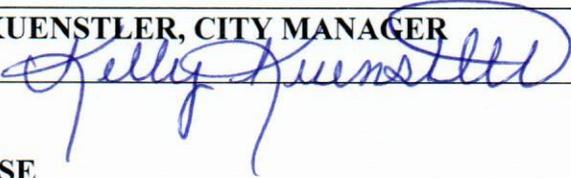




SECTION: HUMAN RESOURCES	REFERENCE NUMBER: A10
SUBJECT: DRUG AND ALCOHOL POLICY	INITIAL EFFECTIVE DATE: 3/17/1998
FROM: KELLY KUENSTLER, CITY MANAGER 	LAST REVISION DATE: 10/1/2017

A. **PURPOSE**

It is the desire of the City to provide an alcohol and drug-free, healthy and safe workplace. To promote this goal, employees are required to report to work in appropriate mental and physical condition to perform their jobs in a satisfactory and safe manner.

The City of Leon Valley is also required by Federal regulation to administer a testing program for drug and alcohol use for employees who are required to have and maintain a Commercial Driver's License.

B. **COVERED EMPLOYEES**

1. The following groups of employees with the exception of firefighters are required by law to participate in the drug and alcohol testing program:
 - i. Regular employees who are required to operate a commercial vehicle as part of their routine job duties.
 - ii. Any employee who possesses a Commercial Driver's License who may at any time operate a commercial vehicle on an on-call, emergency or unscheduled basis (including supervisory employees who may be called upon at any time to operate a commercial motor vehicle).
 - iii. Current employees who transfer or promote to a position requiring operation of a commercial vehicle and possession of a Commercial Driver's License.
2. All applicants to whom a conditional offer of employment has been made will be required to submit to testing for alcohol and illegal and unauthorized drugs. A positive test result, refusal to test, or attempts to alter or tamper with a sample or any other part of the test, will render the applicant ineligible for consideration of employment or future employment with the City.

3. Reasonable suspicion drug and alcohol testing is conducted when a trained supervisor has reason to believe that an employee is in violation of this policy. The reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee; the observations may also include indications of the chronic and withdrawal effects of controlled substances. The supervisor must consult with the Department Director (or designee) and affirm the basis of the suspicion. If the Department Director concurs, the employee will be required to undergo testing only after consultation with the Director of Human Resources. A written report of the reasonable suspicion observations must be prepared by the supervisor(s) who made the observation within 24 hours of the observed behavior or before the results of tests are released, whichever is earlier. This report must be promptly forwarded to the Director of Human Resources.

C. **DEFINITION OF TERMS**

1. **Accident** - Accident means an occurrence involving a Vehicle on a public road which results in:
 - a. A fatality.
 - b. Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident.
 - c. One or more motor vehicles incurring damages.
2. **Alcohol** – Includes all alcoholic beverages, including distilled spirits, wine and malt beverages which have the capacity to intoxicate an individual.
3. **Authorized Drugs or Medications** - Prescriptions or over the counter drugs or medications which were:
 - a. Prescribed for the person in possession of the drugs/medication by a physician licensed in the United States (applicable to prescribed medication only).
 - b. Filled by a registered/licensed pharmacist in accordance with prescription instructions (applicable to prescription medications only).
 - c. Maintained in their original container, or traceable to a valid prescription.
 - d. Administered or ingested only in the prescribed or recommended therapeutic dosages.

4. **Collecting Agent** – Refers to the facility (and its employees) that have been chosen by the City of Leon Valley for conducting a Drug and/or Breathalyzer testing.
5. **City Property or Premises** – For the purposes of this Policy, City property or premises includes all property, facilities, buildings, structures, installations, and vehicles owned, operated, leased or under the control of the City, wherever located. City premises also include personal vehicles and property located on or within City property or premises.
6. **Commercial Vehicle** – A commercial vehicle is one that has either:
 - a. A gross vehicle weight of over 26,000 pounds (including combined weight if towed unit weighs over 10,000 pounds).
 - b. Is designed to transport 16 (sixteen) or more persons, including the driver.
 - c. Is used to transport hazardous materials.
7. **Driver** – This term includes all employees whose is operating a motor vehicle.
8. **Substance Abuse Professional (SAP)** – A SAP is a licensed physician, or a licensed or certified psychologist, social workers, employee assistance professional, or addition counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders. The SAP is responsible for evaluating employees with positive test results.

