

**CITY OF POTEAU  
ALCOHOL & CONTROLLED SUBSTANCE  
TESTING POLICY AND PROCEDURES**

**Section 1. Policy Statement:** The City of Poteau recognizes the importance of a drug and alcohol free workplace. The abuse of drugs, alcohol or other chemical substances by an employee endangers the safety of the public, the employee, and other City employees. The City recognizes that it is in its best interest, as well as the best interest of its employees and the public, to prevent and eliminate drug, alcohol and/or substance abuse in the work place. Any employee found using, possessing, selling, distributing or being under the influence of an illegal chemical substance and/or alcohol during working hours or while on City property or while using City equipment will be subject to discipline up to and including termination of employment.

**Section 2. Effective Date:** This policy will be effective ten (10) days after posting in a prominent place at all City facilities where employees routinely report for duty and following distribution of the policy to all employees. In addition, a copy will be given to each applicant for employment upon receipt of a conditional offer of employment.

**Section 3. Application:** This policy applies to all employees as well as all applicants for employment once they have received a conditional offer of employment. Employee is defined as any person who supplies labor for remuneration to his or her employer in this state and shall not include an independent contractor, subcontractor or employees of an independent contractor; provided, however, an independent contractor, subcontractor, or employees of an independent contractor, unless otherwise provided for by contract. This policy will comply with the Oklahoma Standards for Workplace Drug and Alcohol Testing Act, 40 O.S. §551, *et seq.* (Act) as amended.

**Section 4. Applicant Pre-Employment Testing:** All applicants will undergo drug and/or alcohol testing following a conditional offer of employment, but prior to final hiring and assignment. Refusal to undergo a test, or a positive test, will result in the City withdrawing its conditional offer of employment. In addition, adulteration of a specimen for a drug or alcohol test will be considered as a refusal to undergo a test.

**Section 5. For Cause Testing:** Drug and/or alcohol testing may be conducted on any employee at any time the City has reasonable suspicion there is cause to believe an employee may be under the influence of drugs or alcohol, including, but not limited to, the following circumstances:

- 5.1 Observation of drugs or alcohol on or about the employee's person or in the employee's vicinity;
- 5.2 Observation of conduct on the part of the employee that suggests that the employee is impaired or is under the influence of drugs or alcohol;

- 5.3 Receipt of a report of drug or alcohol use by an employee while at work;
- 5.4 Information that an employee has tampered with drug or alcohol testing at any time;
- 5.5 Negative job performance patterns by the employee; or
- 5.6 Excessive or unexplained absenteeism or tardiness.

The supervisor will verbally inform the employee of the reason for the test. Additionally, the attached Reasonable Suspicion Determination Report will be completed and signed by the supervisor(s)/witnesses within 24 hours of the event. A copy of the Report will be forwarded to the Mayor or City Clerk.

The employee involved must stop work immediately and will be transported as soon as possible to the designated testing facility by a management/supervisory employee. The employee will not be allowed back to work until the results of the test are known.

**Section 6. Post Accident Testing:** Post-Accident drug and/or alcohol testing shall be conducted on an employee where there has been damage to City property or equipment while the employee was at work or the employee or another person has sustained an injury while at work. The post accident test will be administered while the employee is still on duty or as close to as possible. No employee required to take a post accident alcohol or drug test may use any alcohol or drugs, of any kind, following the accident until the employee undergoes the post accident testing.

**Section 7. Random Testing:** The City may, at various times, randomly select members of the following employment groups, at its discretion, for unannounced random testing for drugs or alcohol:

- 7.1 police officers;
- 7.2 firefighters;
- 7.3 persons engaged in activities which directly affect the safety of the public;
- 7.4 employees whose work requires possession of a CDL.

**Section 8. Periodic Scheduled Testing:** The City may require an employee in any of the employment groups identified in Section 7 above to undergo drug or alcohol testing as part of a routinely scheduled employee fitness for duty examination or in connection with the employee's return to duty from a leave of absence.

**Section 9. Post Rehabilitation Testing:** The City may require an employee to undergo drug and/or alcohol testing, without prior notice, for a period of up to two (2) years after the employee's return to work following a confirmed positive test result or

following participation in a drug or alcohol dependency program. Post-rehabilitation testing will be conducted in addition to any other testing the employee is subject to under this policy.

**Section 10. Substance for Which Tests May Be Given:** The City reserves the right to test for all drugs and for the presence of alcohol. Threshold reporting levels will be those established and maintained by State and Federal Regulations relevant to the position held by employee. Any positive levels below those established reporting levels will not be reported to the City's Review Officer by the testing laboratory.

