



# CITY OF HOUSTON

## Executive Order

Subject: **Controlled Substance & Alcohol Abuse**

E.O. No:

**1-12**

Effective Date:

**Upon Approval**

### 1. PURPOSE

- 1.1 To provide to applicants and employees the policies and procedures applicable to controlled substance and alcohol use.

### 2. OBJECTIVES

- 2.1 To provide an understanding of and the consequences for abuse of controlled substance(s) and/or alcohol for applicants and employees.
- 2.2 To provide procedures for pre-employment, reasonable-suspicion, post-accident, random, pre-assignment, and follow-up controlled substance testing of employees.
- 2.3 To provide procedures for reasonable-suspicion, post-accident, and follow-up alcohol testing of employees.
- 2.4 To provide procedures for steroid testing of Houston Fire Department (HFD) and Houston Police Department (HPD) classified personnel, probationary personnel academy trainees, and applicants.
- 2.5 To comply with the requirements of the Drug-Free Workplace Act of 1988.
- 2.6 To provide procedures for employees who self-identify for a substance abuse problem before it affects their on-the-job performance.

### 3. SCOPE

- 3.1 These policies and procedures apply to all City of Houston applicants and employees. Elected officials are excluded from this Executive Order.

### 4. DEFINITIONS:

*Accident/Injury* – An event resulting in any lost time, personal injury or property damage.

*Adulteration* – The addition of any substance to a sample that may mask or falsify test results. This includes, but is not limited to, substitution or dilution of urine with water or additives.

*Alcohol* – The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl alcohol but excluding isopropyl rubbing alcohol.

Approved:

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Date Approved:

*9/26/14*

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**Alcohol Possession** – Having on the employee’s body or clothing, in City-provided vehicles, in workplace locations, desks, files, or other workplace locations, a previously-opened, unsealed container or a container with a broken seal containing any amount of alcohol.

**Alcohol Screening/Testing** – A procedure to indicate and/or confirm the presence of alcohol in the body.

**Alcohol Use** – Ingestion of any beverage, mixture, or preparation containing alcohol, including medication or mouthwash.

**Applicant for Employment (Applicant)** – A person seeking employment or reemployment for any position with the City. A person shall be considered an applicant until a negative controlled substance test result has been received, processed, and verified.

**Breath Alcohol Technician (BAT)** – An individual meeting U.S. Department of Transportation (DOT) training requirements, who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing (EBT) device according to DOT-approved methodology.

**CDL** – Commercial Driver’s License.

**Certified Peace Officer** – Person(s) who have met the requirements and are certified under state law as peace officers, including classified personnel assigned to HPD, in any capacity, or to HFD, in the capacity of Arson Investigators.

**City Workplace** – All City facilities and buildings whether owned, leased or otherwise controlled by the City, including buildings, portions of buildings, parking lots, parking garages reserved in whole or in part for City employee use, their associated surroundings whether or not adjacent or attached, passageways or walkways for ingress and egress to City buildings, designated work sites such as construction or repair sites whether permanent or temporary, program venues, and City-provided motor driven equipment or vehicles, wherever situated.

**Collection Site** – A designated facility that meets (1) the federal Department of Health and Human Services (DHHS) guidelines for collection of urine and/or hair samples for controlled substance testing; and/or (2) the federal DOT guidelines for collection of a breath sample by a Breath Alcohol Technician for alcohol testing.

**Controlled Substance** – An illegal drug and/or drug listed in the Controlled Substances Act. For HPD and HFD classified personnel, probationary employees, trainees at the academies and academy applicants, controlled substances include exogenous steroids in accordance with HFD Guidelines and HPD General Orders. (See Prescription Use for additional information, below).

**Controlled Substance Screening/Testing** – A procedure to identify the presence of the metabolites of controlled substances or steroids in an employee’s system.

**Departmental Testing Coordinator (DTC)** – The individual designated in writing by each Department Head to coordinate and facilitate the department’s implementation of these procedures.

**Department Head** – Person appointed by the mayor and confirmed by City Council to manage a department of the City or his/her designee(s) with a minimum classification of Deputy Director or the equivalent. For purposes of this policy, the term extends to the Mayor’s Chief of Staff, other Division Heads in the Mayor’s office, and the City Controller. For the purpose of this policy, the Mayor, or in his/her absence, the Chief of Staff, shall be deemed the Department Head for the Mayor’s office and Council staff; the City Controller shall be deemed the Department Head for the Controller’s office and staff.

*Dilute Sample* – A urine specimen where the concentration has been reduced by the drinking of excess fluids or by other means.

*Drug-Free Workplace Act of 1988* – The statute passed by Congress on November 18, 1988 and all amendments thereto, requiring grantees of federal agencies to certify they will provide a drug-free workplace.

*Employee Assistance Program (EAP)* – A City-sponsored program designed to assist both management and employees in resolving personal and/or work related problems.

*Evidential Breath Testing Device (EBT)* – A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA Conforming Products List of Evidential Breath Measurement Devices.

*EMIT* – An initial urinalysis screening by enzyme immunoassay technique for the detection of the presence of controlled substances or their metabolite residues.

*Employee* – Individuals engaged in the performance of duties for the City, whether hired, appointed, separately funded, full time or part time. The term “employee” in this policy is not limited to municipal or classified personnel and extends to staff members of the Mayor, City Controller, and City Council, and full or part time Municipal Court Judges.

*GC/MS* – A gas chromatography/mass spectrometry test that confirms an initial controlled substance screen.

*Hair Test* – A screening/testing procedure used to identify the presence of metabolite(s) that may be present after use of a controlled substance.

*Human Resources Physical Exam/Drug Testing Facility (HRPEDT)* – A Human Resources facility which provides examinations and testing to implement the drug/alcohol policies.

*Informed Consent* – An authorization form completed by an applicant or an employee consenting to an alcohol and/or controlled substance test and permitting the release of test results to designated individuals to implement the drug/alcohol policies.

*Laboratory* – A testing facility certified by the U.S. Department of Health and Human Services and authorized by the City to perform controlled substance screening/testing.

*Lost Time* – Any time absent from the work site due to an accident or injury.

*Medical Review Officer (MRO)* – A licensed physician knowledgeable about substance abuse disorders, who is responsible for reviewing an employee’s laboratory results generated through the City’s controlled substance testing program. The MRO determines, based on the employee’s medical history, other relevant biomedical information, the standards in the industry/profession, and this policy, that the employee has a confirmed positive or negative test result for controlled substance(s)/alcohol.

