

C-U
2/21/24

CITY PROPOSAL TO IAFF – DRUG AND ALCOHOL TESTING

City Proposed Language:

ARTICLE XX DRUG AND ALCOHOL TESTING

XX.1 All bargaining unit members are subject to the [City's Substance Abuse Program and Policy \(attached\)](#), which allows for reasonable suspicion testing for drugs and alcohol.

XX.2 Testing Standards:

The City intends to utilize the same testing standards as the Federal Department of Transportation's Federal Motor Carrier Safety Administration that are in effect as of the date of this Agreement. For more information, please refer to the City's Federal DOT Drug and Alcohol Testing Policy (attached).

XX.3 Random Drug and Alcohol Testing:

15% of the total bargaining unit members on a random basis each year will be tested for controlled substances and/or alcohol. The tests shall be unannounced, with all members selected from a random pool and will be administered by the City or a third-party administrator. The City shall determine the date, time, and location of each test and will be responsible for the cost of testing. Represented employees subject to random testing may be ordered to submit to a controlled substance and/or alcohol test whenever randomly selected, up to two (2) times in any 12-month period.

Employees selected for testing shall be personally notified, by the Human Resources Department or by a designated department representative.

Refusal to comply with either form of testing, as provided in this section and XX.1 above, shall be considered a positive test result and this refusal, in and of itself, is subject to disciplinary action, up to and including dismissal from City service. Any other positive test result will also be subject to disciplinary action, up to and including dismissal from City service.

XX.4 Post Work-Related Accident Testing:

The driver is responsible for providing a urine and breath sample for testing as soon as possible after a work-related moving vehicle accident (whether or not the driver was at fault). Alcohol and drug testing is to be completed as soon as possible, but not later than eight (8) hours following the accident for an alcohol test and thirty-two (32) hours following the accident for a drug test, unless testing cannot be completed due to a medical emergency.

Except in medical emergencies, failure of the driver to remain readily available for drug and/or alcohol testing will be considered a refusal to submit to testing and subject to discipline.

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XX.5 Return to Duty and Follow-up Testing:

At the conclusion of treatment and/or any disciplinary action a return to duty test must be conducted immediately prior to the return to work of an individual who has violated the prohibited drug or alcohol conduct standards. The employee shall be required to have a verified negative controlled substances test, or if applicable, a negative breath alcohol test.

XX.6 Split Specimen:

Employees who are notified of a positive test result will be advised that the “split” specimen can be used for confirmation.

XX.7 Consequences of a Positive Alcohol and/or Drug Test:

An employee who has a positive alcohol and/or drug test, will be subject to the actions outlined in the [City's Substance Abuse Program and Policy](#).

Any changes to the testing standards outlined in the City's Federal DOT Drug and Alcohol Testing Policy and any changes to the Substance Abuse Program and Policy after the effective date of this Agreement will be subject to the meet and confer process.

Substance Abuse Program & Policy**1.4.2****PURPOSE**

It is the policy of the City of San José to maintain a safe, healthful and productive work environment for all employees. To that end the City will act to eliminate any substance abuse (alcohol, illegal drugs, prescription drugs or any other substance which could impair an employee's ability to safely and effectively perform the functions of the particular job), which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or tends to undermine public confidence in the City's workforce.

This policy provides guidelines for self-referral and rehabilitation/treatment options for employees that may be experiencing a problem with alcohol and/or drug use and for-cause alcohol and/or drug testing for the detection and deterrence of alcohol and drug abuse. It also outlines the responsibilities of management and employees. All persons covered by this policy should be aware that violations of the policy may result in discipline, up to and including termination.

In recognition of the serious duty entrusted to employees of the City, with knowledge that drugs and alcohol do hinder a person's ability to perform duties safely and effectively, the following policy against drug and alcohol abuse is hereby adopted by the City of San José.

APPLICATION**A. Personnel**

- a. Full-time and permanent, benefited part-time employees in the following employee/bargaining units:
 - i. Association of Building, Mechanical and Electrical Inspectors (ABMEI)
 - ii. Association of Engineers and Architects (AEA), IFPTE, Local 21
 - iii. Association of Legal Professionals of San Jose (ALP)
 - iv. Association of Maintenance Supervisory Personnel (AMSP), IFPTE, Local 21
 - v. City Association of Management Personnel (CAMP), IFPTE, Local 21
 - vi. International Association of Firefighters, San Jose Firefighters Local 230 (IAFF)
 - vii. International Brotherhood of Electrical Workers (IBEW), Local 332
 - viii. Municipal Employees' Federation (MEF), AFSCME Local No. 101
 - ix. International Union of Operating Engineers (OE#3), Local No. 3
 - x. San José Police Officers' Association (POA)
 - xi. Executive Management and Professional Employees (Unit 99)
 - xii. All Unrepresented employees
- b. Unbenefited employees are subject to all rules and responsibilities of this policy, exclusive of benefits provided by applicable MOA/Compensation Summary. Please see applicable MOA/Compensation Summary for information regarding benefits.

B. Substances

- a. Alcohol;
- b. Illegal drugs; and

Substance Abuse Program & Policy**1.4.2**

- c. Prescription drugs and other substances which may impair an employee's ability to effectively perform the functions of the job.

POLICY

It is the policy of the City that employees:

- Shall not report to work under the influence of alcohol or drugs or exhibit symptoms of alcohol or drug use;
- While on duty shall not use, possess, sell or provide drugs or alcohol;
- Shall not have the ability to work or be on paid stand-by when impaired as a result of the use of alcohol or drugs.

