

DRUG AND ALCOHOL ABUSE POLICY CITY OF MONTGOMERY

The City of Montgomery *must insist upon* an alcohol and drug-free workplace. The manufacture, distribution, dispensation, possession or use of illegal drugs and of alcohol in the workplace *is, therefore, prohibited*. The City *also recognizes that* use and abuse of illegal drugs and alcohol outside the workplace *may also cause* problems in the workplace.

The implementation of a drug and alcohol abuse policy by the City of Montgomery will further the overall interests of the City by (1) ensuring public safety; (2) developing public trust and integrity; (3) discouraging corruption; (4) developing high morale and safety in the workplace; (5) preventing a loss of productivity; and (6) minimizing or eliminating liability.

The City is concerned for the well being of its employees. The City believes it has a responsibility to provide a safe, healthy, and productive working environment for all of its employees.

The City of Montgomery adopts the following policy *in furtherance of its goal to establish* a drug-free workplace.

I. RESPONSIBILITY

The implementation *of, and compliance with,* the City of Montgomery Drug and Alcohol Abuse Policy *is primarily* the responsibility of *the* department heads. Each department head *is responsible for ensuring* that all aspects of this policy are followed. In addition, the department head should assign a contact person in each department who will receive confidential drug testing information. The City of Montgomery Risk Manager will be *available to assist* each department head in the implementation of *this* policy.

II. ILLEGAL DRUG OR ALCOHOL USE IN THE WORKPLACE

If *it is determined that an employee used, consumed, possessed or manufactured: (a) illegal drugs either during work hours or while on duty, or (b) alcohol, during work hours or while on duty if such use or consumption in any way impairs his/her ability to perform his/her job duties,* that employee will be terminated. A drug screen *or breath alcohol test will be performed, if possible, to confirm the consumption or use by the employee. An "illegal drug", for purposes of this policy, shall include cocaine, marijuana, PCP, opiates, amphetamines, ecstasy as well as any prescription narcotic, opiate, and/or amphetamine based drug for which the employee does not have a current, valid prescription in his/her*

name. Furthermore, in adherence with Title 49 Code of Federal Regulations Part 40, a breath alcohol concentration of .04 or greater shall constitute a positive finding for purposes of this policy.

III. DRUG AND ALCOHOL SCREENING AND TESTING

(A) FOR ALL CITY OF MONTGOMERY EMPLOYEES

1. PRE-EMPLOYMENT, TESTING:

All potential *merit system* employees, both temporary and permanent, shall be given an initial drug screen test after receiving a conditional offer of employment. The conditional employee must pass the test before receiving final appointment to the position. If the test result is positive for illegal drugs, the applicant will be refused employment for the position he/she was applying and will, additionally, be refused employment for ANY City of Montgomery position for a period of five (5) years thereafter. The test administered will ascertain whether the conditional employee has traces of any illegal drug in his/her system.

2. TESTING BASED ON REASONABLE SUSPICION DURING EMPLOYMENT:

If there is reasonable suspicion to believe that an employee is using or possessing illegal drugs or is under the influence of alcohol while working for the City, this employee may be administered a drug screen and/or breath alcohol test. These tests must be in accordance with the city drug and alcohol testing procedure to include verification of the test results by a qualified Medical Review Officer (MRO) as defined in 49 CFR Part 40.

Supervisors are required to specify in writing the exact facts, symptoms, and/or observations of drug or alcohol use. Any corroboration by other sources, which formed the basis for a reasonable suspicion, must also be documented. The documentation is to be immediately forwarded to the supervisor's department head or his designee.

Circumstances which provide a basis for determining reasonable suspicion may include, but are not limited to:

- a. Direct observation of drug or alcohol use
- b. Presence of physical symptoms consistent with drug or alcohol use, i.e., alcohol odor, slurred speech, poor coordination and/or reflexes.
- c. Abnormal or erratic behavior by the employee

d. Information concerning recent drug or alcohol use by the employee, from a reliable and credible source

3. ON-THE-JOB INJURY TESTING:

Any employee who suffers an on-the-job injury may be subject to a drug screen and/or *breath* alcohol test pursuant to the City drug and alcohol testing procedure. The test result must be verified by a qualified medical review officer (MRO). If the test results are positive for drug or alcohol use, workers compensation benefits *may not be paid to the employee*. Furthermore, the employee will be subject to paragraph "G" of the drug and alcohol testing procedure. A drug screen will be performed after *each and every* on-the-job injury that is treated by a physician; furthermore, if the physician or supervisor has reasonable suspicion to believe that the injured employee is under the influence of alcohol, a breath alcohol test will be administered as well. The injured employee has twelve (12) hours, *from the time of the injury*, to submit to the drug screen. The injured employee must submit to the breath alcohol test immediately upon request absent an overriding cause for delay. Failure to adhere to these time restraints may subject the employee to termination of employment and/or denial of workers compensation benefits.