*On Duty* – The time period while the employee is at work, whether or not in the employee’s normal work day or location.

*Open Container* – A bottle, can, or other receptacle that contains any amount of alcoholic beverage and that is open, has been opened, has a broken seal or the contents of which are partially removed.

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**Over-the-Counter (OTC) Drug Use** – Medications and preparations which can be purchased without a prescription but which contain alcohol (such as cough syrup) or have properties (like causing sleepiness) which make them unsuitable for employees performing safety-sensitive duties.

**Prescription Drug Use** – Use of controlled substances by prescription specifically written for that employee.

**Reasonable Suspicion** – An articulable belief based on specific facts, reasonable inferences, or observations regarding the physical, behavioral or performance indicators of alcohol or drug use, including the employee's speech, appearance, odors, actions or performance.

**Referee Test** – A split sample test conducted to confirm the presence of a controlled substance in a sample that has been determined positive by the City's MRO. The test is conducted on a portion of the employee's or applicant's original sample by a certified federal DHHS laboratory different from the laboratory conducting the original controlled substance test. The referee test shall be performed at the expense of the applicant or employee.

**Safety Impact Position** – Employment positions involving safety-sensitive job duties which if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure, may result in mistakes that could present a threat to the personal health and safety of the employee, co-workers, and/or the public. This generally includes, but is not limited to, positions held by employees who drive City vehicles or other motor-driven equipment, and may also include the positions of employees who drive their personal vehicles on City business. A safety impact position also includes those employment positions where associated job duties involve direct contact with or access to controlled substances, or those persons who carry or handle firearms.

**Safety Impact Committee** – Shall be composed of the City Medical Director, City Attorney or designee, Human Resources Director or designee, Drug Clinic Manager/Nurse, Safety Administrator and Departmental Testing Coordinator. Its responsibilities are set forth in Section 6.3, below.

**Special Event** – Events for the benefit of the City or from which, in the opinion of the Mayor, Mayor's designee, or a Department Head, the City may derive a benefit and at which alcohol is served.

**Steroids** - Any organic or synthetic derivative of the hormone testosterone having properties of promoting growth and repair of the body at the cellular level. The use of these substances by HFD and HPD classified personnel, probationary personnel, academy trainees, or applicants must be under the direct care and supervision of a state licensed physician. All use of over the counter exogenous (developed or originating outside the body) steroids, non-United States (US) market prescriptions for steroid preparations and/or any other exogenous steroid like substances are strictly prohibited. See HPD General Order and HFD Guidelines on this subject for specific details.

## SYMBOLS

mg	=	milligram	>	= greater than or equal to
ml	=	milliliter	<	= less than or equal to
ng	=	nanogram	>	= greater than
dl	=	deciliter	<	= less than
g	=	microgram		

## 5. POLICY

- 5.1 The City of Houston strictly prohibits employees' use or possession of controlled substances, including but not limited to amphetamines, cocaine, opiates, phencyclidines, and marijuana. Possession and use include having the metabolites of a controlled substance in the employee's system resulting in a positive test. Except as provided in this policy, the City prohibits the on-duty use of alcohol or possession of alcohol in an open container. The City also prohibits arriving at work or working still intoxicated from off-duty use of alcohol. The City encourages its employees to seek assistance for a substance abuse problem before it affects their job performance.

## 6. RESPONSIBILITIES

- 6.1 The Human Resources Director is responsible for:
- 6.1.1 Implementing this policy and associated procedural training for departments.
  - 6.1.2 Implementing a policy familiarization program as part of the procedures for processing all new employees.
  - 6.1.3 Implementing a policy familiarization program for existing employees.
  - 6.1.4 Administering and coordinating the use of Employee Assistance Programs.
  - 6.1.5 Developing a training program to assist supervisors in the recognition of the indicators of alcohol and/or controlled substance use.
  - 6.1.6 Certifying safety impact positions in consultation with the requesting department and the Safety Impact Committee.
  - 6.1.7 Distributing alcohol and controlled substance test results to the appropriate department head or designee.
  - 6.1.8 Maintaining statistical data on applicants and employees tested for alcohol and/or controlled substances.
  - 6.1.9 Maintaining appropriate alcohol and controlled substance testing records, and assuring that they are kept confidential.
  - 6.1.10 Distributing the required forms for alcohol and controlled substance testing.
  - 6.1.11 Calculating the monthly percentage level for random testing and providing departmental designees with listings of employees selected for random testing.
  - 6.1.12 Monitoring the summary monthly random reports submitted by each department.
  - 6.1.13 Coordinating applicant and assignment testing.
  - 6.1.14 Collecting data for the Request for Proposal and administering the contract to provide alcohol and controlled substance testing.
  - 6.1.15 Selecting the Medical Review Officer (MRO).
  - 6.1.16 Overseeing the administration of the Mayor's Revised Controlled Substance and Alcohol Abuse Policy.
  - 6.1.17 Updating job descriptions and job postings to identify safety impact positions that are subject to random controlled substance testing.

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6.2 The Medical Review Officer is responsible for:

- 6.2.1 Reviewing controlled substance test results from the laboratory and interpreting the results.
- 6.2.2 Informing employees and applicants of the positive test results.
- 6.2.3 Examining alternate acceptable medical explanations for any positive controlled substance test result, and determining the final test result.
- 6.2.4 Referring those with a confirmed positive controlled substance test to the HRPEDT for information or their option to obtain, at their own expense, a referee test to retest the original sample at a different certified laboratory.
- 6.2.5 Providing the Human Resources Director with controlled substance test results.
- 6.2.6 Referring to a physician those employees and applicants claiming they are medically unable to provide the required breath, urine or hair sample, so they may provide medical documentation in support.
- 6.2.7 Receiving the supporting medical documentation from the physician within 30 calendar days, unless the MRO obtains an extension on behalf of that physician from the Human Resources Director.
- 6.2.8 Assessing whether pharmacy-noted side effects (e.g. sleepiness, warnings regarding operation of vehicles or heavy equipment, etc.) of a controlled substance prescribed to an employee would impair the employee's performance of his/her job duties.
- 6.2.9 Providing testimony as needed in administrative, judicial or quasi-judicial proceedings involving controlled substance test results.

