



CITY OF GRAND RAPIDS

ADMINISTRATIVE POLICY

NUMBER: 95-02	DATE: 1/31/95
REVISIONS: 01/01/02, 03/17/11, 6/14/13	
ISSUED BY: City Manager	SIGNED: <i>Megyn A. Sundstrom</i>

SUBJECT: SUBSTANCE ABUSE POLICY FOR COMMERCIAL MOTOR VEHICLE DRIVERS

PURPOSE: This policy defines the City's implementation of and compliance with 49 CFR Parts 40, 382, federal legislation mandated by the Omnibus Transportation Employee Testing Act of 1991. This section requires alcohol and drug testing for all employees in safety-sensitive positions in areas of transportation (driving a vehicle). Drivers required to have a commercial driver's license (CDL) are subject to the controlled substance and alcohol testing rules. The express goal of the federal legislation is to establish a program designed to help prevent accidents and injuries to the public resulting from the misuse of alcohol or controlled substances by drivers of commercial motor vehicles. Unless expressly exempted by federal law, every person who operates a commercial motor vehicle is subject to the alcohol and drug test requirements.

This policy applies to any "driver" (as defined in Section A6 of this policy) who operates a "commercial motor vehicle" (as defined in Section A3 of this policy) for or on behalf of the City and who is required to have a commercial driver's license (CDL) in order to operate that vehicle. The policy also applies to all applicants who seek employment for such driver positions.

This policy explains the Federal Motor Carriers Safety Administration's (FMCSA) drug and alcohol regulations and the City's own policies with respect to the use of controlled substances or misuse of alcohol.

Any questions regarding the meaning or application of this policy should be directed to the Human Resources Department.

POLICY:

A. DEFINITIONS

1. **“Alcohol” means** the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.
2. **“Alcohol Use”** means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
3. **“Commercial Motor Vehicle”** means for purposes of this policy a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
 - a) Has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) including a towed unit with a gross vehicle weight of more than 4,536 kilograms (10,000 pounds); or
 - b) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds).
4. **“Controlled Substances”** and **“Drugs”** as used interchangeably in this policy are those prohibited by law to mean marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), or their metabolites, methamphetamines and ecstasy
5. **“Disabling Damage”** means damage which prevents a motor vehicle from being driven from the scene of the accident in its usual manner in daylight after simple repairs including damage to motor vehicles that could have been driven, but would have been further damaged if driven.
6. **“Driver”** means any person who operates a “commercial motor vehicle” (as defined in Section A3). Under FMCSA regulations, this includes but is not limited to: full-time, regularly employed drivers; casual, intermittent or occasional drivers.
7. **“Performing A Safety-Sensitive Function”** means any period in which a driver is actually performing, ready to perform, or immediately available to perform any job duty involving a vehicle requiring a commercial driver’s license.

B. PROHIBITED CONDUCT

1. Prohibited Conduct Concerning Driver’s Use of Drugs and Alcohol
 - a) Drivers are prohibited from reporting for duty or remaining on duty when using any drugs.
 - b) Drivers are prohibited from reporting for duty or remaining on duty with an alcohol concentration of 0.04 or greater. Drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04 are prohibited from performing any safety-sensitive functions for at least 24 hours from the test.

- c) Drivers are prohibited from using alcohol in any form **(including medications containing alcohol) while** performing safety-sensitive functions.
 - d) Drivers are prohibited from performing safety-sensitive functions within four (4) hours after using alcohol.
 - e) Drivers are prohibited from using alcohol for eight (8) hours following an accident or until the driver takes a post-accident alcohol test (and tests negative), whichever occurs first.
 - f) Drivers may not “refuse to submit” to any drug or alcohol test required under the FMCSA’s drug and alcohol rules and/or this policy. Any refusal as herein defined is treated as a positive test.
2. Refusal to Submit: For purposes of this policy, the following employee conduct will be considered as a refusal to submit to a test:
- a) Refusing to complete the chain-of-custody form or any other required drug or alcohol testing form(s);
 - b) Refusing to provide a specimen as required under this policy;
 - c) Failing to provide an adequate amount of urine or breath for testing without a valid medical explanation;
 - d) Failing to promptly notify the City that the driver was in an accident or not being readily available for testing after an accident (except as necessary to obtain assistance or medical care);
 - e) Refusing or failing to report directly to the collection site after being notified of the need to submit to a test;
 - f) Delaying the collection, testing, or verification process;
 - g) Adulterating or substituting or attempting to adulterate or substitute any specimen required under this policy; or
 - h) Otherwise engaging in conduct that clearly obstructs the testing process.
3. Consumption of Food or Food-Products Containing Hemp: The consumption of food and food-products containing hemp may cause a driver to test positive for marijuana. A test result that is positive as a result of a driver’s consumption of food or food-products containing hemp will be reported as a positive test.
4. Medicinal Marijuana: The use of any Federal Controlled Substances Act Schedule I drug, whether for non-medical or ostensible medical purpose, violates Federal law and the Federal Drug-Free Workplace Program. It is also inconsistent with the performance of safety-sensitive, health sensitive, and security positions.
- a) Regardless of any State law or statute, Marijuana remains a Schedule I drug. Under the FMCSA regulations **and the Company**

drug testing program, the MRO shall not accept a prescription or the verbal or written recommendation of a physician for marijuana as a legitimate medical explanation for the presence of marijuana.

