

RESOLUTION 16-32

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, AMENDING THE CITY'S PERSONNEL POLICIES TO UPDATE DRUG AND ALCOHOL TESTING PROCEDURES; CONFIRMING THE CITY'S COMMITMENT TO PROMOTE A DRUG-FREE WORKPLACE; PROHIBITING THE CONSUMPTION OF ALCOHOL WHILE ON DUTY AND THE POSSESSION OF ALCOHOL ON CITY PREMISES AS MORE PARTICULARLY SET FORTH IN THE BODY OF THE POLICY; PROHIBITING THE USE, POSSESSION OR DISTRIBUTION OF ILLEGAL DRUGS AT ANY TIME AND ADDRESSING THE USE OF PRESCRIPTION DRUGS WHICH IMPACT SAFETY OR PERFORMANCE, AS MORE PARTICULARLY SET FORTH IN THE BODY OF THE POLICY; PROVIDING FOR TESTING UPON REASONABLE SUSPICION AND THE EMPLOYMENT OF SAFETY SENSITIVE POSITIONS; SETTING FORTH TESTING METHODS AND PROCEDURES; LISTING THOSE POSITIONS DETERMINED TO BE SAFETY SENSITIVE; REPEALING ALL POLICIES OR RESOLUTIONS IN CONFLICT HEREWITH, AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED by the City Council of the City of Panama City Beach, from and after the effective date of this Resolution, that the Drug and Alcohol Policy attached and incorporated herein as Exhibit A to this Resolution, is hereby adopted.

AND BE IT FURTHER RESOLVED that all policies or resolutions or parts of policies or resolutions in conflict herewith are repealed to the extent of such conflict.

THIS RESOLUTION shall take effect on 1-14-16.

PASSED, APPROVED, AND ADOPTED in regular session this 14th day of January, 2016.

CITY OF PANAMA CITY BEACH


GAYLE F. OBERST, MAYOR

ATTEST:


DIANE FOWLER, CITY CLERK

MEMORANDUM

TO: CITY COUNCIL
CC: MARIO GISBERT, CITY MANAGER
FROM: DIANE FOWLER
DATE: 01/07/2016
SUBJECT: DRUG AND ALCOHOL TESTING POLICY

The Drug and Alcohol Testing policy received many updates to define when and to whom the City is able to test both pre and existing employees based on safety sensitive positions. The policy spells out each circumstance requiring testing, defines the types of tests and procedures required, and provides an appeal process for a positive test result. The last few pages identify City safety sensitive positions and why the positions are defined as such.

Staff recommends approval of the updated policy as presented.

Panama City Beach Drug and Alcohol Policy

APPROVED BY THE PANAMA CITY BEACH CITY COUNCIL ON (DATE)

EFFECTIVE DATE:

LAST REVISION: 1/8/2016

PURPOSE

As a part of its commitment to safeguard the health of its employees, to provide a safe place for its employees to work, and to promote a drug-free community, the City of Panama City Beach has established this policy on the use of illegal drugs and the abuse of alcohol or prescription drugs. This policy is established pursuant to the drug-free workplace program under Florida Workers' compensation Law, Fla. Stat. 440.101-1.102, the Florida Administrative Code, Chapter 38F-9 (2009 update 69L-9.015); the Florida Uniform Traffic Control Law, Fla. Stat. 316.302, the U.S. Department of Transportation Administration Controlled Substance Testing, 49 CFR Part 382, U.S. Department of Transportation Drug Testing Procedures, 49 CFR Part 40, as they currently exist and are subsequently amended.

The use of illegal drugs and the abuse of alcohol or prescription drugs, while at work or otherwise, seriously endangers the safety of employees, as well as the general public, and creates a variety of workplace problems including increased injuries on the job, increased absenteeism, increased health care and benefit costs, increased theft, decreased morale, decreased productivity, and a decline in the quality of products and services provided. The City of Panama City Beach has established this policy to prevent the possession or use of illegal drugs and the abuse of alcohol and prescription drugs at any time and to further prohibit the possession or use of alcohol during working time, on City property and in City vehicles.

The Florida Workers' Compensation Act, Fla. Stat. 440.101-102 and Fla. Adm. Code 38F-9 provide that an employee who is injured in the course and scope of his employment and tests positive on a confirmed drug test, may forfeit his eligibility for medical and indemnity benefits under Florida's Workers' Compensation in addition to disciplinary action. Refusal to take a drug test will result in the employee forfeiting his eligibility for medical and indemnity benefits under Florida's Workers' Compensation and will be cause for termination of employment.