**Section 11. Methods and Documentation:** Collection, storage, transportation, testing facilities and testing procedures will be conducted in accordance with rules established by the State Board of Health. Samples may be collected on the premises of the City at its election. Body component samples will be collected with due regard to the privacy of the individual being tested. In no case may any City employee directly observe collection of a urine sample. A written record of the chain of custody of the sample will be maintained until the sample is no longer required.

All sample testing will conform to scientifically accepted analytical methods and procedures. Testing will include confirmation testing of any positive test results by gas chromatography, gas chromatography-mass spectroscopy, or an equivalent scientifically accepted method of equal or greater accuracy as approved by the State Board of Health at the cut off levels as determined by the State Board of Health. In the case of the use of Breathalyzer testing method, no discipline may be imposed unless there is a confirmation test performed on a second sample that confirms the prior results.

An applicant or employee will be given the opportunity to provide notification of any information which he/she considers relevant to the test, including currently or recently used drugs or other relevant information. In the event that an applicant or employee wishes to challenge the results of the City's test, he/she may do so as provided in this policy. The applicant or employee must have had the sample collected within one hour of the City's sample and such retest must be in accordance with the standards set forth by the State Board of Health and in this policy.

**Section 12. Costs:** The City is responsible for all costs associated with drug or alcohol testing. However, if an applicant or employee requests a confirmation test of a sample within twenty-four (24) hours of receiving notice of a positive test result in order to challenge the results of the positive test, the applicant or employee is responsible for the cost of the confirmation test unless the confirmation test reverses the findings of the challenged positive test. In such case, the City will reimburse the person for the cost of the confirmation test.

**Section 13. Refusal to Undergo Testing or Tampering with Sample:** Employees who refuse to undergo testing according to the terms of this policy will be

subject to disciplinary action up to and including termination. Adulteration of a specimen or of a drug or alcohol test will be considered as a refusal to undergo a test and will result in disciplinary action up through and including termination of employment.

**Section 14. Review Officer:** The City will contract with a lab/testing facility that includes the services of a Review Officer who will receive confirmed positive test results from the testing facility and evaluate those results in conjunction with the subject employee and/or applicant. The Review Officer will be qualified by the Board of Health to receive, interpret and evaluate the test results. Upon receiving a confirmed positive test result, the Review Officer will contact the applicant or employee prior to notification of City officials. The applicant or employee will be given the opportunity to explain the test results.

**Section 15. Confidentiality:** The City will treat all tests and all information related to such tests, as confidential materials. All records relating to drug testing will be kept separated from personnel records. The records are the property of the City but will be made available to the affected applicant or employee for inspection and copying upon request and will also be available for review by the City' Review Officer. Except as set forth below, the records will not be released to any person other than the applicant or the employee without that person's express written permission. However, the City may release the records:

- 15.1 To comply with a valid judicial or administrative order;
- 15.2 As admissible evidence in a case or proceeding before a court of record or administrative agency if the employee or the City is named as a party in the case or proceeding; or
- 15.3 To employees or agents of the City who need access to the records in connection with the administration of this Policy and the Act.

**Section 16. Disciplinary Action:** The City may elect to take disciplinary action, up to and including termination of employment, against an employee who: 1) tests positive for drugs and/or alcohol; 2) refused to test under this policy; or 3) adulterates a specimen for a drug or alcohol test.

- 16.1 The City will evaluate the employment history of any employee who tests positive for drugs and/or alcohol. The appropriate course of action will be determined based on the employee's total work record. Where deemed appropriate by management, an employee may be offered the opportunity to enter into a rehabilitation program. Continued employment will be contingent upon the successful completion of a rehabilitation program and an agreement to undergo periodic drug and/or alcohol post-rehabilitation testing for up to two (2) years. However, the City reserves the right to initiate disciplinary action, up to an including termination of employment, for the first positive test result. A decision regarding disciplinary action

under this policy by management will be final and binding.