An employee is required to notify his/her supervisor when any medications or drug he/she is taking could create an unsafe and dangerous situation.

In the event there are questions regarding an employee's ability to safely and effectively perform assigned duties when using such medications or drugs, clearance from the City physician will be required. If an employee is prescribed medication or drugs in relation to a work-related injury or illness, the doctor treating the employee for the work-related injury or illness shall provide the required clearance.

The City has established an Employee Assistance Program (EAP) to assist those employees who voluntarily seek help for alcohol or drug problems. Employees could contact their supervisors or the Department of Human Resources for additional information.

Employees reasonably believed to be under the influence of alcohol or drugs, as described under the Management Responsibilities and Guidelines Section, Paragraph B, shall be prevented from engaging in further work and shall be instructed to wait for a reasonable time until a Department designee can transport the employee from the worksite to home or an appropriate medical facility.

Violations of this policy should be grounds for disciplinary action, up to and including termination for serious or repeated infractions. Refusal to submit immediately to an alcohol and/or drug analysis, pursuant to this policy, when requested by management will constitute insubordination, which alone will form a basis for discipline.

RESPONSIBILITIES**Employee Responsibilities:**

- A. Not report to work while his/her ability to perform job duties is impaired due to alcohol or drug use;
- B. Not possess or use, or have the odor of alcohol or drugs on his/her breath during working hours while operating any City vehicle or equipment;

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- C. Not directly or through a third party sell or provide drugs or alcohol to any person or to any other employee while either employee or both employees are on duty, or paid stand-by;
- D. Submit immediately to reasonable requests for alcohol and/or drugs analysis when requested by a designee of a Department Director and if in a bargaining unit, may request Union representation;
- E. Notify his/her supervisor, before operating City equipment, when taking any medications or drugs, prescription or non-prescription, which may create an unsafe or dangerous situation for the public or the employee's co-workers, including but not limited to valium, muscle relaxants, and painkillers, and
- F. Provide within 24 hours of request a current valid prescription for any drug or medication identified when a drug screen/analysis is positive. The prescription must be in the employee's name.

Management Responsibilities and Guidelines:

- A. Managers and supervisors are responsible for consistent enforcement of this policy, i.e., that refusal constitutes insubordination that will result in disciplinary action. Any supervisor who knowingly permits a violation of this policy by employees under his/her direct supervision shall be subject to disciplinary action.
- B. A Department Director or designee may request that an employee submit to a drug and/or alcohol analysis when a manager or supervisor has a reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol. "Reasonable suspicion" is a belief based on objective and articulable facts sufficient to lead a reasonable prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job safely is reduced.

For example, any of the following, alone or in combination, may constitute reasonable suspicion:

- 1. A pattern of documented abnormal or erratic behavior;
 - 2. Direct observation of drug or alcohol use; or information provided by a reliable and credible source that an employee has engaged in drug or alcohol use, the identity of which source shall be available to the employee and if employee is in a bargaining unit, the bargaining unit;
 - 3. Presence of the mental or physical symptoms of drug or alcohol use (e.g., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes);
 - 4. A work related accident in conjunction with other facts which together support reasonable cause.
- C. Any manager or supervisor should immediately notify another supervisor to meet him/her to observe the employee's behavior prior to directing an employee to submit to a drug and/or alcohol analysis. If the employee is in a bargaining unit and requests Union representation,

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the employee will be allowed the opportunity to secure such representation. The process for directing an employee to submit to a drug and/or alcohol test is outlined below (numbers 1 - 7).

Additionally, if an employee believes an employee not under his/her supervision has a problem and should be tested or referred, he/she should contact the **Office of Employee Relations** who will notify the Department Director or designee. Should the Department Director or designee concur that the employee appears to be in violation of the policy, the following procedure shall immediately be applied:

1. The manager or supervisor shall document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs.
2. Any manager or supervisor requesting an employee to submit to a drug and/or alcohol analysis shall be responsible for the employee's transport to the City's designated Employee Health Services or emergency room where a drug and/or alcohol test will be requested. If the incident occurs at other times when EHS is closed, complete the attached form and contact:

Alliance Occupational Medicine
Phone: (408) 642-4866

Alliance will arrange for the testing to occur at their office located at 2737 Walsh Ave., Santa Clara, CA 95051. After using this service, please notify EHS at the first available opportunity. Alliance is staffed by certified technicians. All test results will be treated as confidential and returned to EHS.

3. Any manager or supervisor encountering an employee who refuses to submit to a drug and/or alcohol analysis upon direction shall remind the employee of the requirements and consequences of this policy. The manager or supervisor should ask the employee to wait a reasonable time until an authorized City representative can transport the employee home.
 4. Managers and supervisors shall not physically search employees.
 5. Managers and supervisors shall notify the Police Department when they have reasonable suspicion to believe that an employee may have illegal drugs in his or her possession.
 6. Managers and supervisors shall not confiscate, without consent, prescription drugs or medications from an employee who has a prescription.
 7. The employee will be informed of the requirement that he or she undergo testing in a confidential manner, by one of the supervisory employees who made the reasonable suspicion determination.
- D. A manager or supervisor may require an employee to attend an initial screening session with the Employee Assistance Program (EAP) as an alternative to drug or alcohol testing. The employee shall provide proof of attending the initial appointment. Failure to attend or to

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provide proof of such attendance may subject the employee to disciplinary action. Actual results of the initial screening shall be subject to disciplinary action. Actual results of the initial screening shall be subject to normal confidentiality provisions. The employee's decision to attend or not attend follow-up sessions shall be voluntary.