- b) Any employee receiving a verified positive for marijuana shall be disciplined according to the provisions in this policy.**
- c) In addition, no employee is permitted to possess, distribute, or sell marijuana on company property regardless of any State law or statute that would otherwise permit such activities.**

C. REQUIRED TESTS

1. As required by the FMCSA's regulations, the City will conduct drug and alcohol tests under the conditions and circumstances described below.

a) Pre-Employment Drug Testing and Past Test Results Information

(1) Pre-Employment Testing

(a) With written consent of the applicant, the City may obtain all information concerning an applicant's record relating to the following:

- Alcohol tests with a concentration result of 0.04 or greater
- Positive controlled substances test results
- Participation in a substance abuse program
- Records of any refusals to be tested within the preceding three years which are maintained by the driver's previous employers

(b) In such circumstance, the City must obtain and review the information no later than 14 days after the first time a driver performs a safety-sensitive function. The City may not use a driver whose previous employment tests indicate a 0.04 or greater alcohol result or positive result for controlled substance use unless the driver was evaluated by a substance abuse professional, completed a required counseling program(s), provided a negative drug and alcohol return to duty test, and was subjected to and successfully passed the follow-up tests.

(c) All applicants who have received a conditional offer of employment for a job in which they will be performing safety-sensitive functions and all existing employees who transfer to such a position are required to submit to a pre-employment drug test and must receive a negative test result as a condition of employment.

b) Post-Accident Drug and Alcohol Testing

- (1) A driver who is performing safety-sensitive functions involving a commercial motor vehicle is required to submit to a post-accident drug and alcohol test as soon as practicable following the accident under the following circumstances:¹
 - (a) Fatal accidents: A driver who is involved in an accident which results in a death to another human being must always submit to a drug and alcohol test.
 - (b) Non-fatal accidents: A driver who is involved in a non-fatal accident must submit to a post-accident drug and alcohol test if:
 - (i) the driver was given a citation for a moving traffic violation involving the accident **and**
 - (ii) the accident also results in one of the following:
 - bodily injury to the driver or another individual requiring immediate medical treatment away from the scene of the accident; or
 - one or more of the vehicles involved in the accident incurs disabling damage (as defined in Section A5 of the policy) that requires the vehicle(s) to be transported away from the scene by a tow truck or other vehicle.
- c) Random Drug and Alcohol Testing
 - (1) Each year the City will administer random alcohol and drug tests at an annualized rate consistent with the federal regulations.
 - (2) The City shall select drivers for testing using a computer-based random number generator that is matched with the drivers' social security numbers which will ensure that each driver has an equal chance of being tested each time selections are made.
 - (3) All random tests will be unannounced and the dates for administering the tests will be spread reasonably throughout the calendar year.
 - (4) Each driver who is notified of selection for random drug or alcohol testing must proceed to the test site immediately.
 - (5) If an employee selected for a random test is on vacation or an extended medical absence, the City will keep the original selection confidential until the employee returns and will conduct the test at that time.

¹Under City Rules and Regulations, employees have an affirmative duty to report as soon as possible any accident in which he/she has been involved.

- d) Reasonable Suspicion Drug and/or Alcohol Testing
 - (1) A driver must submit to a reasonable suspicion drug and/or alcohol test whenever a manager or supervisor has reasonable suspicion to believe that the driver has violated the drug or alcohol prohibitions contained in this policy.
 - (2) Reasonable suspicion determinations will be based on specific contemporaneous, articulable observations concerning the driver, including but not limited to the driver's appearance, behavior, speech, or body odors. For drug testing, the observations may also include indications of the chronic and withdrawal effects of drugs.
 - (3) Documentation of the observations leading to a reasonable suspicion test will be prepared and signed by the supervisor or manager who made the observations. The supervisors and managers who will make reasonable suspicion determinations have received training on alcohol misuse and controlled substances use in accordance with the FMCSA's regulations.
 - (4) A driver who is directed to take a reasonable suspicion drug and/or alcohol test must submit to the test as directed. The City shall transport or ensure transport of the driver both to and from the collection site.
- e) Return to Duty Testing
 - (1) The City will conduct return to duty tests whenever an employee is returning to duty after engaging in a prohibited activity as identified in Section B. The employee's **direct observation** test must result in an alcohol concentration of less than 0.02 and/or a verified negative result for controlled substance use before they can be returned to duty.
- f) Follow-Up Testing
 - (1) When an employee has been determined to be in need of assistance in resolving problems related to alcohol misuse and/or use of controlled substances, the City shall ensure that the employee is subjected to a minimum of six (6) unannounced, follow-up tests. These tests will occur when the employee is available to perform a safety-sensitive function, just before the employee is to perform a safety-sensitive function, or just after the employee has ceased performing a safety-sensitive function.