D. **DESIGNATED CONTACT**

The following individual(s) have been designated by the City of Leon Valley to answer questions about the program and program materials and may provide employees with resource or referral assistance:

Human Resources Director, (210) 684-1391 Ext. 212

E. **EMPLOYEE ASSISTANCE PROGRAM**

The City of Leon Valley offers an Employee Assistance Program (EAP) designed to assist employees and their families experiencing personal or job-related problems. The EAP is available to all regular employees who need assistance in dealing with a

substance abuse problem. Employees are encouraged to contact the EAP for assistance in early detection of substance abuse problems and referral for treatment programs. All EAP services are confidential and generally provided at no cost to the employee. Any service provided, shall not interfere with the tests required by these policies. For example, a driver may not identify himself/herself as unfit to drive after having been notified of a random or reasonable suspicion test and expect to avoid the consequences for a positive test or a refusal to test. In addition, voluntarily seeking assistance does not excuse any failure to comply with all of the provisions of this policy or other policies of the City.

The City has contracted with Logical Management Solutions for its Employee Assistance Program. They can be reached at (210) 822-0546.

F. **PROHIBITIONS**

This policy prohibits the following:

1. The unauthorized use, possession, manufacture, distribution or sale of an illegal drug, controlled substance or drug paraphernalia on City property or while on City business, in City supplied vehicles or during working hours. Drug-related paraphernalia includes material and/or equipment designed for use in testing, packaging, storing, injecting, ingesting, inhaling or otherwise introducing illegal or unauthorized drugs into the body.
2. The unauthorized use, possession, manufacture, distribution, or sale of alcohol on City premises or while on City business, in City supplied vehicles or during working hours.
3. Storing any illegal drug, paraphernalia, or any controlled substance whose use is unauthorized, or any container of alcohol, in or on City property (including vehicles). Unopened containers of alcohol in a private vehicle parked on City property shall not be a violation of this policy.
4. Reporting to work, or working, while under the influence of illegal drugs or alcohol, whether on City premises or on City business, or in City supplied vehicles.
5. Failing to notify the employee's supervisor, before beginning work that the employee is taking medications or drugs which may interfere with the safe and effective performance duties.
6. Refusing to immediately submit to an alcohol and drug test when requested by a supervisor, in accordance with this policy.

7. Failing to provide, by the next work day following a request, a valid prescription for any drug or medication identified when the results of a drug test are positive. If the employee is taking prescription drugs, the prescription must be in the employee's name.
8. Refusing to submit to an inspection as described in the Testing Procedures section when requested by a supervisor, in accordance with this policy.
9. Failing to adhere to the requirements of any drug or alcohol treatment program in which the employee is enrolled:
 - a. As a condition of continued employment.
 - b. Pursuant to a written agreement between the City and the employee.
10. Violating any criminal drug or alcohol statute while working. Conviction under any criminal drug statute.
11. Taking prescription medication and/or over-the-counter medication that will impair the employee's ability to perform the essential functions of his or her job (or operate a vehicle, property or other equipment, if applicable) effectively and in a safe manner. Examples of impairment include, but are not limited to, slurred speech, drowsiness, dizziness, confusion, or feeling shaky.
12. Failing to notify the City of any arrest or conviction under any criminal drug or alcohol statute by the next work day following the arrest or conviction.

G. **MANADATORY DISCLOSURE**

Employees taking prescription medication and/or over-the-counter medication must report such use to either their Department Director or to the City Manager if there is a reasonable likelihood the medication will impair the employee's ability to perform the essential functions of his or her job (or operate a vehicle, property or other equipment, if applicable) effectively and in a safe manner that does not endanger the employee, citizens or other individuals in the workplace. Examples of impairment include, but are not limited to, slurred speech, drowsiness, dizziness, confusion, or feeling shaky.