- E. Demands for drug or alcohol analysis by supervisors or managers, which are determined to be malicious or vexatious will not be tolerated and will subject the directing individual to disciplinary action.
- F. Results of Drug and/or Alcohol Analysis:
 - 1. Upon a negative result, the employee shall return to work if otherwise fit for duty. All records and documentation shall be preserved.
 - 2. If the test result is positive, the following shall apply:

First Offense

In an effort to encourage the employee to take responsibility for his/her problem, the first violation of this policy will result in a formal, mandatory referral to the **Employee Assistance Program (EAP)**, using the established referral procedures in addition to any disciplinary action the City may impose for violations of this policy. A written record of this referral will be maintained in a restricted confidential employee medical file. **EAP** will assess the employee's need for treatment. An employee declining to be evaluated by **EAP** may be subject to disciplinary action independent of any other misconduct.

Treatment will be offered to the employee on a voluntary basis for a plan approved by the **EAP** for the employee and the City will pay seventy percent (70%) of treatment costs, which are not covered by the employee's health insurance for one treatment program. The employee will pay the remaining thirty percent (30%) of treatment costs.

No disciplinary action will be imposed for refusal of treatment; however, misconduct including being under the influence of drugs and/or alcohol in the workplace and/or while on duty and/or while on standby or any action constituting a violation of this policy will continue to be subject to discipline, subject to applicable due process for City employees.

Second Offense

During an employee's career, a second opportunity for treatment may be offered in the event of a relapse. Discipline, which could result in termination, will be imposed for the second violation of this policy, subject to due process for City employees. If a second treatment program is allowed, the employee will be responsible for the cost. The employee may request a split sample be tested at another facility at City expense to provide a second independent result.

Substance Abuse Program & Policy**1.4.2****Confidentiality**

Laboratory reports or test results, if positive only, shall appear in an employee's confidential medical file. The reports or test results may be disclosed to a Department Director or designee and Human Resources Director on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur when: (1) the information has been placed at issue in a formal dispute between the employer and employee, including employee discipline; (2) the information is to be used in administering this program; (3) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

Procedure: Drug Testing

The City of San Jose Drug Testing Procedures contains procedures for handling testing for drugs if the test is conducted by Employee Health Services during normal business hours. Tests required on nights or weekends will be handled in a medical facility determined by the City.

Presence of drugs in the employee's system will be reported as positive in the initial and confirmation test if the amount exceeds the minimum detection levels.

In addition to drug screening, alcohol level will be reported as positive if it is present at greater than or equal to 0.04g.

Substance Abuse Treatment

The City will make substance abuse treatment available to employees in the following way:

1. **Self Referral**
 - A. If an employee believes he or she has a substance abuse problem, he or she may make a confidential appointment with a counselor at **EAP**.
 - B. The counselor will evaluate the case and determine the appropriate level and type of treatment, if any. The **EAP** will approve a plan and facility. These decisions will be made jointly with the individual seeking treatment.
 - C. The counselor will notify the City by an employee code number that treatment and funding is authorized. Claims administration will be handled confidentially as are other health insurance claims.
2. **Formal Referrals**
 - A. If an employee's pattern of work behavior indicates a problem is potentially related to substance abuse, the supervisor may contact the **EAP** and define issues.
 - B. The employee will be advised to go to the **EAP** for evaluation. Any participation in treatment is voluntary.

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- C. If the employee accepts treatment, the procedures for developing a plan and the payment of bills by the City are the same as for the person who self refers.

3. Positive Drug Test

- A. The first time an employee tests positive on a drug test, the Department Director or designee will contact the EAP and initiate a formal referral. An evaluation by the **EAP** is mandatory. Participation in treatment is voluntary.
- B. The employee will sign a release allowing the **EAP** to advise the City about whether the employee is participating in and cooperating with treatment. No information can be released about the problem or treatment.

4. Settlement of a Proposed Discipline

- A. If an employee has received a Notice of Intended Discipline for misconduct or job performance, either on or off the job, which has a substance abuse component, the City may agree to waive the discipline, if the employee will agree to and successfully comply with a treatment program.
- B. The specific terms of the agreement are determined on a case-by-case basis, including requiring the employee to submit to follow-up random drug and/or alcohol testing for a specified period of time. The intent, however, is not to relieve the employee of responsibility for his/her actions. It is to encourage maximum access to rehabilitation.

5. Funding

The City will pay seventy percent (70%) of treatment costs for a plan approved by the **EAP** for the employee, which are not covered by the employee's health insurance for one treatment program.

The employee will pay the remaining thirty percent (30%) of treatment costs.

Approved:

Approved:

/s/ Jennifer Schembri
Director of Employee Relations

March 13, 2019
Date

Approved for posting:

/s/ Jennifer Maguire
Assistant City Manager

March 13, 2019
Date

Substance Abuse Program & Policy**1.4.2****City of San José
Substance Abuse Program****SCOPE OF SERVICES**

1. Provide case management for chemical dependency problems of employees. This service is to include assessment, referral to high quality treatment facilities, precertification, and post-treatment case management.
2. Provide orientation to the services provided via programs coordinated through the City Training Program.