(B.) FOR ALL CITY OF MONTGOMERY COMMERCIAL DRIVERS AND OTHER AUTHORIZED OPERATORS OF CITY OWNED VEHICLES

In addition to the above stated policy, the following testing must be implemented *for commercial drivers* pursuant to the Omnibus Transportation Employee Testing Act, Public Law 102-143, which amends the Commercial Motor Vehicle Safety Act of 1986. All non-commercial drivers are dictated to follow this provision due to their authorized operation of City owned vehicles and not resulting from Federal Law.

1. RANDOM TESTING:

All authorized drivers of City owned vehicles, commercial or otherwise, shall be subject to at random drug and alcohol testing *during work hours*. The City of Montgomery Risk Manager shall submit at random a list of commercial *and other authorized* drivers from each applicable department for testing following the City Drug and Alcohol Testing Procedure to include verification of results by the MRO. The Risk Manager will be responsible for ensuring that all technical aspects of this at random testing follow U.S. Department of Transportation rules and regulations. The random testing will be conducted in phases and will ensure that the federally mandated percentage of commercial drivers is tested annually.

2. POST VEHICULAR ACCIDENT:

An authorized driver with the City of Montgomery may be given a drug screen *and breath alcohol test* following any vehicular accident involving a commercial or other vehicle owned by the City of Montgomery where there is loss of life, bodily injury, or significant property damage (in excess of \$100.00). The testing will follow the Drug and Alcohol Testing Procedure to include verification by an MRO. The drug screen should be performed as soon as possible but no later than twelve (12) hours after the accident. *The employee shall submit to the breath alcohol test immediately absent an overriding cause for delay.* If the driver is seriously injured and cannot *therefore*, provide a specimen for the screen, the driver must authorize the release of any hospital reports that would indicate the presence of controlled substances in his/her system. Failure to adhere to the time constraints of the testing procedure *and to the release of records*, could subject the employee to termination of employment.

(C.) FOR PUBLIC SAFETY AND OTHER SAFETY SENSITIVE EMPLOYEES:

1. This policy does not supersede any drug or alcohol testing policies already in place in the public safety area. It is *merely designed to supplement and in no way intended to repeal any policies utilized by the Montgomery Police or Fire Departments with the exception of Section IV Drug and Alcohol Testing Procedure.*

2. All public safety *and safety sensitive* employees are subject to at random testing. *Public Safety employees include sworn Police and Fire Department employees. Employees who are considered to hold safety sensitive positions will be identified as such by their respective department heads and notified of this status. These positions will include, but not be limited to, positions requiring or having direct access to a controlled substance, having access to NCIC information, a position where the employee's action or inaction directly affects public safety, and/or supervisors of those safety sensitive functions.* Random testing shall be ensured through a computer-generated list *or other non-discriminatory method* using random names from the employment population of each public safety *and/or safety sensitive* employee sector.

3. Annually, the total number of random tests should be *at least* twenty five per cent (25%) of the number of the public safety *and/or safety sensitive* employees in each department.

IV. DRUG AND ALCOHOL TESTING PROCEDURE

A. *New employees will be informed of this policy through receipt of an employee handbook, that will include a copy of this policy, and will sign a form as soon as possible, following their hire date, acknowledging receipt thereof.*

B. An employee who is requested to submit to a drug or alcohol screen pursuant to this policy must *submit to such testing and be tested* or be subject to termination. *The testing may include, but is not limited to, the collection of urine, hair, breath, and/or fingernails. If the testing involves the collection of hair and/or finger nails and the employee intentionally cuts or removes hair and/or finger nails thus making the testing reasonably impossible, without a valid medical or other excuse, the employee will be given a maximum of thirty (30) days from the date of notification to provide the required hair or finger nail sample. Failure to provide such a sample will be deemed a refusal to submit to testing and could subject the employee to punishment, up to and including, termination.*

C. An employee who is requested to submit to a drug or alcohol screen will report immediately to the City designated testing *or collection* facility.

D. All drug and alcohol testing procedures shall be in accord with rules and regulations of the testing *or collection* facility.