6.3 The Safety Impact Committee is responsible for:

- 6.3.1 Prescribing the guidelines for use in determining classifications designated as safety impact positions.
- 6.3.2 Establishing a schedule for Human Resources to periodically review all Safety Impact Position designations to determine if they should remain so classified.
- 6.3.3 Establishing the parameters for when a Department must advise the Human Resources Director of a new position or a material change in a current position which would affect the Safety Impact classification.
- 6.3.4 Meeting with each Departmental Testing Coordinator, following the adoption of this policy, to determine which positions within their respective departments are safety impact positions.

6.4 The Department Head or designee is responsible for:

- 6.4.1 Identifying, in writing, an individual to serve as the Departmental Testing Coordinator (DTC) and any additional departmental employees who are authorized to obtain the confidential random lists and test results.
- 6.4.2 Ensuring summaries of this policy (E.O. 1-12) are prominently displayed at all departmental facilities housing employees.
- 6.4.3 Identifying safety impact positions, after consultation with Human Resources and the Safety Impact Committee.

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- 6.4.4 Notifying department employees that they have been selected for testing and are to report immediately to the collection site.
- 6.4.5 Authorizing and scheduling controlled substance and/or alcohol testing of departmental employees.
- 6.4.6 Recommending and implementing disciplinary action up to and including indefinite suspension/termination when employees fail to comply with this policy.
- 6.4.7 Notifying the federal grantor agency and the Human Resources Director of a grant employee's conviction of a federal or state criminal controlled substance statute violation. See Section 16, Drug-Free Workplace Act Requirements for Employees of Grant Funded Programs.
- 6.4.8 Ensuring the appropriate implementation and administration of the Mayor's Revised Controlled Substance and Alcohol Abuse Policy.
  - 6.4.8.1 Ensuring that all employees with a confirmed positive alcohol and/or controlled substance test are processed in accordance with this policy.
  - 6.4.8.2 Initiating immediate action to process employees in keeping with those sanctions in Section 13, below.
  - 6.4.8.3 In consultation with the Legal Department, ensure due process and timely compliance with those sanctions in Section 13, below.
- 6.4.9 Ensuring that the alcohol/controlled substance test, notification forms, results and related records are properly maintained in the department and kept confidential.
- 6.5 Departmental Testing Coordinator (DTC) is responsible for:
  - 6.5.1 Obtaining the confidential random test list and maintaining its confidentiality.
  - 6.5.2 Notifying department employees of their selection for random testing without prior notice. The DTC may notify the employee directly or, as appropriate, through the employee's supervisor, reminding the supervisor not to notify the selected employee until the employee is able to leave immediately for the collection site.
  - 6.5.3 Providing the appropriate forms, instructions for all testing procedures and location of the collection sites.
  - 6.5.4 Obtaining the executed informed consent forms and ensuring all necessary forms for alcohol and/or controlled substance testing are correctly completed.
  - 6.5.5 Obtaining the negative test results for their own department by way of the computerized reporting system.
  - 6.5.6 Obtaining and signing for positive controlled substance test results in person, at the HRPEDT.
  - 6.5.7 Ensuring the confidentiality and security of all test results as well as all related test information contained in the computerized reporting system.
  - 6.5.8 Preparing and submitting to the HRPEDT by the end of the subsequent month, the report which documents the results of all the departmental random controlled substance tests or provides the reason any test was not completed.
  - 6.5.9 Serving as a member of the Safety Impact Committee.

6.6 Departmental supervisors and/or appropriate designated departmental officials are responsible for:

6.6.1 Assuring random testing notification to the employee does not allow time beyond the window needed for direct transit to the collection site.

6.6.2 Determining if reasonable suspicion exists to warrant alcohol and/or controlled substance testing and documenting the facts, symptoms, or observations which form the basis for the reasonable suspicion.

6.6.3 Obtaining the informed consent forms and other required forms for alcohol and/or controlled substance testing.

6.6.4 Submitting the appropriate alcohol and/or controlled substance testing related documentation to the Department Head or designee.

6.6.5 After obtaining proper authorization from the Department Head or designee, notifying the employee to leave immediately for the collection site for testing.

6.6.6 Monitoring and enforcing the appropriate provisions outlined in these procedures.

6.6.7 Notifying the Department Head that an employee has violated this policy if the supervisor has actual knowledge of the violation, and to the extent within his/her control, not permitting the employee to perform safety-sensitive functions pending disposition of such violation.

6.6.8 Insuring removal of an employee who violates this policy and placing such employee on "administrative relief of duty leave with pay" pending an administrative investigation and disposition of their employment status.

6.7 Employees are responsible for:

6.7.1 Complying with this policy.

6.7.2 Complying with the terms of Administrative Procedure 2-2 (Motor Vehicle Assignment and Use), including notification to supervisor of: (a) on-duty crash and need for post-accident controlled substance and/or alcohol test; (b) DWI/DUI conviction or deferred adjudication; (c) felony conviction involving the use of a motor vehicle; or (d) a suspended license.

6.7.3 Reporting violations of this policy immediately to management.

## 7. BASIS FOR TESTING

### 7.1 Pre-employment Testing

7.1.1 Before hiring, applicants for employment or reemployment who have been made a conditional offer of employment must successfully pass a controlled substance test.

7.1.2 Applicants for the HFD and HPD Academies are subject to reasonable suspicion testing during the recruitment phase.

7.1.3 Any applicant below the age of eighteen (18) years must have an Informed Consent for Minors form signed by a parent or legal guardian. If hired, the consent form signed by the parent or legal guardian of the minor employee will

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remain on file, with full effect, with the DTC, the Human Resources representative for the department or the department head or designee until the employee's eighteenth birthday. A minor employee may consent to having their parent or legal guardian involved in any communication with the MRO.