COMPONENTS**1. Assessment**

Covered employees may be self-referred to **Employee Assistant Program (EAP)** or referred by a supervisor from the City of San José. **EAP** will provide a clinical assessment for the most appropriate level of treatment (See Tracks A, B, C). Treatment options include:

Structured Inpatient Program: Inpatient facilities are licensed by the California Department of Health Services under two ratings:

- CDRH: Chemical Dependency Recovery Hospital located in an acute-care hospital.
- CDRS: Chemical Dependency Recovery Service, which is a free-standing residential facility.

Inpatient treatment may be required when a client has a lengthy history of abuse, is in an advanced stage dependency, has significant associated medical problems, or has little family support. This program would include detoxification waiting period.

Structured Outpatient Program: Outpatient facilities are not currently licensed. This treatment may be appropriate when a client is in the early or middle stages of dependency, is not resistant to treatment, and has family support.

Alcoholics Anonymous and Al-Anon: When chemical dependency is in an early stage, intensive participation in assistance programs, such as Alcoholics Anonymous or Al-Anon, in conjunction with supportive counseling at **EAP** may be appropriate. This approach has proven successful when a client is very strongly motivated to recover and has the support of the family.

2. Referral

Criteria have been developed at **EAP** to assist counselors in making a referral to the most appropriate level of treatment. Counselors are required to document referrals based on this criteria. The Clinical Coordinator reviews all alcohol/drug cases referred to treatment to ensure that the most cost effective recommendations are made. Referrals are made to quality programs to ensure the best chance of success.

Substance Abuse Program & Policy**1.4.2****3. Pre-certification**

Provide required pre-certification for coverage for all chemical dependency treatment. All covered employees requesting treatment should be directed to **EAP** prior to contacting a treatment facility. **EAP** will evaluate and refer the employee to a recommended facility and notify the City of San José of the referral for billing purposes. Should an emergency or a self admission be initiated, **EAP** will evaluate the employee within 48 hours and make a recommendation for continued treatment, and notify the City of San José Human Resources/Benefits Division. The following section outlines the steps **EAP** will take in this process.

4. Case Management

EAP counselors will coordinate the chemical dependency treatment of employees from initiation of treatment for up to one year after treatment. This is a critical component of recovery because treatment programs have little investment in clients once they have left their program. Quality case management can reduce the high risk of relapse and assist employees who have relapsed to resume the recovery process. Case management involves the following activities on the part of **EAP**.

- Act as liaison with the treatment program team and City of San José to monitor progress and facilitate the return to work.
- Participate in the development of a recovery plan with the client, the family and the treatment team.
- Continued counseling with client and family as necessary after discharge from treatment facility for one year.
- Should a relapse occur, provide crisis intervention and assistance in developing a stronger recovery plan to increase the involvement of employer, family, after-care team, etc.
- Provide relapse prevention education and therapy groups as appropriate.

5. Treatment Program

Treatment Program is considered to have the following components:

- Inpatient or outpatient treatment, or a combination of both;
- Treatment aftercare program;
- **EAP** case management for up to a year following treatment.

A treatment program is considered ended when all three of the above have been completed or when an employee terminates participation in any of the components.

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Treatment will be covered if it is provided by one of **EAP**'s recommended facilities. If these facilities are not used, coverage will be limited to that normally covered under the employee's medical benefits plan.

6. Tracks

There are three sets of procedures (tracks) for initiating chemical dependency treatment:

TRACK A: Assessment at EAP and Referral to Treatment facility

- A. Client is assessed at **EAP** with a chemical dependency problem requiring treatment. If the counselor is clear that outpatient or inpatient is required, the client may be sent directly to the recommended treatment facility and Step B would be initiated.

If the counselor desires, the client may be sent for additional assessment at a treatment facility. An outpatient assessment counselor may be utilized in these cases, especially if the client falls in a "gray area" regarding type of necessary treatment.

- B. Counselor obtains a release of information to authorize report of participation to the City of San José Human Resources/Benefits Division.
- C. Treatment program is contacted by telephone to notify them that the client is coming and that:
1. Treatment is pre-authorized for a specific number of days and the authorization form is mailed to them.
 2. The program should contact City of San José Human Resources/Benefits Division to confirm eligibility.
- D. Counselor fills out the pre-authorization form within one working day of admission and sends it to:
- a. Treatment facility
 - b. City of San José Human Resources/Benefits Division
 - c. Client (at home address)
- E. Counselor interaction with treatment program during treatment will be as follows:
- Outpatient: Telephone contact weekly for the duration of treatment. If necessary, schedule a meeting with the client and treatment counselor for post-treatment planning.
 - Inpatient: Meet with staff during the first fifteen (15) days of authorized treatment to determine the subsequent treatment course. Ask them to justify inpatient treatment beyond the fifteen (15) authorized days. Generally speaking, we will want to follow the recommendations of the program.
 - Keep in contact on a weekly basis via telephone or letter.