H. **ON CALL EMPLOYEES**

Employees scheduled to be on call are expected to be fit for duty upon reporting to work. Any employee scheduled to be on call, and is called out, is governed by this policy. Sometimes, an employee who is not scheduled to be on call may nevertheless be called out. If this or any other situation occurs where the employee called out is under the influence of alcohol or has a presence in the system of drugs,

such that reporting to work would result in a violation of this policy, the employee must so advise the appropriate supervisor on duty. The employee will not be required to report to work.

I. **OFF-DUTY CONDUCT.**

The City may take disciplinary action, up to and including termination of employment, if an employee's off-duty use of or involvement with drugs or alcohol is damaging to the City's reputation or business is inconsistent with the employee's job duties, or when such off-duty use or involvement adversely affects the employee's job performance. Any employee reporting to work under the influence of illegal drugs or alcohol (.02 bac or higher) may be disciplined, up to and including termination.

All employees must notify their Department Director of a criminal arrest no later than 24 hours after the employee is arrested (Reference Article four, Section V of this policy).

J. **TESTING PROCEDURES**

1. Pre-employment Testing

- a. All Prospective employees, including those required to hold a CDL, who are applying for positions with the City which will be tested for the presence of drugs as part of the pre-employment evaluation process.
- b. Current employees who are transferring from a position that does not require a Commercial Driver's License to a position that does require one, will be tested for the presence of drugs prior to performing duties that require driving or operating a commercial vehicle.
- c. A positive drug test result for an employment candidate will result in disqualification from further consideration for the position. Employees seeking to transfer to a position requiring the driving of a commercial vehicle will be denied the transfer and are subject to discipline as described in this policy.

2. Random testing for commercial driver's license employees

- a. The annual random testing rate required under federal regulations is 50 (fifty) percent of the available candidates for drug testing and 25 (twenty-five) percent for alcohol testing. This means that if the list contains 100 (one hundred) eligible persons, there will be at least 50 (fifty) random drug tests and at least 25 (twenty-five) random alcohol tests conducted throughout the year.

- b. Individuals for random testing will be selected on a monthly basis. Some individuals will be selected for drug testing and others will be selected for both drug and alcohol testing.
 - c. Each month, the City will send the names of individuals selected for random testing to the appropriate contacts.
 - d. Employees selected for random testing will be scheduled for a test by the designated contact at some time during the month that the name was selected.
 - e. Employees selected for alcohol testing may only be tested just before, during or after driving commercial vehicle. Employees will NOT be notified until just prior to the testing.
3. Post-Accident Testing
- a. All employees will be subject to post-accident testing when reasonable suspicion exist, if they are involved in an accident while driving a City or commercial vehicle on a public road which results in:
 - 1. A vehicle fatality.
 - 2. The driver receives a citation under state or local law for a moving violation.
 - 3. There is bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene.
 - 4. One or more motor vehicles incur disabling.
 - b. After an accident, employees are responsible for contacting their immediate supervisor or other management personnel. If the above conditions are met, the employees must make themselves available for post-accident testing as soon as possible. Post-accident testing for alcohol should occur within 2 (two) hours if possible, but may not exceed 8 (eight) hours. Testing for drugs should occur within 32 (thirty-two) hours.
 - c. Employees subject to post-accident testing are prohibited from consuming alcohol for 8 (eight) hours following the accident, or until the employee has completed the alcohol test, whichever comes first. An employee who does not comply with the post-accident testing will be considered to have refused testing and will be subject to disciplinary action. An employee in a post-

accident situation should cooperate with law enforcement personnel investigating the scene.

- d. Supervisors are responsible for determining if the accident qualifies the driver for post-accident testing and should escort the employee to the collection site if possible. If an employee is unable to provide consent to testing due to their medical condition, the supervisor will document the reasons why the employee was not tested. If testing is not completed within the required time following an accident, the supervisor will document in writing why the tests were not administered.