This policy as it relates to applicants or employees who are required to have a commercial drivers' license, is implemented pursuant to the U.S. Department of Transportation (D.O.T.) Regulations, 49 CFR Part 40 and 49 CFR Part 382, et seq. and the Florida Uniform Traffic Control Law, Fla. Stat. 316.302. Parts of this policy may only apply to employees covered by the D.O.T. regulations, or additional requirements may be applied in accordance with D.O.T. regulations.

The purpose of this policy is to communicate the City's position on the use or possession of illegal drugs and the misuse or abuse of alcohol and prescription drugs, both in the workplace and in the community, and provide guidance for the implementation of related programs.

This policy provides assistance toward outpatient rehabilitation for an employee who seeks the City of Panama City Beach's help in overcoming any addiction to, dependence upon, or problem with alcohol or drugs.

Exhibit A

SCOPE

All employees are covered by this policy and are required to abide by the terms of this policy as a condition of employment.

DRUG-FREE WORKPLACE POLICY DISSEMINATION

The City will give a general one-time notice to all employees during in-processing that it is a condition of employment to refrain from using, possessing or otherwise dealing in illegal drugs on or off the job and that a drug testing program is being implemented.

A notice of drug testing will be included with all vacancy announcements for those positions where drug testing is required as part of the employment process.

ALCOHOL USE PROHIBITIONS

The consumption of alcohol on City premises, in a City vehicle, or while on duty is prohibited and will result in disciplinary action, up to and including discharge. There may be occasions, removed from the usual work setting at which it is permissible to consume alcohol in moderation with City administration approval on City premises (i.e., City Picnic).

Off-duty abuse of alcohol which adversely affects an employee's job performance or adversely affects or threatens to adversely affect other interests of the City is prohibited and may result in disciplinary action up to and including discharge.

The personal possession (whether on the person, or in a desk, locker or City vehicle) of alcohol on City premises or on duty will result in disciplinary action up to and including discharge.

The possession of alcohol on City property in a personal vehicle in a closed container (i.e., the manufacturer's seal on the container has not been opened or broken) is not prohibited, provided such possession is in compliance with this policy as well as federal, state and local laws.

It is against City policy to report to work or to work under the influence of alcohol.

For the purpose of this policy, an employee is presumed to be under the influence of alcohol if a blood test (breath alcohol for D.O.T. random test purposes) or other scientifically acceptable testing procedure shows a forensically acceptable positive quantum of proof of alcohol usage.

Consistent with this policy, an employee who is perceived, based on reasonable suspicion, to be under the influence of alcohol will be removed immediately from the workplace; be subject to testing; and may be evaluated by medical personnel, if reasonably available. The City will take further action (i.e., removal from service, referral to counseling or disciplinary action) based on medical information, position held, work history, job conduct, and other relevant factors. The determination of what action is appropriate in each case rests solely with the City.

Refusal to submit to, efforts to tamper with, or the confirmed positive test results of an alcohol test will result in disciplinary action, up to and including discharge.

Employees arrested for an alcohol-related incident must immediately notify their division supervisor, the Human Resources Director or their department head of the arrest if the incident occurs:

During scheduled working hours.

While operating a City vehicle on City or personal business.

While operating a personal vehicle on City business.

Off the job for employees whose job:

Requires a commercial drivers' license, or whose job requires the employee to operate a City Vehicle

Failure to notify an appropriate City official may result in disciplinary action, up to and including discharge.

DRUG USE PROHIBITIONS

The use, sale, purchase, possession, manufacture, distribution or dispensation of illegal drugs at any time, whether on or off duty and whether on or off City property, is against City policy and is cause for immediate discharge.

It is against City policy to report to work or work under the influence of drugs. This includes prescription drugs which induce an unsafe mental or physical state. Employees who violate this policy are subject to disciplinary action up to and including discharge.

For the purpose of this policy, an employee is presumed to be under the influence of drugs if a urine test, hair test, or other accepted testing procedure shows a forensically acceptable confirmed positive quantum of proof of drug usage. Test results will be confirmed by a second test different in scientific principle from the initial test. A confirmed positive drug test will result in disciplinary action up to and including discharge.