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- Attend discharge planning meeting at facility, and set-up first after-care appointment. Request that staff remind client to contact **EAP** therapist for appointment and that there are resources available to the employee via employee's bargaining unit, if employee is in a bargaining unit, or the **EAP**.
- F. Provide authorization for alterations or extension of treatment as necessary.
- G. Continue contact a minimum of once a month for the first six months. Monitor the client's progress and participation in aftercare. (**EAP** will verify that the facility has obtained a release of information from the client.) Identify indicators of potential relapse and refer to prevention group if appropriate. Make referrals for additional necessary services; i.e., family counseling, adult and child support groups, etc.
- H. The treatment program will be considered terminated when the client has successfully completed treatment, aftercare, and **EAP** case management, or:
- a. If the client fails to attend aftercare.
 - No more than 2 unexcused absences.
 - Reasons for non-attendance must be cleared through **EAP** therapist.
 - b. Failure to attend follow-up counseling with **EAP** as agreed upon with their counselor.
- I. Notify City of San José Human Resources/ Benefits Division and the client, in writing, when the "treatment program" is terminated or completed.

TRACK B: Emergency Admission to Treatment Facility

- A. Employee presents to a treatment facility. Facility calls City of San José Human Resources/Benefits Division to determine eligibility and coverage.
- B. City of San José Human Resources/Benefits Division will confirm eligibility and notify the facility that authorization is required through **EAP** beyond the initial 48-hour period of coverage.
- C. **EAP** will visit the treatment facility and assist the client within the 48 hours.
- D. If it is determined the client needs inpatient treatment, and
- The treatment facility is an **EAP** recommended facility, authorization will be given as outlined in Track A;
 - The treatment facility is not an **EAP** recommended facility, **EAP** will facilitate a transfer to a recommended facility.
- E. If outpatient treatment is recommended and client agrees with the treatment course, **EAP** will facilitate the referral and authorize as indicated in Track A.

Substance Abuse Program & Policy**1.4.2****TRACK C: Second Treatment**

- A. Eligible employees who have relapsed following an initial treatment would not be authorized for a second treatment without assessment by **EAP**. The procedures would be the same as for Track A or Track B, and approval would be based on professional judgment.

RECOMMENDED TREATMENT PROGRAM

Programs are evaluated on the basis of:

- Skill and experience of the staff
- Intensity of treatment model
- Use of group and family therapy
- Inclusion of a strong education component
- Availability of a well-structured aftercare program
- Involvement of the family in all phases of the program

Referrals to specific programs are made on the basis of:

- 1) Quality of program to meet the needs of the employee
- 2) Location in relation to employee, and
- 3) Cost.

EAP will assist in the negotiation of preferred provider rates at the City's request.

The City of San José will provide a head count of all covered employees to **EAP** each month. **EAP** will bill the City of San José each month the contracted rate per covered employee for all case management services. The City of San José will be responsible for the cost of all recommended treatment services for covered employees.

Federal DOT Drug and Alcohol Testing Policy **Section 1.4.3****PURPOSE**

The U.S. Department of Transportation (DOT) issues regulations implementing the Omnibus Transportation Employee Testing Act of 1991. This Act is designed to improve the overall safety of the transportation industry by requiring employers to test safety-sensitive employees for the use of controlled substances and alcohol. The City of San Jose is legally required to enforce Federal DOT regulations and implement controlled substance and alcohol testing for employees who require a commercial driver's license.

In 1989 the City of San Jose adopted a Drug-Free Workplace and Substance Abuse Policy applicable to all employees. The Federal DOT legal requirement reinforces the City's commitment to promote a drug-free workplace and to ensure that employees involved in safety sensitive transportation activities avoid problems created by the use of controlled substances and alcohol.

The purpose of the following policy is to outline details of the Federal DOT program, including testing requirements and consequences to employees who have been found to use controlled substances and alcohol as outlined in this policy. In addition, this policy is intended to comply with all applicable regulations of the Federal DOT. Employees covered by this policy are also covered by the City of San Jose's Substance Abuse Policy.

APPLICATION

- The Federal DOT regulation covers City employees whose duties are such that federal regulations require them to hold a Commercial Driver's License (CDL) in order to drive a commercial motor vehicle (CMV).

Employee Notification

Employees initially covered by the Federal DOT's controlled substance and alcohol testing regulations have been notified of the testing regulations by the City. Any employees newly covered by these regulations will be notified of their coverage by their Department Director or Designee. The Human Resources Department will provide affected Department Directors with a copy of this Federal DOT Drug and Alcohol Testing Policy whenever revisions are made.

Supervisor Training

Supervisors of the covered employees must attend at least one hour of training on alcohol misuse and at least one hour of training on controlled substance use, which may be through the use of a videotape or other media.

This training must cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and controlled substance use.

POLICY**1. Prohibited Conduct Related to Controlled Substances**

No driver shall report for duty or remain on duty performing a safety-sensitive function when the driver uses a controlled substance in concentrations greater than those described below, except

Federal DOT Drug and Alcohol Testing Policy **Section 1.4.3**

when the substance is prescribed by a physician, and the physician informs the driver that the substance does not adversely affect the driver's ability to perform the safety-sensitive function. The City reserves the right to have the City Physician make the final determination as to whether the driver can drive a City vehicle when the employee is using a prescription medication.

No driver shall perform a safety sensitive function after testing positive for a controlled substance, until such time that he or she is authorized to return to full duty by the Substance Abuse Professional (SAP) and has a verified negative controlled substances test.

2. Prohibited Conduct Related to Alcohol

No driver shall report to duty or remain on duty requiring the performance of a safety sensitive function with a breath alcohol concentration level of 0.04 or greater.

No driver shall use alcohol while performing a safety sensitive function. No driver shall possess alcohol while on duty or operating a Commercial Motor Vehicle.