- 7.1.4 Upon notification for controlled substance testing, each applicant shall proceed to the HR-directed collection site at the designated time and date. Upon arrival at the collection site, the applicant completes the Applicant Controlled Substance Test Notification form and the Applicant Informed Consent form.
- 7.1.5 Applicants shall timely appear at the designated collection site and shall provide a urine sample, or if not immediately able to do so, provide one within three (3) hours after the first failed attempt.
- 7.1.6 If the test is ruled a "no test" (no result obtained) for any reason, the applicant must successfully complete an immediate next morning retest. Should the applicant be unavailable for such test or provides a dilute sample on the retest, the conditional offer of employment will be withdrawn; provided, however, upon retest and a second ruling of no test the applicant may, at applicant's expense, submit to hair sample testing upon a schedule established by the MRO.
- 7.1.7 Should the results of an EMIT screening be positive, the laboratory sends the sample for GC/MS confirmation. If after GC/MS confirmation, the test result remains positive, the laboratory sends the results to the MRO for review. The MRO then reviews the positive results with the applicant to assist in consideration of alternate medical explanations for the positive test result.
  - 7.1.7.1 If the MRO verifies the positive result, after review with the applicant, the MRO notifies the applicant that he/she has three (3) working days from such notification to request a referee test. The referee test is limited to confirming the presence of the positively identified controlled substance.
  - 7.1.7.2 The referee test occurs solely at the applicant's own expense. The MRO shall coordinate any requested referee testing.
- 7.1.8 Applicants cannot begin employment until a verified negative drug test has been received by the City.
- 7.1.9 If an applicant cannot begin work within 30 days of being tested the Department Head, at his or her discretion, may require that the applicant be retested with a verified negative test before actual start date.

## 7.2 Reasonable-Suspicion Testing

- 7.2.1 All employees are subject to reasonable-suspicion controlled substance and/or alcohol testing.
- 7.2.2 All HFD and HPD classified personnel, probationary personnel, academy trainees, and applicants are also subject to reasonable-suspicion steroid testing in accordance with HFD Guidelines and HPD General Orders.
- 7.2.3 Usually a supervisor determines initially if reasonable suspicion exists to warrant controlled substance and/or alcohol testing. The supervisor shall document the basis for the reasonable suspicion and forward the concerns to the Department Head or designee to authorize testing.

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7.2.4 The Department Head or designee shall require an employee to undergo controlled substance and/or alcohol testing if there is reasonable suspicion that the employee is in violation of this policy. Circumstances which constitute a basis for determining that reasonable suspicion exists include, but are not limited to:

7.2.4.1 Abnormal or erratic behavior – A single incident or a pattern of behavior noticeably different from the employee's normal behavior or acceptable workplace conduct.

7.2.4.2 Information provided by a reliable and credible source (Ex., Law Enforcement Officer) as determined by the Department Head.

7.2.4.3 Direct observation of alcohol or controlled substance use (mandatory testing).

7.2.4.4 Observing the physical symptoms of controlled substance and/or alcohol use, including but not limited to glassy or bloodshot eyes, slurred speech, odor emanating from the body characteristic of alcohol or marijuana, uncharacteristic hyper/hypoactivity or hypersensitivity, poor motor coordination and/or slow or poor reflex responses different from what is usually displayed by the employee.

7.2.5 The following will also be deemed reasonable suspicion and provide a sufficient basis for requiring an alcohol and/or controlled substance test at the discretion of the Department Head or designee:

7.2.5.1 Violent or threatening behavior;

7.2.5.2 Absenteeism and/or tardiness when an employee has previously received a disciplinary action for absenteeism and/or tardiness and has a continued poor record (within twelve months);

7.2.5.3 Documented, unexplained or unsatisfactorily explained loss of City property, equipment, money or other asset(s).

### 7.3 Post Accident Testing

7.3.1 All employees are subject to controlled substance and alcohol testing after any type of accident on the job. Accidents are not limited to vehicular accidents, but may include any occurrence that results in lost time, personal injury or property damage, even if allegedly caused by a co-worker.

### 7.4 Follow-Up Testing

7.4.1 An employee in a safety impact position must successfully pass a controlled substance test before returning to work after an absence of more than 30 consecutive calendar days.

7.4.2 In addition to all other testing requirements, an employee who voluntarily identifies him/herself to the City as having a drug or alcohol abuse problem, shall be subject to random follow-up alcohol and/or controlled substance testing for a minimum of 24 months and a maximum of 60 months from the date the employee is released by the health care provider or EAP professional overseeing his/her rehabilitation to return to work. The actual time period and frequency will be determined by an EAP professional and monitored by the DTC.

- 7.4.3 Should the City obtain information through a credible and reliable source (as determined by the Department Head) that an employee may be violating this policy, that employee is subject to follow-up alcohol and controlled substance testing for a period of up to 24 months from the date of such determination. The actual monitoring period and frequency will be determined by the Department Head and monitored by the DTC.
- 7.4.4 Should the MRO find an employee's sample not to the standards for normal human urine but not specifically described in this policy, the MRO shall determine whether it is caused by a verifiable medical condition.
  - 7.4.4.1 If the non-standard test is caused by a verifiable medical condition as documented by the employee's physician, the employee is subject to either: (a) monthly random controlled substance testing at a minimum of one test per month for a period of at least three consecutive months; or (b) alternate hair testing at the discretion of the MRO.
  - 7.4.4.2 If the non-standard sample is not caused by a verified medical condition, the provision of the sample shall be deemed a refusal to submit to testing by the MRO.
- 7.4.5 Any employee, including non-DOT drivers, who has an off-duty DWI/DUI and obtains an exemption from the department head to allow driving shall be subject to follow-up controlled substance and alcohol testing according to these procedures for the duration required in Administrative Procedure 2-2. The DTC will notify the employee of scheduled testing in such a manner as to ensure the random nature of all testing.
- 7.4.6 Follow-up testing shall be in addition to any other testing requirement under this policy as a whole.

**7.5 Random Testing**

- 7.5.1 Municipal employees in safety impact positions and all classified personnel under Chapter 143 of the Texas Local Government Code are subject to random testing. Employees in safety impact positions shall be informed that they are in such a position and are subject to random controlled substance testing.
- 7.5.2 The selection of employees for controlled substance testing shall be made by a random computer selection process performed by an outside contractor. Each month the pool consists of 100% of all employees eligible for random testing; consequently, an employee may be randomly selected multiple times during any given period of time.
- 7.5.3 Employees selected for random testing are notified by the Department Head or designee to submit to a controlled substance test. Employees selected for random tests but who are absent due to vacation, sick leave, other leave, or urgent City-business approved by their Department Head, shall not be notified to test until the first day they return to work after random selection, even if the first day back occurs in the subsequent month.