Prescription drugs may also affect the safety of the employee or fellow employees or members of the public. Therefore, any employee who is taking any prescription drug which might impair safety, performance, or any motor functions must advise his supervisor before reporting to work under such medication. A failure to do so may result in disciplinary action. If the City determines that such use does not pose a safety risk, the employee will be permitted to work. The City reserves the right to require that the employee have his or her physician confirm that the substance does not adversely affect the employee's ability to perform his or her job in a safe manner. If such use impairs the employee's ability to safely and effectively perform his or her job, the City may temporarily reassign the employee or grant a leave of absence during the period of treatment. Improper use of "prescription drugs" or the sale or distribution of prescription drugs is prohibited and may result in disciplinary action. Prescription medication must be kept in its original container if such medication is taken during working hours or on City premises.

Refusal to submit to, or efforts to tamper with, a drug test will result in discharge.

TESTING

Testing of Applicants

Pursuant to Florida Statute 440.102 (o), "Safety-sensitive position" means, with respect to a public employer, a position in which a drug impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to carry a firearm, perform life-

threatening procedures, work with confidential information or documents pertaining to criminal investigations, or work with controlled substances; a position subject to s. 110.1127; or a position in which a momentary lapse in attention could result in injury or death to another person.

The City of Panama City Beach and the members of the Council have determined these positions to be safety related or because of the nature of the position in dealing with children, these positions are of such a sensitive nature that it requires pre-employment testing. (See Attachment 1 for specific list of positions)

Certain applicants who have been offered employment must successfully complete testing for controlled substances as a condition of employment. All applicants for positions requiring a commercial drivers' license will be tested for drugs pursuant to federal law.

Any job applicant who is required to and refuses to submit to drug testing, refuses to sign the consent form, fails to appear for testing, tampers with the test, or fails to pass the pre-employment drug test shall be ineligible for hire.

Reasonable Suspicion Testing (Alcohol and Drugs)

Employees must submit to a drug or alcohol test if reasonable suspicion exists to indicate that their ability to perform work safely or effectively may be impaired. "Reasonable suspicion testing" means drug or alcohol testing based on a belief that an employee is using or has used drugs or is under the influence of alcohol in violation of the City's policy, on the basis of specific, objective, articulable facts and reasonable inferences concerning the physical behavior or performance indicators of probable drug or alcohol use, drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon:

- Observable phenomena while at work, such as direct observation of drug use or of the physical symptoms or manifestations of being under the influence of a drug or alcohol.
- Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
- A report of drug use, provided by a reliable and credible source.
- Gross negligence or carelessness.
- Disregard for safety, life, or well-being of any City employee, customer or the general public.
- Reporting to or remaining at work in an apparently unfit condition.
- Excessive unexcused tardiness or absenteeism
- Evidence that an individual has tampered with a drug or alcohol test during his employment with the City.
- Information that an employee has caused, contributed to, or been involved in an accident at work.

The reasonable suspicion conduct should be witnessed by at least two (2) supervisors or City officials, if feasible. If not feasible, only one (1) supervisor or City official need witness the conduct. If a supervisor believes a reasonable suspicion exists, the supervisor should report his or her findings and observations to the Human Resources Director, his or her department head or the City Manager. Upon approval by the City Manager, the employee will be asked to submit to a drug test and sign a form acknowledging his or her consent. Factors which substantiate cause to test should be documented by the supervisor on the Substance Abuse Investigation Report Form which must be done as soon as possible, but no later

than twenty-four (24) hours after the employee has been drug tested or a longer period if permitted by law. A copy of this report shall be given to the employee upon request and the original documentation shall be kept confidential by the City and retained for at least one (1) year.

Random Testing

The City will randomly test safety sensitive employees for compliance with its drug-free workplace policy. As used in this policy, "random testing" means a method of selection of safety sensitive employees for testing, performed by an outside third party. The selection will result in an equal probability that any employee from a group of safety sensitive employees will be tested. Furthermore, The City has no discretion to waive the selection of an employee selected by this random selection method.

Scheduled Periodic Testing

The City reserves the right to conduct periodic testing on a regularly scheduled basis for employees in designated departments, classifications or workgroups.

Post-Rehabilitation Testing

When an employee has had a confirmed positive test result, or has been sent to a drug dependency program at the request of the City Manager, a condition of continued employment will require the employee take and pass follow-up drug tests during a probationary period within the two-year period after the employee's return to work.