No driver shall perform a safety-sensitive function within four (4) hours after using alcohol. No driver shall use alcohol within eight (8) hours after an accident, or until an alcohol test has been completed, whichever comes first.

No driver shall perform a safety sensitive function after testing positive for a controlled substance, until such time that he or she is authorized to return to full duty by the SAP and a breath alcohol test value less than 0.02.

3. Refusal to Submit to an Alcohol or Controlled Substance Test

No driver shall refuse to submit to any of the required controlled substance and/or alcohol tests, including post-accident, random, reasonable suspicion, or follow-up tests. In addition to direct refusal to give a urine sample, refusal also includes inability to give a urine specimen or failure to provide a sufficient amount of urine without a reasonable medical explanation, not reporting to the collection site in the time allotted by the department, refusing to sign the necessary forms, failing to remain at the testing site until the testing process is complete, failing to permit the observation or monitoring of controlled substance test, if applicable, and failure to cooperate with any part of the testing process. Any of the above occurrences will constitute a refusal to take a controlled substance test.

Refusal to test will be considered a positive test and the employee will be disqualified from driving until a verified negative test result is obtained. In addition, disciplinary action may be taken for refusing to submit to any controlled substance or alcohol testing required by this policy.

4. Types of Testing

Pre-employment Testing: The regulations require urine controlled substance testing of candidates for positions that require Class A or B drivers' licenses. Candidates who have a verified positive controlled substance test may have their offer of employment rescinded. An employee who transfers, demotes, or promotes into a position that requires a Class A or B driver's license will be subject to urine testing prior to starting the new assignment.

Federal DOT Drug and Alcohol Testing Policy **Section 1.4.3**

Reasonable Suspicion Testing: Drivers must be tested based on reasonable suspicion, provided that the conduct underlying the decision to test is witnessed by a supervisor. If the incident causing reasonable suspicion occurs during or shortly before normal business hours (7:30 a.m. – 4:00 p.m.), contact Employee Health Services (EHS) to conduct the testing. If the incident occurs at other times when EHS is closed, complete the attached form and contact:

Alliance Occupational Medicine
Phone: (408) 642-4866

Alliance will arrange for the testing to occur at their office located at 2737 Walsh Ave., Santa Clara, CA 95051. After using this service, please notify EHS at the first available opportunity. Alliance is staffed by certified technicians. All test results will be treated as confidential and returned to EHS.

Random Testing: The employer must annually test at least 25% of the total number of covered drivers on a random basis each year for controlled substances and 10% for alcohol. The test must be unannounced, with all drivers selected from a random pool. Individuals in the pool may be randomly selected for drug testing only or may be randomly selected for both drug and alcohol testing. When an individual is randomly selected for both drug and alcohol testing, these tests will be administered during a single visit to the collection facility to minimize the number of work disruptions.

Post Accident Testing: The driver is responsible for providing a urine and breath sample for testing as soon as possible after a reportable accident. Drivers who are subject to post-accident testing are required to remain readily available for testing for the next eight (8) hours for an alcohol test and for the next thirty-two (32) hours for a drug test, unless tested or excused from testing. Except in medical emergencies, failure of the driver to remain readily available for drug and/or alcohol testing will be considered a refusal to submit to testing. If the accident occurred during, or shortly before, normal business hours (7:30am – 4:00pm), contact Employee Health Services to conduct the testing. A “Reportable accident” is one that (1) involves a fatality, or (2) results in the driver receiving a citation under state or local law for a moving traffic violation. If the incident occurs at other times when EHS is closed, complete the attached form and contact:

Alliance Occupational Medicine
Phone: (408) 642-4866

Alliance will arrange for the testing to occur at their office located at 2737 Walsh Ave. Santa Clara, CA 95051. After using this service, please notify EHS at the first available opportunity. Alliance is staffed by certified technicians. All test results will be treated as confidential and returned to EHS.

Return to Duty and Follow-up Testing: A return to duty test must be conducted when an individual who has violated the prohibited drug or alcohol conduct standards returns to performing safety-sensitive functions. The driver needs to have a verified negative controlled substances test or if applicable, a breath alcohol test value less than 0.02. Follow-up testing is conducted periodically after the individual has returned to work, based on a plan established by Employee Health Services and communicated to departments.

5. Prohibited Substances

A urinalysis will be performed to detect the presence of the illegal substance shown below or its defined metabolite equivalent. A positive test is one in which the concentration meets or exceeds the following DOT levels. Measurements are in nanograms per milliliter.

Federal DOT Drug and Alcohol Testing Policy Section 1.4.3

Type of Drug or Metabolite	Initial Test * (Immunoassay)	Confirmation Test ** (GC/MS)
(1) Marijuana metabolites	50	
(i) Delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA)		15
(2) Cocaine metabolites (Benzoylecgonine)	150	100
(3) Phencyclidine (PCP)	25	25
(4) Amphetamines	500	
(i) Amphetamine		250
(ii) Methamphetamine		250
(iii) Methylenedioxyamphetamine (MDMA)	500	250
Methylenedioxyamphetamine (MDA)		250
(5) Opiate Metabolites		
(i) Codeine/Morphine	2000	
(ii) Codeine		2000
(iii) Morphine		2000
(iv) 6-Acetylmorphine	10	10
(6) Semi-synthetic Opiate		
(i) Hydrocodone/Hydromorphone	300	100
(ii) Oxycodone/Oxymorphone	100	100

* Immunoassay

** Gas chromatography/Mass spectrometry

On an initial drug test, a result below the cutoff concentration is reported as negative. If the result is at or above the cutoff concentration, a confirmation test will be conducted automatically by the testing laboratory. On a confirmation controlled substance test, a result below the cutoff concentration for the specific assay method is reported as negative and a result at or above the cutoff concentration for the specific assay method is a confirmed positive.