## 7.6 Pre-Assignment Testing

- 7.6.1 Employees must pass a controlled substance test before being placed into a safety impact position for any reason (e.g., promotion, voluntary or involuntary demotion, appointment, lateral transfer, etc.). Pre-assignment testing occurs before any such appointment becomes permanent. This requirement shall not apply to the lateral transfer of HFD and HPD classified and probationary personnel unless specifically required by the Department Head.
- 7.6.2 In the event the pre-assignment test is ruled a "no test" (no result obtained) for any reason, including, but not limited to the collection of a second dilute sample, the employee may, at his/her option, be immediately rescheduled for hair testing. This test shall be at the employee's expense.
- 7.6.3 The department making the appointment to the safety impact position will pay the cost of the controlled substance test except in cases of referee or hair testing requested by the employee, in which case the employee shall pay the cost of such test.
- 7.6.4 An employee being assigned to a safety impact position who refuses to consent to a pre-assignment controlled substance test or who fails to cooperate in the testing, shall have the transfer, promotion or voluntary demotion process terminated, and the conditional offer of transfer, promotion or voluntary demotion withdrawn. A refusal to consent to a controlled substance test following an involuntary demotion to a safety impact position shall be considered a refusal to test.

## 8. SCREENING/TESTING PROCEDURES

- 8.1 When reasonable suspicion or post-accident testing is required, the employee shall not drive and at least one supervisor shall accompany the employee to the collection site.
- 8.2 When random, pre-assignment or follow-up testing is required a supervisor shall not be required, but may accompany an employee to the collection site.
- 8.3 An alcohol test shall be administered first when both alcohol and controlled substance tests are required or authorized by these procedures.
- 8.4 Employees are notified of their selection for testing in person by the Department Head, or designee, or the DTC, and not by voice mail, e-mail, telephone answering machine, pager, a written message, a message with their co-worker or administrative assistant or any other indirect method.
- 8.5 The appropriate City official provides the employee with the completed Employee Alcohol/Controlled Substance Test Notification, and/or Employee Informed Consent forms.
- 8.6 All actions an employee takes once he/she has been notified to test must be toward completion of the collection and testing process. When testing is to be accomplished by means other than hair sample the employee shall proceed immediately and directly to the designated collection site. The time period the employee has to get to the collection site is only that time necessary from notification to get to the collection site by the most direct route. In no instance shall the period of time from notification to signing in at the

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collection site extend beyond two (2) hours, unless the site to which the employee is initially sent does not have the capacity to handle the testing upon the employee's arrival, in such case, the employee shall have an additional two (2) hours to be tested at a secondary site to which the employee is instructed to utilize. No employee has the authority to expand the time limits required herein under any circumstances.

- 8.7 Once an employee has been notified to take a test, unless hospitalized, no sick leave, vacation, emergency vacation or other leave may be authorized until the collection process is completed.
- 8.8 HFD and HPD classified personnel, probationary personnel, Academy trainees, and applicants may be required to sign a consent/order form specific to the particular type of test being conducted.
- 8.9 The procedures for collection of breath samples at a minimum must meet federal DOT requirements. The procedures for collection of urine samples must meet the minimum requirements of the federal DHHS.
- 8.10 At the collection site, employees will be required to present their forms, including the Employee Alcohol/Controlled Substance Test Notification, Employee Informed Consent, and photo identification.
  - 8.10.1 Street clothes, bags, briefcases, purses, or any other containers shall not be carried into the collection area.
  - 8.10.2 Employees shall provide their own hair and/or urine sample for testing purposes and shall not substitute anyone else's urine or hair for testing.
  - 8.10.3 Employees shall follow instructions given by and cooperate with collection site personnel.
  - 8.10.4 Employees shall not tamper with their samples, or hinder, delay, impede or thwart the collection process.
  - 8.10.5 If the employee submits a urine sample which fails to have a temperature of between 90 and 100 degrees Fahrenheit or is blue in color or has an odor of a substance other than urine, or for any specific reason appears to be, in the judgment of the collector, an adulterated sample, that sample will be retained, properly sealed with a barcode label and sent for laboratory testing. The employee will be notified of the reason for the sample failure and required to submit another sample at that time. The collector will use a new chain of custody form for this second sample. A second sample which again fails to be acceptable or suspicious in any way will also be properly sealed and submitted for laboratory testing. At that point, no further testing will be conducted pending the results of the tests.
  - 8.10.6 If the employee is unable to provide a sufficient amount of urine, the initial insufficient sample shall be discarded. The employee shall drink up to, but no more than, 40 ounces of fluids within 3 hours of the first failed attempt to provide a urine sample. At any time during the 3 hours, the employee may again attempt to provide a sufficient sample. If the employee is still unable to provide a sufficient sample in the three-hour interval, testing shall be discontinued and the HRPEDT notified.

- 8.10.6.1 As soon as practicable after the failed attempt to provide a urine sample, the employee shall be directed by the MRO to obtain an evaluation from a licensed physician who shall determine whether the employee's inability to provide a urine sample is due to an identifiable medical condition.
  - 8.10.6.2 If the physician determines that a medical condition has, or with a high degree of reasonable medical probability precluded the employee from providing an adequate urine sample, the employee's failure to provide an adequate sample shall not be deemed a refusal to take a test. The physician shall provide a written notification to the department of the medical finding for his/her conclusion and the employee will be required to comply with alternate hair testing.
  - 8.10.6.3 If the employee fails to provide a sufficient amount of hair, absent a verifiable medical reason as defined by the MRO, the test result shall be classified "no test" (no result obtained).
- 8.10.7 The collector shall (1) confirm whether or not the employee reported for the testing and supplied an adequate breath, hair and/or urine sample by completion of the Employee Alcohol/Controlled Substance Test Notification form; (2) collect and process the breath, hair and/or urine sample received from the employee; (3) forward the completed copy of the Employee Alcohol/Controlled Substance Test Notification form to the laboratory along with the hair or urine sample; and (4) forward breath test results to the HRPEDT.
- 8.11 If the MRO verifies the positive result after review with the employee, the MRO shall notify the employee, specify the controlled substance(s), and explain that the employee has three working days (M-F) from such notification to request a referee test (split sample retest) from a portion of the original sample at another laboratory certified by the federal DHHS.
  - 8.12 The referee test shall be limited to detecting the presence of the positively identified controlled substance. The referee test shall be at the employee's or applicant's own expense. The MRO shall coordinate the referee testing of employees and applicants.
  - 8.13 When the MRO, despite reasonable efforts, is unable to contact the individual concerning a potentially positive finding on the test results for a period of five (5) working days, the MRO will rule the test a presumed positive.
  - 8.14 When alcohol testing is required, a breath test shall be administered by a BAT utilizing DOT collection procedures to detect the presence of alcohol.
  - 8.15 Initial and confirmatory alcohol tests are administered with devices meeting the requirements of the National Highway Traffic Safety Administration's (NHTSA) model specifications for alcohol screening devices.
  - 8.16 An alcohol screen with a result of 0.04 grams/210 liters alcohol concentration of breath or greater shall be followed by a confirmatory test that provides quantitative alcohol concentration data. A result less than 0.04 grams/210 liters of alcohol concentration is considered a negative test.
  - 8.17 Employees shall follow the instructions of the BAT and shall not eat, drink, or put any object or substance into their mouths during the waiting period before the confirmatory test.