Substances Covered by Drug and Alcohol Testing

Employees will be tested for their use of commonly abused controlled substances, which include amphetamines, barbiturates, benzodiazepines, opiates, cannabinoids, cocaine, methadone, methaqualone, phencyclidine (PCP), propoxyphene and chemical derivatives of these substances. Employees must advise testing lab employees of all prescription drugs taken in the past month before the test and be prepared to show proof of such prescriptions to testing lab personnel.

Testing Methods and Procedure

All testing will be conducted by a licensed independent medical laboratory, which will follow testing standards established by the state or federal government. Testing will be conducted on a urine sample provided by the employee to the testing laboratory under procedures established by the laboratory to ensure privacy of the employee, while protecting against tampering with or alteration of the test results. Employees will be considered to be engaged at work for the time spent in taking any tests and will be compensated for such time at their regular rate.

The City will pay for the cost of the testing, including the confirmation of any positive test result by gas chromatography. The testing lab will retain samples in accordance with state law, so that an employee may request a retest of the sample at his or her own expense if the employee disagrees with the test result.

Refusal to Undergo Testing

Employees who refuse to submit to a test are subject to immediate discharge.

Positive Test

If an employee tests positive on an initial screening test, the employee will be temporarily suspended while the confirmation test is being conducted. On receipt of the confirmation test, the employee will be subject to disciplinary action, up to and including discharge. Discipline selected by The City will depend on a variety of factors, including the prior work record of the employee, the length of prior employment, the prior accident and attendance record of the employee, the circumstances that led to the testing, and the proposals by the employee to address the problem.

Right to Explain Test Results

All employees and applicants have the right to meet with the testing laboratory personnel, and with The City, to explain their test results. These discussions should be considered confidential except that information disclosed in such tests will be communicated to personnel within The City or within the lab who need to know such information to make proper decisions regarding the test results or regarding the employment of the individual.

Right to Review Records

Employees have a right to obtain copies of all test results from the testing laboratory, or from The City.

When an employee disagrees with the test results, the individual may request that the testing laboratory repeat the test. Such repeat testing will be at the expense of the individual, unless the repeat test overturns the original report of the lab, in which case The City will reimburse the employee for the costs incurred for the retest.

Confidentiality Requirements

All records concerning test results will be kept in medical files that are maintained separately from the personnel file of the employee.

Testing laboratories may conduct testing only for substances included on the disclosure list provided to the individual, and may not conduct general testing related to the medical conditions of the individual that are unrelated to drug use.

Retesting

Employees may request a retest of their positive test results within 24 hours after notification by the City of such positive test result. This retest is at the expense of the individual, unless the original test result is called into question by the retest.

Where the employee or applicant believes that the positive test result was affected by taking lawful or prescribed substances, the individual may be suspended without pay pending receipt of confirming

information to substantiate the claims of the individual. Normally, the individual will be provided no more than five business days in which to provide this additional information.

Once the City Manager has determined whether there is evidence to indicate that the test results are incorrect, the individual will be advised of the decision.

Treatment, Termination and Rehire

Employees who test positive for any drug(s) listed on the disclosure list have two choices. The employee may agree to enter an authorized treatment program approved by the City, and agree to subsequent retesting for a period of two years after returning from treatment, or the employee will be terminated immediately and will not be considered for rehire until he or she can show that he or she has remained drug-free for a period of two years or more.

THIS POLICY SUPERSEDES ANY INFORMATION PROVIDED TO APPLICANTS AND CITY EMPLOYEES, EITHER WRITTEN OR ORAL. THE CITY RESERVES THE RIGHT TO CHANGE THE PROVISIONS OF THIS POLICY AND TESTING PROGRAM AT ANY TIME IN THE FUTURE, CONSISTENT WITH APPLICABLE LAW.

W.C. Definition of Safety Sensitive: With respect to a public employer, a position in which a drug impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to carry a firearm, perform life-threatening procedures, work with confidential information or documents pertaining to criminal investigations, or work with controlled substances; a position subject to s. 110.1127; or a position in which a momentary lapse in attention could result in injury or death to another person.