The use of legally prescribed medications that may contain a controlled substance in concentrations greater than those specified above is prohibited when operating a commercial motor vehicle.

The use of beverages or food containing alcohol or any other substances including medications that produce an alcohol level of 0.04 or greater is prohibited. A safety sensitive driver cannot drink 4 (four) hours prior to work regardless of alcohol level.

Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine. If a verified adulterated or substituted controlled substance test result is received, this will be handled in the same manner as a confirmed positive for a drug or drug metabolite and the employee must be immediately removed from performing safety sensitive functions.

If a controlled substance test result is received indicating that the employee’s specimen is negative dilute and the creatinine concentration is greater than or equal to 2 mg/dL but less than 5 mg/dL, the medical review officer will request an immediate recollection under direct observation.

Federal DOT Drug and Alcohol Testing Policy **Section 1.4.3****6. Consequences of a Positive Alcohol or Drug Test**

Following receipt of the initial report of the verified positive test result, a driver who engages in prohibited conduct (Sections 1 and/or 2 of this policy) shall be removed immediately from performing any and all safety-sensitive functions, including those defined by DOT and such other functions as: any work with vehicles, machinery or tools; any work in the street or a potentially hazardous location, or any other work where drug or alcohol-induced impairment may constitute a danger to the employee or others. If a non-safety sensitive function is not available, the employee may be required to take available paid leave or unpaid leave until he or she is approved to return to full duty.

A positive alcohol breath test between .02 and .04 will result in the removal of the driver from the safety-sensitive function for 24 hours.

A driver will not be hired or promoted if he/she refuses to submit to a pre-employment drug or alcohol test, or if he/she tests positive for a controlled substance or alcohol test. In addition, disciplinary action may be taken for refusing to submit to any controlled substance or alcohol testing required by this policy.

7. Referral, Evaluation and Treatment

When an employee has violated DOT drug and alcohol regulations, he/she cannot again perform any DOT safety-sensitive duties for any employer until and unless that employee completes the SAP evaluation, referral, and the education/treatment process set forth in this subpart and in applicable DOT agency regulations and has a verified negative test for controlled substances. The first step in this process is a SAP evaluation.

Any one of the following constitutes cause for a SAP referral: a verified positive DOT controlled substance test result, a DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, a refusal to test (including adulterating or substituting a urine specimen) or any other violation of the prohibition on the use of alcohol or controlled substances under a DOT agency regulation constitutes a DOT controlled substance and alcohol regulation violation.

Drivers who have engaged in conduct prohibited by this policy will be:

- Provided resources for evaluation and resolving problems associated with alcohol misuse and controlled substance use.
- Evaluated by an EAP-approved SAP who will recommend the appropriate level of assistance for the employee to resolve problems associated with alcohol misuse and controlled substance use.
- Investigated for possible disciplinary action.

First Offense: In an effort to encourage the employee to take responsibility for his/her problem, the first violation of this policy will result in a formal, mandatory referral to the Employee Assistance Program (EAP), using the established referral procedures, in addition to any disciplinary action the City may impose for violations of this policy. A written record of this referral will be maintained in a restricted confidential employee medical file. Positive controlled substance or alcohol test results and related information will be used only for medical or disciplinary purposes. This does not prohibit the City of San Jose from taking disciplinary action against any employee for a first offense.

Federal DOT Drug and Alcohol Testing Policy **Section 1.4.3**

A Substance Abuse Professional (SAP) associated with the EAP will assess the employee's need for treatment. If treatment is recommended by the SAP, the employee must complete the treatment before he/she can return to the safety-sensitive duties. An employee declining to be evaluated by the SAP may be subject to disciplinary action independent of any other misconduct.

Successful completion of the treatment will be considered a condition for continued employment. At the department's discretion and subject to the availability of a suitable position, the employee may be permitted to work in a non-safety-sensitive function while undergoing the prescribed treatment.

Second Offense: During an employee's career, a second opportunity for treatment may be offered in the event of a relapse. Discipline, which could result in termination, will be imposed for the second positive test itself subject to due process. If a second treatment program is allowed, the employee will be responsible for the full cost.

- Any rehabilitation program must be approved for the employee by the EAP prior to enrollment in the program.
- The employee who enters into an EAP-approved program shall pay 30% of the treatment costs, and the City will pay the remainder of the cost not covered by the employee's health insurance (for a first offense).
- The employee may use accrued, authorized paid leave (i.e. sick leave, vacation) during his/her absence for treatment.
- Further details of the Substance Abuse Treatment Program may be obtained by consulting your Memorandum of Agreement or by contacting the Office of Employee Relations.

Referral to Substance Abuse Program Procedures

- All drug tests are reviewed by the MRO. The MRO will sign the chain of custody form.
- The MRO calls the employee to inform him/her of a positive result and follows MRO protocol for verification.

The Employee Health Services representative then informs the employee's Department Director or authorized representative and the Office of Employee Relations.