D. DRUG AND ALCOHOL TESTING PROCEDURES

1. As required by the FMCSA's rules, the City's drug and alcohol testing procedures comply with the Federal Procedures for Transportation Workplace Drug and Alcohol Testing Programs, 49 C.F.R. Part 40 as amended.

E. SPLIT SPECIMEN ANALYSIS

1. All applicants and drivers whose primary urine sample is verified positive, adulterated, or substituted have the right to request that their split-sample be analyzed in a different Department of Health and Human Services (DHHS) certified laboratory (selected by the City) for the presence of the drug(s) for which a positive result was obtained. The request must be made to the Medical Review Officer (MRO) within 72 hours of being notified by the MRO of a verified positive test result. If the split-sample is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report the cancellation and the reasons for it to the City's representative and the testing individual. However, if the split-sample reconfirms the presence of the drug(s) or drug metabolite(s), adulterant, or abnormal urine values, the MRO will notify the City or a designated representative and the tested individual of the test results.

F. CONSEQUENCES FOR POLICY VIOLATIONS²

1. The consequences discussed below apply to applicants and drivers who are found to have violated this policy.
 - a) Automatic Removal from Safety-Sensitive Functions: FMCSA's regulations require drivers who violate this policy in any way to be immediately removed from their safety-sensitive functions. Such drivers are prohibited from performing or being permitted to perform a safety-sensitive function including driving City trucks and motor vehicles with gross vehicle weight ratings between 10,001 and 26,000 pounds.
 - b) Violation of This Policy: Following a violation of this policy, the driver shall be subject to any penalties that exist under the law, City Rules and Regulations (which include disciplinary action up to and including discharge), and the labor agreement provisions.
 - c) Duty to Report: Under City Rules and Regulations, employees have an affirmative duty to report as soon as possible any accident in which he/she has been involved.
 - d) Costs for Counseling: Any costs associated with the counseling resources are to be consistent with current City policies and practices.
 - e) Initial Evaluation by Substance Abuse Professional: The driver shall be evaluated by a substance abuse professional to assess what assistance the employee needs to address his/her substance abuse problem.

²This list is not all inclusive; other penalties exist under the law, City Rules and Regulations (which include disciplinary action up to and including discharge), and the labor agreement provisions.

- f) Return to Duty: Following the required treatment, the substance abuse professional shall then determine if or when the driver shall return to duty.
- g) Follow-Up Evaluation by Substance Abuse Professional and Follow-Up Testing: The driver shall be subject to at least six (6) unannounced follow-up alcohol and/or controlled substance tests in the first twelve (12) months following the driver's return to duty. If the counselor determines that return to duty and follow-up testing for both alcohol and controlled substances is necessary for a particular driver, the City may direct the driver to undergo a return to duty follow-up test for both substances.
- h) Evaluation and Rehabilitation Requirements for Pre-Employment Individuals: The requirements of referral evaluation and rehabilitation do not apply to applicants who refuse to submit to a pre-employment alcohol and/or controlled substance test or to those who have a pre-employment positive test result.
- i) Imposed Penalties and Inability to Perform Work Following Alcohol Testing: Employees shall also be subject to the penalties imposed for any misconduct or violation of related City work rules. In addition, the regulation deems a person with an alcohol level of "0.02 or greater but less than 0.04" to be medically unqualified for performing a safety-sensitive function until 24 hours following administration of the test. Therefore, the City will likewise consider the employee unqualified to perform their work during said period.

G. NOTIFICATION OF TEST RESULTS

1. Drivers will be advised of drug test results which are verified positive and the drug or drug(s) for which a positive result was verified. Drivers will be notified of the results of their alcohol tests immediately after the administration of the screening test and the confirmatory test (if necessary). An employee may contact the Human Resources Department to check on the results of their tests.

H. RECORD KEEPING, ACCESS TO RECORDS, AND CONFIDENTIALITY OF TEST RESULTS

1. The City will maintain records related to its drug and alcohol testing program as required by the FMCSA's regulations. These records will be maintained in a secure location with controlled access and will not be released to any person except as required by law or expressly authorized by the driver.

I. CONTACT FOR QUESTIONS REGARDING POLICY

1. Questions regarding the policy and Employee Assistance Program as enforced by the City should be directed to the Human Resources Department.

J. NOTICE

1. Each employee is required to sign a certificate verifying that he/she has received a copy of this policy governing the alcohol and drug testing requirements for commercial driver's licenses. The original signed certificate shall be maintained in the City's records.
2. The City ensures that the employees affected by this law shall receive educational materials explaining the requirements of the law and the City's policy designed to meet those requirements. In addition, an employee shall also receive such information upon hire or transferring into a job position requiring a commercial motor vehicle driver's license.
3. The City ensures that supervisors also receive the necessary information about the law and training regarding the City's policies/procedures established to meet the new requirements.