- 16.2 Employees who have tested positive, and who have been offered the opportunity to participate in a rehabilitation program in lieu of termination of employment, will not be allowed to return to work until they can provide a verified negative "return to work" test from a City approved facility. An employee may be allowed a maximum of 12 weeks to provide a verified negative "return to work" drug or alcohol test. If a negative test is not provided within 12 weeks, the employee will be terminated from employment. Until a negative "return to work" test is supplied, the employee will be on leave without pay. However, an employee may request permission to use accrued sick leave and vacation leave. An employee may request a "return to work" test no sooner than two weeks from a positive test result, and subsequently every other week thereafter, until a negative "return to work" test is obtained. Employees refusing to seek help or submit to testing in accordance with this policy will be subject to disciplinary action.
- 16.3 In the event the City does not terminate the employment of an employee who has a positive test result, the employee who enters a rehabilitation program after the positive test results will be permitted to do so only once. Any future recurrence for abuse with the same or any other substance will result in termination of employment.
- 16.4 An employee who is discharged from employment on the basis of refusal to undergo drug or alcohol testing or based on a positive drug or alcohol test will be considered as having been discharged for misconduct for the purpose of unemployment compensation and the City will protest any application for unemployment benefits.

**Section 17. Prohibitions:** No employee will be on duty or operate a City vehicle/equipment or perform job duties while in possession of alcohol nor use alcohol during duty time. Further, no employee may report for duty, drive a City-owned vehicle, operate City equipment or remain on duty when the employee has used any controlled substance, except when the use is pursuant to the instructions of a physician and where the physician has advised an employee the substance will not adversely affect an employee's ability to drive a vehicle or operate equipment. No supervisor having knowledge that an employee has used a controlled substance may permit an employee to be on duty or drive/operate any City vehicle or equipment.

**Section 18. Responsibilities of Individuals:** In order to comply with the provisions of this policy, each employee assumes the following responsibilities:

- 18.1 *Working under the Influence of Performance Impairing Medication:* Employees who have been prescribed legal medications that might affect the safe performance of their duties are required to notify their supervisors

prior to performing any hazardous or dangerous tasks.

- 18.2 *Reporting to Work or Working While Impaired:* Employees may not report to work and may not continue to work while impaired by any restricted substance identified in this policy.
- 18.3 *Reporting Violations:* The services provided by certain employees are performed, at times, under hazardous and dangerous conditions. Thus, employees are encouraged to come forward and report any violation of this policy to management. This information may be instrumental in the prevention of serious accidents and injuries on the job.

**Section 19. Medical Marijuana:** *Effective August 28, 2019* employees possessing a valid State issued Medical Marijuana license shall not be discriminated against for possessing a license or testing positive for marijuana that is at or above the cutoff concentration level established by the United States Department of Transportation or Oklahoma law regarding being under the influence, whichever is lower, except in the following circumstances:

- 19.1 Use or possession of marijuana at work or during work hours;
- 19.2 The City would fail to obtain or lose federal funding;
- 19.3 The employee is required as part of the job duties to possess a federal license under the Federal Motor Carrier Safety Administration, the Federal Aviation Administration, Federal Railroad Administration, Federal Transit Administration, National Highway Traffic Safety Administration or Pipeline and Hazardous Materials Safety Administration.
- 19.4 *Safety Sensitive Positions.* The employee's position involves safety sensitive job duties, including but not limited to:
  - a. the handling, packaging, processing, storage, disposal or transport of hazardous materials;
  - b. the operation of a motor vehicle, other vehicle, equipment, machinery or power tools;
  - c. repairing, maintaining or monitoring the performance or operation of any equipment, machinery or manufacturing process, the malfunction or disruption of which could result in injury or property damage;
  - d. performing firefighting duties;
  - e. the operation, maintenance or oversight of critical services and infrastructure including, but not limited to, electric, gas, and water

utilities, power generation or distribution;

- f. the extraction, compression, processing, manufacturing, handling, packaging, storage, disposal, treatment or transport of potentially volatile, flammable, combustible materials, elements, chemicals or any other highly regulated component;
- g. dispensing pharmaceuticals;
- h. carrying a firearm; or
- i. direct patient care or direct child care

19.5 *Health and Workers Compensation Benefits.* Employer is not required to reimburse the costs associated with the use of medical marijuana.

## **REASONABLE SUSPICION (FOR CAUSE) CHECKLIST INSTRUCTIONS**

### **Observation of Behavior**

When a Supervisor is notified or suspects an employee may be in violation of the Drug Free Workplace Policy (the Policy):

- The Supervisor must notify Mayor as soon as possible of the possibility of a violation of the Policy.
- Two designated staff members (witnesses) [who have received reasonable suspicion training] will observe the behavior of the employee and immediately complete the Reasonable Suspicion Testing Checklist.
- After completing the Reasonable Suspicion Testing Checklist, if the witnesses believe, there is reasonable suspicion that the employee may be in violation of the Policy (e.g. using or being under the influence of drugs or alcohol while at work); the witnesses must contact the Mayor.
- Each witness must observe the behavior of the employee and complete a separate Reasonable Suspicion Testing Checklist.
- After completing the Reasonable Suspicion Testing Checklist, if the witnesses believe the employee may be in violation of the policy, the witnesses will escort the employee to an area where a conversation with the employee can be held in private.