- The employee's manager or supervisor removes the employee from performing safety-sensitive duties, the designated Department representative contacts the EAP by calling 800-826-4690.
- A SAP clinician is fully briefed on the case by the EAP representative. The SAP then conducts an assessment of the employee and determines the employee's treatment plan.
- An EAP representative notifies the MRO or the EHS representative of the employee's treatment plan recommendations.
- The employee is then referred into treatment.

Federal DOT Drug and Alcohol Testing Policy **Section 1.4.3**

- The EAP representative confirms the treatment with the SAP and the employer.
- At the conclusion of the treatment, the SAP conducts a post-treatment assessment. The assessment includes a review of the treatment plan, discharge plan, and suggested aftercare.
- A Completion of Treatment letter is generated based upon the recommendations of the treatment program and the SAP. The EAP representative also directly contacts the referring party (EHS) to expedite communication of the discharge/aftercare plan. An EHS or Employee Relations representative will then inform the appropriate department representative that the treatment has been completed.

8. Return to Duty

Before a driver returns to work requiring performance of a safety-sensitive function, following a positive test result, he/she must:

- Follow the rehabilitation program prescribed by the SAP, and
- Obtain a verified negative return-to-duty controlled substance and/or obtain a breath alcohol test level less than 0.02, and
- Submit to unannounced follow-up alcohol and/or controlled substances tests. The number and frequency of such follow-up testing shall consist of at least six tests in the first 12 months.

DRUG AND ALCOHOL TESTING PROCEDURES**1. Drug Testing Procedures**

Selection Process for Random Drug Testing: A random number generating software program will provide a list of the employees covered by this policy and select the sample for each testing period. All drivers will have an equal chance of being selected on each testing day. Employee Health Services will notify departments of randomly selected employees. Drivers notified of selection for testing must proceed immediately to the designated testing site. A reasonable amount of transportation time will be allowed. The time allowed between notification and testing is no more than the requisite travel time to the testing site. In the event the employee is on vacation or an extended medical absence, another employee may be selected for testing through the software program randomization process.

Collection of Urine: The employee will submit for urine drug testing at EHS.

Split Specimen: The urine specimen is divided into two containers, each of which is sealed, labeled, and maintained separately. At the request of the employee the "split" specimen can be used for confirmation.

Documentation and Chain of Custody Procedures: EHS completes the Federal Chain of Custody form certifying that the specimen is properly collected, identified and labeled.

Federal DOT Drug and Alcohol Testing Policy **Section 1.4.3**

Laboratory Procedures: The testing laboratory must be certified by the Department of Health and Human Services (DHHS). The split specimen bottle remains sealed and is stored at the laboratory.

Urine specimens are first tested by a screening procedure. Tests that screen positive must have the substance confirmed by gas chromatography/mass spectrometry (GC/MS), which both identifies the substance correctly and measures its concentration in the urine. Blind samples will be sent to the laboratory at a rate of 1% of all specimens, up to a maximum of 50 blind samples per quarter.

Reporting of Results: All controlled substance tests are reviewed and interpreted by the Medical Review Officer (MRO) before they are reported to the employee. The employee will be notified of a positive test result by the MRO. After the employee is notified, Employee Health Services representative will inform the employee's Department Director or authorized representative and the Office of Employee Relations of the verified test result.

2. Alcohol Testing Procedures

Random Testing Procedure: Random alcohol testing must be conducted just before or after an employee's performance of safety-sensitive duties. The number of random tests must equal 10% of all employees covered by this program per year. A random generation software program will randomize the drivers and select the 10% sample. Drivers notified of selection for testing must proceed immediately to the designated testing site. A reasonable amount of transportation time will be allowed. The time allowed between notification and testing is no more than the requisite travel time to the testing site. A certified Breath Alcohol Tester will conduct all breath alcohol testing.

Method: Tests for alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration approved evidential breath testing (EBT) device operated by a trained Breath Alcohol Tester (BAT).

Criteria for Positive Test Results: An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the initial test. An employee who has a confirmed alcohol concentration of greater than 0.02 but less than 0.04 will be removed from his/her safety-sensitive position for 24 hours.

Reporting of Results: The Department Director or designee will be notified by EHS or Human Resources immediately if the alcohol test result is positive.

3. Dilute or Adulterated Specimens

If a verified adulterated or substituted drug test result is received, this will be handled in the same manner as a confirmed positive test for a controlled substance and the employee will immediately be removed from performing safety-sensitive functions. This action will be taken upon receiving the initial report of the verified adulterated or substituted test result. If a controlled substance test result is receiving indicating that the employee's specimen was negative dilute with a creatinine level greater than or equal to 2 mg/dL and less than 5 mg/dL, a second collection must take place immediately under direct observation.

Federal DOT Drug and Alcohol Testing Policy **Section 1.4.3**

4. Record Retention

Drug testing records will be maintained in EHS. Negative test results will be held for one year and the positive test results will be held for five years. Documentation of employees who refuse to take the controlled substance test will also be included in the records. All records pertaining to controlled substance and alcohol testing will be confidential on a need-to-know basis. Positive controlled substance or alcohol tests results and related information will be used only for medical or disciplinary purposes.

Approved:

/s/ Jennifer Schembri
Director of Employee Relations
Director of Human Resources

April 25, 2019
Date

Approved for posting:

/s/ Jennifer Maguire
Assistant City Manager

April 25, 2019
Date