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- 8.18 A confirmatory alcohol test must be conducted after the initial positive alcohol screen.
- 8.19 The HRPEDT shall notify the employee's Department Head or designee or DTC of a positive alcohol test result.
- 8.20 Upon notification of any positive test for controlled substances or alcohol, the department shall immediately relieve the employee from duty. If under the influence of a controlled substance or alcohol, an employee may then be prohibited from driving and alternative arrangements should be made for the employee's transportation.
- 8.21 Use of controlled substances by prescription specifically written for the employee is permitted. However, an employee may not perform safety-sensitive duties while using prescribed controlled substances if the MRO determines that the side effects attendant with the use of such controlled substance would interfere with the employee's ability to perform their job duties. The Department head or his/her designee may refer the employee to the MRO for assessment.
- 8.22 A routine controlled substance test detects the presence of amphetamines, cocaine metabolites, opiate metabolites, phencyclidine, and marijuana metabolites.
- 8.23 In addition, HFD and HPD classified personnel, probationary personnel, Academy trainees, and applicants are subject to reasonable-suspicion testing for steroids/steroid-like substances and controlled substances.
- 8.24 Steroids and steroid-like substances require a prescription and must be used under the direct care and supervision of a U.S.-licensed physician. Prescriptions for steroid/steroid-like substances by physicians not licensed in the U.S. (such as internet prescriptions) and over-the-counter steroid/steroid-like substances are strictly prohibited.
- 8.25 Any attempt to alter the outcome of an alcohol and/or controlled substance test process or inhibit the testing process shall be viewed as an adulteration of the test process or a refusal to test. The MRO is responsible for reviewing each controlled substance test in which laboratory findings indicate the presence of abnormal test results. Abnormal test results indicating alteration or dilution will result in an immediate, next morning, controlled substance retest and/or an alternate hair test to occur 10 days from the initial test. The guidelines for addressing dilute, non-DOT urine specimens are as follows:
- 8.25.1 If a drug screening is reported as both negative and diluted, the employee will be contacted and requested to provide an immediate re-collection. The result of the second test becomes the test of record; or if the employee elects yet another test by use of hair, at his expense, the hair test results becomes the test of record.
- 8.25.2 Hair sample analysis drug screens are tested twice, for both the hair sample and the wash done on the hair sample, before a confirmed positive is reported to the City. Therefore, any hair analysis drug screen reported to the city as a positive for prohibited drugs shall be considered a confirmed positive. All positive hair tests will be verified by the MRO.
- 8.25.3 In the case of HFD and HPD classified personnel, probationary personnel, Academy trainees, and applicants, where a drug screen is reported as both negative and diluted, the employee may be re-tested by use of hair at the department's expense.

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8.26 The minimum cut off levels for positive controlled substance test results are as follows:

<b>CONTROLLED SUBSTANCE GROUP</b>	<b>Initial EMIT Screen Level (ng/ml)</b>	<b>Confirmatory GC/MS TEST Level (ng/ml)</b>
Amphetamines Amphetamine Methamphetamine	1000 500	500
Cocaine Metabolites	300	150*
Opiate Metabolites Morphine Codeine Hydrocodone (HFD & HPD only) Hydromorphone (HFD & HPD only) Oxycodone (HFD & HPD only)	2000	2000** 2000 300 300 300
Phencyclidine	25	25
Marijuana Metabolites	50	15***
Steroids (HFD and HPD only)	The level for a positive test in the testosterone procedure will be a 6 to 1 ratio of testosterone to epitestosterone. For all other exogenous steroids and their synthetic derivatives, the cut off levels will be in accordance with the established industry standards as defined by the testing laboratory.	

- \* Benzoyllecgonine
- \*\* 6 acetylmorphine (6-AM) at a cut-off of 10 ng/ml
- \*\*\* Delta 9 tetrahydrocannabinol – 9 – carboxylic acid

8.27 The following matrix identifies appropriate authorization and notification levels.

**AUTHORITY TO AUTHORIZE TESTING AND/OR  
NOTIFY EMPLOYEE OF TESTING REQUIREMENT**

	<b>Applicant</b>	<b>Assignment</b>	<b>Random</b>	<b>Post-Accident</b>	<b>Reasonable Suspicion</b>	<b>Follow Up</b>
<b>Department Head/ designee</b>						
Authorize/Notify	NO/NO	NO/NO	NO/YES	YES/YES	YES/YES	YES/YES
<b>DTC</b>						
Authorize/Notify	NO/NO	NO/(1)	(2)/YES	NO/YES	NO/YES	NO/YES
<b>Supervisor</b>						
Authorize/Notify	NO/NO	NO/NO	(3)/YES	NO/YES	NO/YES	NO/YES
<b>HR Official</b>						
Authorize/Notify	YES/YES	YES/YES				

- (1) In accordance with HPD General Orders, HPD classified personnel assigned to the HPD Personnel Division Drug Testing Unit may sign as the notifying official on all assignment testing.
- (2) In accordance with HPD General Orders, HPD classified personnel assigned to the HPD Personnel Division Drug Testing Unit may sign as the notifying official for those individuals selected for random testing.
- (3) In accordance with HPD General Orders, HPD classified personnel assigned to the HPD Personnel Division Drug Testing Unit may authorize classified supervisors to sign as both the authorizing and notifying official for those individuals selected for random testing.