E. The drug or alcohol test results will be forwarded to the City Risk Manager by the testing facility. The reports will be sent to the employee's department head or his designee and are to be kept secure and confidential, in a separate file, for at least three years. Each department head will assign only *one other employee* access to these files. Also, these designated employees will sign a statement *acknowledging the need to maintain* the confidentiality and privacy of these files. No other employee shall have access to these files without the express authorization of the Mayor.

F. All positive urine, *hair, and/or finger nail* specimens of drug tests will, *to the maximum degree possible*, be retained at the testing facility for *at least thirty (30) days* following the written report to the City. Any employee whose test results are positive may secure the *split urine* specimen sample and have an independent test performed, *or in the case of hair or fingernail collections, may request a "safety net" comparison retest.* The employee should notify the Risk Manager *of such a request.* The second test will be performed at the expense of the employee and will conform to commercially acceptable practices.

G. If an employee tests positive for the use of illegal drugs *that were used, consumed or ingested outside of work hours*, or is under the influence of alcohol *consumed outside of work hours but impairing behavior* during work hours, that employee will be disciplined as follows:

1. The first violation shall result in, *at a minimum*, a suspension of forty five (45) calendar days. *The Mayor shall have the discretion, based upon the nature of the employee's work responsibilities, prior work history, circumstance of the positive finding, and/or other information to discipline the employee in any other manner deemed appropriate to include, but not be limited to immediate*

termination of employment. Prior to an employee's returning to work after a positive drug or alcohol screen, he must first take and pass a subsequent drug or alcohol test. Any number of follow-up tests can be administered to the employee without notification during the twelve (12) month period following the return to work.

2. The second violation shall *automatically* result in termination.
3. A VIOLATION by a commercial driver may also result in suspension of the driver's Commercial License based upon U.S. Department of Transportation rules and regulations.
4. An active employee who has his/her employment terminated due to a positive drug or alcohol test will be FOREVER barred from future re-employment with the City of Montgomery.
5. *If an employee is suspended under Section IV Paragraph G(1) of this policy, the employee shall, within the first five (5) days of the suspension, agree to and undergo an assessment by a medical professional, selected by the City of Montgomery, to determine whether the employee will benefit from substance abuse treatment. If such professional recommends treatment, the employee shall be given prompt written notice of such recommendation and shall be given up to 72 hours from receipt of notification to comply with such recommendation. A failure on the part of said employee to comply with such recommendation, in a timely fashion, as provided for in this subparagraph, may result in a forfeiture of rehabilitation benefits.*

V. DRUG AND ALCOHOL ABUSE TREATMENT

A. If an employee voluntarily admits to *abusing* alcohol, or *the use of* illegal drugs, or other mood or mind altering substances and desires treatment, that employee may request treatment from any supervisory personnel of his/her department or request help from *a medical provider* outside the department. This request shall be *kept* confidential. The City of Montgomery supports such requests for help and will accommodate the needs of such employees. There will be no *disciplinary* action taken against an employee *for requesting such* treatment; *so long as* such request is made prior to any of *the following having occurred: an alleged violation of this policy, any City mandated drug screen or breath alcohol test request, and/or the arrest of such employee for a drug or alcohol related offense or crime. An employee shall be permitted to take advantage of the provisions of this subparagraph on no more than two (2) occasions during employment with the City.* (Treatment is defined as the admission to a recognized inpatient or outpatient rehabilitation program and the subsequent follow-up care.)

B. Upon completion of treatment, the employee must adhere to all aftercare contracts and agreements *imposed by the healthcare provider and the*

City and may be subject to a random drug screening. If the employee does not adhere to *the terms and conditions of these agreements*, disciplinary action, up to and including termination, may be brought against the employee. Each employee *utilizing the provisions of this subparagraph shall be required to sign a form agreeing to be bound by* this requirement.

VI. MISCELLANEOUS

The City of Montgomery's *testing guidelines and procedures have been adopted primarily* for administrative purposes. The testing is not designed to enforce the criminal laws of the State of Alabama or to bring criminal charges against an employee suspected of using drugs. The program *seeks to provide the employee with a regimen of testing that is minimally intrusive while still providing accurate results. The goal is to balance the integrity and benefits of testing procedures with the employee's right to privacy.*

An individual's test results will not be released publicly *unless agreed to by the employee or ordered by a court or administrative body.* Information may be used for *internal* administrative purposes; however, the City will *strive not to breach the employee's expectation of privacy.*