4. Return to Duty and Follow-Up Testing

All employees who have engaged in prohibited conduct defined in this policy, including those who have tested positive for drugs or alcohol, are subject to return to duty testing and may be subject to follow-up testing.

a. Return to Duty Testing

After engaging in prohibited conduct regarding alcohol or drug use, an employee is required to undergo a return to duty alcohol and or drug test prior to returning to a duty which requires driving a commercial vehicle. A return to duty alcohol test must result in a breath alcohol concentration of 0.02 or less. A return to duty drug test must result in a verified negative result.

b. Follow Up Testing

An employee who returns to work after evaluation by a SAP determining that the employee is in need of assistance in resolving problems associated with alcohol misuse or drug abuse is subject to unannounced follow up alcohol and or drug testing as directed by the SAP and the City but no less frequent than six times in the first year following the return to work. The follow up testing period may not exceed 60 (sixty) months for each incident.

5. After Hours Testing

If the need for testing occurs outside of the normal hours of operation of the designated collection site, a supervisor or manager will be responsible for following the procedures established by testing lab for such occurrences.

K. **TESTING COSTS AND COMPENSATION**

1. Testing Costs

- a. The City will pay for the following alcohol and or initial drug tests:
 - 1. Random testing
 - 2. Reasonable suspicion testing
 - 3. Post-accident testing
 - 4. Pre-employment
 - 5. Follow-up testing
 - 6. Return to duty testing
- b. Employees are responsible for the costs associated with the following tests:
 - 1. Split sample re-tests made at the employee's request.
 - 2. If a split sample re-test returns a negative result, the City will reimburse the employee for the cost of the test.
- c. The cost associated with the Substance Abuse Professional under this policy will be the responsibility of the City.

2. Pay Status

- a. For Time Spent Testing Employees will be compensated for time spent to report to the testing facility and be tested for the following alcohol and or initial drug tests:
 - 1. Random testing
 - 2. Reasonable suspicion testing
 - 3. Post-accident testing
 - 4. Return to duty testing
 - 5. Follow-up testing
- b. Employees are responsible for taking a split-sample re-test made at their request on their own time.

- c. Waiting for Results. Employees who have been asked to submit to a reasonable suspicion drug test will be placed on unpaid leave pending the outcome of the test results. Such employees are eligible to use accrued personal, annual, holiday leave or compensatory time during this time. If the test result is negative, the time will be paid and any leave used will be credited.
- d. Alcohol Concentration of 0.02 but less than 0.04
If an employee receives an alcohol test result of at least 0.02 but less than 0.04, the employee must be removed from duty which requires driving a commercial motor vehicle for at least 24 (twenty-four) hours following the administration of the test. The employee may use accrued leave during this absence.
- e. Positive Drug Test or Alcohol Test Result of 0.04 or Higher
An employee who receives a positive drug test or who tests 0.04 or greater on an alcohol test is not allowed to return to work until all of the applicable requirements are met as outlined in the Policy (see Consequences of Engaging in Prohibited Conduct and Positive Drug or Alcohol Test). Such employees may use accrued leave during this absence.

L. **TRAINING AND EDUCATION**

1. The City will provide all affected employees with copies of these procedures and other information regarding the effects of drugs and alcohol, signs and symptoms of a drug or alcohol problem, information on assistance available for abuse problems and testing requirements. Each driver must sign a receipt upon having been provided the above referenced information.
2. Managers and supervisors designated to determine whether reasonable suspicion exists to require a driver to undergo alcohol or drug testing will receive at least 60 (sixty) minutes of training on alcohol and 60 (sixty) additional minutes of training on drug abuse. The training will cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances.

M. **REFUSAL TO TAKE AN ALCOHOL OR DRUG TEST**

No employee shall refuse to submit to an alcohol or drug test as directed under this policy. A refusal to submit will include, but is not limited to:

1. A failure to provide adequate breath for testing without a valid medical explanation after the employee has received notice of the requirement for breath testing in accordance with the procedures manual.
2. Failure to provide adequate urine for drug testing without a valid medical explanation after the employee has received notice of the requirement for urine testing in accordance with the procedures manual.
3. Engaging in conduct that obstructs the testing process.

Refusal to submit to a test will be considered the same as a positive test result.

N. **SECURING INFORMATION FROM PREVIOUS EMPLOYERS**

If a person is to be hired into a position subject to this policy and during the previous two (2) years has worked as a driver of a commercial vehicle, that person must authorize a request of all employers of the driver within the past two years to release information on the following:

1. Positive alcohol or drug tests.
2. Refusal to be tested.

Note: The City is required to obtain the information listed above in items one (1) and two (2) by Federal law.