## 9. EMPLOYEE ASSISTANCE PROGRAM

- 9.1 An employee may request a referral to the Employee Assistance Program (EAP) for assessment, counseling and rehabilitation at any time prior to the notification of testing. Participation in the EAP is voluntary, encouraged, and confidential.
- 9.2 Employees shall remain free of alcohol and controlled substances while seeking and/or undergoing alcohol and/or controlled substance rehabilitation or employee assistance counseling. EAP participation does not exempt any employee from testing required by these procedures.
- 9.3 Disciplinary action based on a violation of this policy is not suspended by an employee's request for or participation in the Employee Assistance Program.

## 10. SELF-IDENTIFICATION ASSISTANCE AND EAP REFERRALS

- 10.1 The City of Houston offers the services of the EAP as a part of its commitment to provide a drug-free workplace. The EAP can provide access to professional services in an effort to aid the employee who has an alcohol or drug problem.
- 10.2 Self Identification: Employees are encouraged to self-identify to management for a substance abuse problem before it affects their on-the-job performance. Discipline will not be initiated because an employee self-identifies prior to receiving notification of the requirement for a random test. This shall not apply to personnel in HPD, except as to those who self-identify as to alcohol. Employees who self-identify will:
  - 10.2.1 Receive a Substance Abuse Referral Form completed by their supervisor.
  - 10.2.2 Be removed from any safety-sensitive positions until released by EAP.
  - 10.2.3 Be subject to a Last Chance Agreement.
  - 10.2.4 Agree to successfully participate in and complete a treatment/rehabilitation program and comply with the program conditions.
  - 10.2.5 Sign an "Authorization to Release Client Drug and Alcohol Information" form allowing the EAP to communicate the employee's progress to the DTC.
  - 10.2.6 Agree to unscheduled alcohol and/or drug tests, as directed by the EAP, for a minimum of 2 years, and not to exceed sixty (60) months from the date the employee returns to work. The employee shall also undergo a minimum of six (6) tests in the first twelve (12) months.

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- 10.2.7 Eligible employees who self-identify may use any available leave, except donated and wellness leave, and/or be accommodated by their department by being placed in a non-driving/safety -sensitive position, if appropriate and available.
- 10.2.8 Voluntary self-identification shall not relieve the employee from the responsibility of adequate job performance, nor prevent disciplinary action (up to and including indefinite suspension/termination) in the event that the employee tests positive for any illegal controlled substance, a drug they do not have a prescription for or alcohol while on duty or after follow-up testing has begun.
- 10.3 Management Referral: It is the policy of the City of Houston to consider offering treatment/rehabilitation in compelling circumstances to a regular full-time employee for a first-time offense. Employees on original probation, temporary, or part-time status, however, will be dismissed on a positive alcohol and/or drug test. An eligible employee enrolled in a treatment/rehabilitation program may use all available leave, except donated and wellness leave.
- 10.4 Refusal to participate or failure to successfully comply with a counseling program or treatment program to which an employee is referred will result in the employee being terminated/indefinitely suspended.
- 10.5 Failure to successfully comply with a counseling program and/or treatment/rehabilitation program may include, but not be limited to: (a) checking one's self out of the program; (b) being dismissed from the program for non-participation; (c) non-compliance in fulfilling the program/plan as designed by the program staff/counselors; (d) non-compliance in attending the required aftercare meetings; and (e) a positive, adulterated, or substituted drug and/or alcohol test.
- 10.6 An employee who enters a treatment/rehabilitation program may return to duty upon successful completion of the program, and a negative return-to-duty test. Upon release by the EAP and a negative return-to-duty alcohol/drug test, any subsequent positive alcohol or drug test (whether administered by the counseling/treatment program or a follow-up test scheduled in accordance with the EAP Professional evaluation) will result in the employee being terminated/indefinitely suspended.

**11. EXEMPTIONS**

- 11.1 The Chief of Police has the authority to approve an exemption from this policy for HPD personnel as necessary in the performance of undercover law enforcement duties where consumption of alcohol may be necessary.
- 11.2 Subject to the prohibition in Section 12.1.3, below, an employee may consume alcohol at an official special event, if attendance at the event is pre-approved by the Department Head.
  - 11.2.1 An employee who has consumed alcohol at an official Special Event shall not drive a vehicle (a City vehicle, a vehicle rented or leased by the City or a personal vehicle on City business) with a detectable concentration of alcohol of 0.04 grams/210 liters or greater concentration in his/her body.

## 12. PROHIBITED CONDUCT

### 12.1 Employees shall not:

- 12.1.1 Consume alcohol or possess alcohol in an open container on city premises or while on duty, during breaks and/or lunch breaks, while on call or stand-by, except as provided in Section 11.0, above.
- 12.1.2 Consume alcohol prior to performing a safety-sensitive function.
- 12.1.3 Report for duty, or report for duty after being called back to work, or remain on duty while having an alcohol concentration of 0.04 grams/210 liters or greater.
- 12.1.4 Consume alcohol while on-call and fail to notify management of alcohol consumption when contacted by management for call back.
- 12.1.5 Consume alcohol off duty and fail to immediately notify management of the alcohol consumption when contacted by management for call-out.
- 12.1.6 Use, possess or have within their control a controlled substance, absent a valid, personal prescription.
- 12.1.7 Test positive for a controlled substance, absent a valid, personal prescription; or test positive for alcohol.
- 12.1.8 Knowingly or intentionally use or possess any substance or device designed to mask or falsify a controlled substance test or cut or remove hair after being scheduled to provide a hair sample.
- 12.1.9 Report for duty or remain on duty when the employee uses any controlled substance, except when the substance is obtained legally under the instructions of a licensed medical practitioner.
- 12.1.10 Fail to report to supervision the use of prescribed medication that may adversely affect his or her ability to perform safety-sensitive functions.
- 12.1.11 Fail to report to the designated testing facility immediately upon notification to submit to a post-accident, random, reasonable suspicion, return-to-duty, or follow-up alcohol and/or drug test.
- 12.1.12 Fail to remain readily available for testing after an accident.
- 12.1.13 Refuse to submit to a post-accident, random, reasonable suspicion, return-to-duty, or follow up alcohol and/or drug test.
- 12.1.14 Attempt to interfere, alter, substitute, adulterate, contaminate, or in any way affect the outcome of the alcohol and/or drug test procedure.
- 12.1.15 Test positive for any of the drugs in the drug panel: Marijuana, Cocaine, Amphetamines (including MDMA), Opiates (including Heroin) and Phencyclidine (PCP).
- 12.1.16 Test positive for any other drugs tested for in cases where a use of a specific drug or drugs is suspected.
- 12.1.17 Violate the requirements of an EAP/rehabilitation program or the Last Chance Agreement