SAFETY POSITIONS

REASON FOR SAFETY SENSITIVE CLASSIFICATION

CITY MANAGER

City Manager

Head of Disaster Recovery

HUMAN RESOURCES

Human Resource Director/City Clerk

Human Resource Assistant

Payroll Clerk

Senior Admin Support Specialist-Civil Service

Executive Assistant/Deputy City Clerk

These individuals are DERs (Designated Employee Representatives)

RISK MANAGEMENT

Safety/Training Admin

Risk Manager

DERs

PLANNING

Code Enforcement Officer

Senior Planner

Operates a City Vehicle

POLICE DEPARTMENT (PD is responsible for all drug testing of sworn officers)

Animal Control Officer

Call Taker Series

Communication Officer Series

Crime Scene Investigator

Sr. Crime Scene Investigator

Police Captain

Police Chief Police Corporal Police Lieutenant

Police Network Engineer/Forensic Investigator

Police Officer

Police Sergeant Evidence Specialist

Parking Enforcement Officer

Administrative Aide - Police

Routinely operates a city owned vehicle, boat, or other motorized vehicles or equipment,
 Dispatches police officers
 Dispatches police officers
 Control of criminal material
 Control of criminal material
 Control of criminal material
 Routinely operates a city owned vehicle

DER

PW & ENGINEERING

Public Works Director

Assistant Chief Surveyor

Chief Surveyor

Responsible for Maintenance of Traffic (MOT) and operate a city vehicle

Coordinator, Eng. Projects
Building & Planning Director
Building Inspector
Building Official
Engineer I
Engineer II
City Engineer/Utilities Director

STORM WATER

Stormwater Maintenance Worker A
Stormwater Maintenance Worker B
Stormwater Maintenance Worker C
Stormwater Maintenance Worker Trainee
Stormwater Supervisor

Operate a city vehicle and have MOT duties

GROUNDS MAINTENANCE

Groundskeeper
Manager grounds Maintenance
Supervisor grounds Maintenance
Irrigation Systems Tech
Lead Groundskeeper
Roadside Maintenance Foreman
Senior Street Maintenance Worker
Street Maintenance Worker
Street Maintenance Worker Trainee Streets
Superintendent

All operate motorized equipment and may operate a city vehicle

PARKS AND RECREATION

Dock or Pier Attendant
Lead Dock or Pier Attendant
Sr. Dock or Pier Attendant
Director
Assistant Director
Lifeguard (PT, lead, Sr, Captain, lieutenant, etc)
Manager Recreation Programs
Supervisor Recreation Programs
Recreation Supervisor
Parks & Facilities Maintenance Crew Chief-Athletic Field
Parks & Facilities Maintenance Crew Chief-Turf and Irrigation Division
Parks & Facilities Maintenance Superintendent
Parks & Facilities Maintenance Supervisor-Athletic Field Maintenance Division
Parks & Facilities Maintenance Supervisor-Turf and Irrigation Division
Parks & Recreation Director

Aside from lifeguards, the remaining employees work with children and may operate a city vehicle or other motorized equipment or vehicles

Parks & Recreation Resources Supervisor
Pier Attendant
Pier Attendant Crew Chief
Recreation & Athletics Supervisor Recreation
Administration Supervisor Recreation
Coordinator
Lead Beach and Surf Officer

FIRE DEPARTMENT

Deputy Fire Chief
Deputy Police Chief
Fire Battalion Chief Fire Captain
Fire Chief
Fire Inspector Fire Lieutenant
Firefighter/EMT
Firefighter/Paramedic

Operate a city vehicle, performs life-saving activities and may work with controlled substances

WATER AND SEWER

Wastewater Facility Maintenance Supervisor
Wastewater Facility Maintenance Worker Series
Wastewater Plant Operator Series
Wastewater Plant Superintendent
Underground Utilities Foreman
Underground Utilities Locator Series
Underground Utilities Superintendent
Utilities Service Worker Series
Water Plant Operator Series
Water Plant Superintendent
Lift Station Mechanic Series
Meter Reader Series
Meter Reset Technician
Meter Service Technician Series

Positions may work with caustic chemicals, may work in confined spaces, may work with filtration systems for water supply, may operate power or electrical equipment, repair meters or water pipes, and may use a city vehicle. Follows MOT regulations.

OTHER POSITIONS

Instrumentation & Controls Technician series
Senior Street Maintenance Worker
Street Maintenance Worker Series
Streets Superintendent

May drive a city vehicle or operate other electrical or motorized equipment or vehicles