This information must be obtained before the person is employed by the City. However, if the information has not arrived by the anticipated start date, and if the person has passed the pre-employment drug test, the person may be hired and the requested information must be obtained from the previous employers within 14 (fourteen) calendar days of the date of hire. If the information has not been received within the 14 (fourteen) calendar days, the person will not be permitted to drive commercial vehicles until the information has arrived. If the information obtained from previous employer indicates either a positive test or that a refusal to be tested occurred within the past two years, that person will not be permitted to drive commercial vehicles unless subsequent information indicates that an evaluation by a Substance Abuse Professional was made and return to duty testing was administered.

O. **CONFIDENTIALITY AND RECORD RETENTION**

1. All records related to drug and alcohol testing will be maintained in a secure location with controlled access. These records will be kept separate from records pertaining to all other employees.

2. The City shall maintain all records related to drug and alcohol testing for each driver in a secure location with controlled access and keep all documents sent by the laboratory or the collection site.
3. The following records will be maintained for a minimum of five (5) years.
 - a. Records of alcohol test results indicating an alcohol concentration of 0.02 or greater.
 - b. Records of verified positive drug test results.
 - c. Documentation of refusal to take required alcohol and or drug tests.
 - d. Evaluations and referrals.
 - e. Copy of annual report.
4. Records related to alcohol and drug collection process and training shall be maintained for a minimum of two (2) years.
5. Records of negative and canceled drug test results and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one (1) year.
6. No records containing driver information required by this policy will be released except as provided as follows:
 - a. Upon written request of the employee.
 1. Upon written authorization of the employee, records will be disclosed to a subsequent employer subject to use as specified by the employee.
 2. Upon specific, written authorization by the employee, records will be released to an identified person, for use only as specified by the employee.
 - b. Records may be disclosed to a decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee, including, but not limited to, a worker's compensation, unemployment compensation or other proceeding relating to a benefit sought by the driver.

P. **CONSEQUENCES OF ENGAGING IN PROHIBITED CONDUCT OR POSITIVE DRUG OR ALCOHOL TESTS**

Any employee engaging in prohibited conduct, receiving a positive drug test, or receiving a blood alcohol test greater than 0.02 shall be subject to the full range of disciplinary action, including termination, depending on the seriousness of the prohibited conduct.

All employees, regardless of disciplinary action taken, will be advised of resources available to the employee in evaluating or resolving problems associated with drug use or alcohol misuse.

The following provisions apply to those employees who are not terminated for policy violations:

1. Positive Test Result and or Engaging in Prohibited Conduct.

If an employee tests positive for drugs or has an alcohol test that indicates a blood alcohol level of 0.04 or greater from a random, reasonable suspicion or post-accident test, or engages in prohibited conduct as outlined in Section F, the employee will be immediately removed from duties requiring the driving of a commercial vehicle. The employee will not be permitted to return to work unless they:

- a. Have been evaluated by a qualified Substance Abuse Professional.
- b. If recommended by a Substance Abuse Professional, have properly followed and completed the rehabilitation prescribed.
- c. Have a verified negative result on a return-to-duty alcohol (<0.02) and or drug test.

Upon completion of a recommended rehabilitation program and successful return to work, an employee will be subject to follow-up random testing for up to 60 (sixty) months as recommended by the Substance Abuse Professional and the City with a minimum of six (6) such unscheduled tests within the first 12 (twelve) months of returning to duty.

2. Alcohol Concentration of 0.02 but less than 0.04

Employees having a breath alcohol concentration of at least 0.02 but less than 0.04, shall be removed from duty requiring the driving of a commercial vehicle for at least 24 (twenty-four) hours.

Sick leave, vacation leave or leave of absence without pay may be granted for treatment and rehabilitation as in other illnesses. Insurance coverage for treatment

will be provided to the extent of individual coverage. Confidentiality of information will be maintained as much as possible at all times.

Q. **MODIFICATION/SUSPENSION OF THIS POLICY**

At the discretion of the City, and as required by federal and or state statutes and regulation, this policy may not be modified or suspended at any time. Covered drivers will be notified of any such modification or suspension by the City of Leon Valley.