentation establishing reasonable suspicion shall be prepared and signed by the witness(es) and the Supervisor prior to testing. The Department Director or Human Resources Department should be notified as soon as possible.
3. Testing shall be comprised of breathalyzer, urine and/or blood samples only. Positive levels for prohibited drugs are as follows:

<u>Drug to be tested</u>	<u>Initial Level</u>	<u>Confirmation Level</u>
Amphetamines and/or Methamphetamines	1000 n/ml	500 n/ml
Barbituates	300 n/ml	200 n/ml
Benzodiazepines	300 n/ml	200 n/ml
Cocaine	300 n/ml	150 n/ml
Marijuana	50 n/ml	15 n/ml
Opiates (morphine and/or codeine)	2000 n/ml	2000 n/ml
Phencyclidine (PCP)	25 n/ml	25 n/ml
Alcohol	.02 percent	.02 percent

4. Employee shall be tested within two (2) hours following the determination made by a Supervisor or otherwise the Employer shall document the reasons the test was not promptly administered. If a test is not administered within eight (8) hours following the determination, the Employer shall cease attempts to administer a test and shall state in the record the reasons for not administering the test.
5. The potentially affected Employee will not be allowed to proceed alone to or from the Collection Site. In addition, to the safety concerns for the Employee, the Supervisor accompanying the Employee also assures that there is no opportunity en route to the Collection Site for the Employee to do or ingest anything that could affect the test result or to acquire "clean" urine from another person.

D. Refusal to Submit to Testing

The following are definitions of refusal:

1. Not providing the City a written consent to take the test;
2. The Employee does not supply enough quantity of either urine or blood (for alcohol or drug testing) without sufficient or valid medical explanation;
3. Tampering with a specimen or collection process;
4. Tardiness to reporting Collection Site after time allocated for Employee to report without valid explanation;
5. Leaving the accident scene without justifiable cause before tests are conducted (testing for drugs and/or alcohol after an accident is presumed);
6. Any refusal to test will be considered a violation subject to discipline up to and including termination.

February 2010