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- 12.1.18 Test positive for alcohol and/or drugs after being released by the EAP and returned to duty; either during the rehabilitation program, tests administered by the rehabilitation facility or follow-up tests scheduled in accordance with the EAP evaluation.
- 12.1.19 Consume alcohol for eight hours following an accident or injury or until they undergo a post-accident alcohol test, whichever occurs first.
- 12.1.20 Delay, hinder, or thwart or otherwise attempt to avoid controlled substance or alcohol testing.
- 12.1.21 Perform safety-sensitive duties while using prescribed controlled substances with pharmacy-noted side effects (such as sleepiness, warnings regarding operation of vehicles or heavy equipment, etc.) that would interfere with those duties, unless the employee's doctor certifies that the prescription use will not interfere with safety-sensitive duties in the employee's specific situation.

12.2 Supervisors/Managers shall not:

- 12.2.1 Permit an employee to perform or continue to perform safety-sensitive functions if the supervisor has actual knowledge or reasonable suspicion that an employee is or has used alcohol or an illegal controlled substance, or over the counter/prescription medications, or has observed impairment while on duty.
- 12.2.2 Permit an employee who refuses to submit to post-accident, random, reasonable suspicion, return to duty, or follow-up alcohol and/or drug testing, to perform or continue to perform safety-sensitive functions.
- 12.2.3 Permit an employee to perform or continue to perform safety-sensitive functions if the supervisor is aware that the employee has tested positive for controlled substances or alcohol.

13. CONSEQUENCES OF PROHIBITED CONDUCT AND MINIMUM DISCIPLINE GUIDELINES

- 13.1 An employee who violates this policy shall be immediately removed from their position and placed on "administrative relief of duty leave with pay" pending an administrative investigation and disposition of their employment status. Employees who violate this policy are subject to termination/indefinite suspension; provided, however, that a Department Head may, in his/her discretion, impose a lesser discipline in accordance with the "Minimum Discipline Guidelines" below, based on compelling circumstances, in certain specific cases, as shown. As to HPD personnel, any positive on-duty test or on-duty refusal to test shall result in termination/indefinite suspension.
- 13.2 A supervisor who violates this policy as it relates to the supervision of employees subject to this policy and the implementation of this policy may be subject to discipline up to and including indefinite suspension/termination.

### MINIMUM DISCIPLINE GUIDELINES

<u>Circumstance</u>	<u>Discipline</u>
1. When informed that his/her name has been selected for random testing, employee identifies himself/herself as a user, and has never before been found in violation of this policy or its predecessor.	Must take test. If test is positive, 40 hour suspension, along with Rehabilitation and Last Chance Agreement. If test is negative, Rehabilitation and Last Chance Agreement. No civil service review for municipal employees.
2. No self-identification. Employee tests positive on a random test, and has never before been found in violation of this policy or its predecessor.	Eighty-hour suspension along with Rehabilitation and Last Chance Agreement. No civil service review for municipal employees.
3. Employee refuses to take random test, and has never before been found in violation of this policy or its predecessor.	It is automatically presumed that the employee would have failed the test. 40 hour suspension for insubordination, plus 80 hour suspension for test failure. Rehabilitation and Last Chance Agreement. No civil service review for municipal employees.
4. Employee experiences two (2) verified negative dilutes, does not successfully complete a hair test, and has never before been found in violation of this policy or its predecessor.	Eighty (80) hours suspension and Last Chance Agreement. No civil service review for municipal employees.
5. Violation of Last Chance or Rehabilitation Agreement.	Indefinite suspension/termination. Civil service review, if applicable.
6. Positive Post Accident test (see A.P. 2-2, Section 7.10, "Disciplinary Action").	Indefinite suspension/termination could result, depending upon circumstances.

#### 14. CONFIDENTIALITY REQUIREMENTS AND CONSEQUENCES

14.1 Documents regarding alcohol and controlled substance tests and their results are confidential and access shall be on a need-to-know basis. Failure to maintain confidentiality may lead to disciplinary action up to and including indefinite suspension/termination.

#### 15. RECORDS RETENTION

15.1 The Human Resources Director or designee shall be responsible and serve as the repository for documents related to testing under these procedures.

15.2 Each department is responsible for the submission of monthly documentation of all the completed random controlled substance tests, and alcohol tests.

15.3 All alcohol and controlled substance testing files created by the department are to be retained in the department for a period of two years at which time those records are to be properly and totally destroyed in accordance with applicable City procedures.

#### 16. DRUG-FREE WORKPLACE ACT REQUIREMENTS FOR EMPLOYEES OF GRANT FUNDED PROGRAMS

16.1 All employees engaged in the performance of a federal grant or a federal contract valued at over \$25,000 shall be given a copy of this policy and informed that they must comply with the requirements as a condition of employment.

16.2 Grant or contract employees shall notify their department head of their criminal conviction for a controlled substance statute violation occurring in the workplace no later than five work days after the conviction. A controlled substance statute violation means a violation of a federal, state or local criminal law or regulation pertaining to the manufacture, distribution, dispensation, sale, use, or possession of any controlled substance. A conviction is the finding of guilt or imposition of a sentence, including deferred adjudication or probation.

16.3 The Department Head shall provide written notice to the grantor or contractor agency and the Human Resources Director of any criminal controlled substance statute conviction occurring in the workplace within ten calendar days after receiving notice from the employee, or receiving actual notice of the conviction. The notice must contain the employee's position, title, and the grant identification(s) for each grant on which the convicted employee was working.

#### 17. COMPLIANCE WITH LAWS

17.1 The City will comply with all federal, state and local laws or regulations regarding alcohol and/or controlled substance testing of employees. In the event of a conflict between these procedures and a law, the federal, state or local law shall control.

#### 18. CONFLICT AND REPEAL

18.1 This Order supersedes Executive Order 1-12 (Second Revision), Mayors' Amended Drug Detection and Deterrence Procedures, signed October 26, 1993, which shall be of no further force or effect.

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