### **Two Witnesses**

Both designated staff members should be involved in all steps of the process and are required to fully document the events immediately.

### **Notification of Possible Violation to Employee**

The witnesses will inform the employee that the employee may be in violation of the Policy and will inform the employee of the observations. The employee must be given an opportunity to provide an explanation of the observed behaviors (“What explanation do you have for these behaviors?”). Both witnesses will document the conversation, including noting if the employee declined to comment.

If both witnesses believe the employee is in violation of the Policy, they will inform the employee that they believe the employee is in violation of the Policy, ask the employee to submit to a reasonable suspicion drug/alcohol test, and sign and complete the Reasonable Suspicion Testing Consent Form indicating the employee’s consent or refusal to the screening.

For example, the designated staff member might say, “At this time, we believe you are in violation of the Drug Free Workplace policy and are requesting that you submit to a reasonable suspicion drug/alcohol test. This test will involve screenings to detect the presence of alcohol or drugs in your system. A positive test could result in corrective action, up to and including

termination of your employment. Please read this consent form and sign in the appropriate area to indicate either your consent to or your refusal to the test. Failure to submit to and/or complete this testing may lead to corrective action, up to and including termination of employment.”

## **The City’s Drug-Free Workplace Reasonable Suspicion Testing Procedure**

### **Minors**

If the employee is 17 years of age or younger, the parent or guardian must be contacted to provide consent.

### **Employee Refuses Testing**

If the employee refuses to submit to the testing, one of the designated staff must tell the employee that refusal to submit to and complete the testing could subject them to corrective action up to and including termination of employment. The designated staff member should again ask the employee to submit to the testing.

If the employee refuses again, the designated staff member will inform the employee that the refusal could subject them to disciplinary action. The designated staff member will inform the employee to report to duty at their next assigned shift and should instruct and assist, if necessary, the employee to make arrangements to be taken home safely. If the employee insists upon driving home, the designated staff member will inform the employee that local law enforcement will be notified and again instruct the employee to make arrangements to get home safely. If the employee refuses, the designated staff member should obtain vehicle information such as make, model, color, license plate number and must notify local law enforcement that an employee is suspected of being in violation of the Drug-Free Workplace policy and that the suspected employee may be attempting to operate a vehicle. The witnesses must report this refusal to Mayor as soon as possible.

### **Employee Consents to Testing**

If the employee consents to testing designated staff member will arrange for testing. The designated staff member should contact the Mayor that they have an employee suspected of being in violation of the Drug-Free Workplace policy and that the suspected employee will be transported to the specimen collection location (see below) for a drug/alcohol screening. The employee will be transported to the collection location if possible by two designated staff members. At no time will the employee be allowed to transport him/herself. A copy of the completed Reasonable Suspicion Testing Checklist and any other relevant documentation will be maintained. If there is a safety concern, the designated staff members can request a City of Poteau police officer to follow the transporting vehicle containing the witnesses and employee.

## **Specimen Collection Contacts**

Saber Transportation Support, Inc.

1500 S. Broadway

Poteau, OK 74953

918-649-3659

The designated staff members will remain with the individual while at the collection location.

If the individual refuses to cooperate in the testing process, the designated staff member must tell the individual that refusal to submit to and complete the testing could subject them to corrective action up to and including termination of employment.

If after reasonable efforts have been made to enable the individual to provide a breath or urine specimen and the individual is unable to do so, an evaluation by the testing facility's medical personnel is to be conducted to establish medical impediment to providing a specimen. If no medical impediment exists, it is considered a refusal to test.

Once the screening has been completed, if positive, the designated staff member will inform the individual to report to the Mayor the next business day and should instruct the individual to make arrangements to be taken home safely. If the individual insists upon driving home, the designated staff member will inform the individual that local police may be notified and again instruct the individual to make arrangements to get home safely. If the individual refuses, designated staff member should obtain vehicle information such as make, model, color, and license plate number and must notify the City of Poteau Police Dept. that they have an individual suspected of being in violation of the Drug-Free Workplace policy and that the suspected individual may be attempting to operate a vehicle.

## **Test Results**

Test results and any other pertinent reports will be reviewed by Mayor who will determine if a policy violation occurred. The Mayor will work with the department manager or senior-level administrator to determine next steps.