



## CITY OF MILPITAS

Revision	Date
Original	04/14/1997
3	08/10/2021

### CITY ADMINISTRATIVE POLICY

<b>Policy No:</b> 2.4.2	<b>DOT DRUG AND ALCOHOL TESTING</b>	<b>Effective Date:</b> 8/10/2021
<b>Revision No:</b> 1	<b>Policy Administrator:</b> Human Resources	<b>Next Review Due:</b> TBD
<b>Related Policies and Procedures:</b> Replaces SOP 16-12	<b>Approved by:</b> Steven G. McHarris, City Manager 	<b>Date Approved:</b> 8/10/2021

#### 1. PURPOSE

- 1.1. The purpose of this policy is to assure worker fitness for duty and to protect our employees and the public from safety and health risks posed by misuse of alcohol and use of prohibited drugs. This policy is intended to comply with and establish procedures for the administration of the Department of Transportation (DOT) Commercial Driver's License Drug and Alcohol Testing Program pursuant to the Omnibus Transportation Employee Testing act of 1991 ("The Act) which requires alcohol and controlled substance testing of safety sensitive transportation employees who are required to have a commercial driver's license. The Federal Highway Administration (FHWA), Code of Federal Regulations, Title 49, section 7494 states that "this final rule for alcohol and controlled substance testing extends coverage to both inter-and intrastate truck and motor coach operations operated by Federal, State and local government agencies". The City reserves the right to make changes to this Policy at any time, without further meet and confer, for the purpose of complying with State and Federal law or regulation as it may from time to time, be amended. The City will provide notice of such change(s) to any employee organizations with positions in their bargaining unit(s) that may be affected by such change(s).

#### 2. POLICY

- 2.1. It is the intent of the City to augment the safety of the transportation industry and the public at large by testing safety sensitive employees (as defined by the Act) for the use of alcohol and controlled substances.
- 2.2. Employees covered by this policy:
  - 2.2.1. Shall not report for duty, remain on duty, or perform any safety-sensitive function while using or under the influence of alcohol or controlled substances;
  - 2.2.2. Shall not report for work or perform any safety-sensitive functions within four (4) hours of using alcohol;
  - 2.2.3. Shall not refuse to take a required alcohol or drug test, nor provide false information in connection with a test or attempt to falsify or tamper with a test.
- 2.3. All employees covered by this policy shall be given a copy of this policy and information regarding the Employee Assistance Program (EAP). Additionally, this policy and EAP information shall be posted on the City's intranet site. Each covered employee shall sign a statement verifying that he/she has received a copy of this policy. Employees covered by these requirements shall be encouraged to familiarize themselves with the provisions of this



## CITY OF MILPITAS

Revision	Date
Original	04/14/1997
3	08/10/2021

### DOT DRUG AND ALCOHOL TESTING/POLICY NUMBER 2.4.2

policy. The Human Resources Director of the designated representative shall be responsible for responding to employees' questions regarding this policy.

- 2.4. The DOT legal requirement reinforces the City's commitment to promote a drug-free workplace and to ensure that employees involved in safety sensitive transportation activities avoid problems created by the use of alcohol and controlled substances. If any conflict occurs between these federal DOT laws and regulations and any corresponding state law or local ordinances, federal law shall prevail.
- 2.5. This policy shall apply to all employees who are required to have a commercial driver's license as a condition of employment and who perform safety sensitive functions. This includes all employees who operate City vehicles such as are defined in this policy, and also includes, but is not limited to, full time, regularly employed drivers and drivers employed on an hourly or temporary basis. As of the time of this Policy's most recent update, regular and hourly or temporary employees performing work in the following classifications are subject to alcohol and controlled substance testing as outlined in this policy:
  - Equipment Maintenance Worker I/II/III
  - Maintenance Worker I/II/III (Utilities, Parks, Street Landscape, Facilities and Recreation)
  - Maintenance Worker Seasonal
  - Fleet Maintenance Worker I/II/III
  - Fleet Maintenance Supervisor
  - Water Systems Operator
  - Assistant Water Operator
  - Recreation Services Assistant (Nutrition Site Manager, Van Driver)
  - Recreation Services Supervisor (Senior Center)
  - Recreation Leader IV, V (Where applicable)

This list is not intended to be exhaustive, and the City reserves the right to treat similarly-situated positions as safety-sensitive.

- 2.6. The Director of Human Resources shall have the authority to modify, amend, supplement, add or remove job classifications or series within classifications from the testing protocol as necessary to meet the personnel needs of the City, and as to conform to legal and/or regulatory changes which may occur from time to time.
- 2.7. Appropriate use of medically-prescribed medications and controlled substances (excluding marijuana) is not necessarily a violation of this Policy. An employee must notify their manager or supervisor, before beginning work, that they are taking medications or controlled substances if the employee knows or reasonably should know that such substances could interfere with the safe and effective performance of their duties.
- 2.8. Commercial Driver's License Drug & Alcohol Clearinghouse
  - 2.8.1. Effective January 6, 2020, the Federal Motor Carrier Safety Administration (FMCSA) modified the 49 Code of Federal Rule (CFR) Part 382.701 Drug and Alcohol Clearinghouse. The City is mandated to query data concerning each commercial driver's possible DOT drug and alcohol testing violations, evaluations/treatment, return-to-duty testing, and/or completion of follow-up testing along with any other



## CITY OF MILPITAS

Revision	Date
Original	04/14/1997
3	08/10/2021

### DOT DRUG AND ALCOHOL TESTING/POLICY NUMBER 2.4.2

violations under Actual Knowledge. The City has registered with the Clearinghouse to conduct queries on applicants, transferring or existing employees.

- 2.8.2. There are two types of queries the City will perform:
  - Limited Queries- for anyone (current employee) holding a position to operate a vehicle requiring a Commercial Driver's License (CDL) in interstate or intrastate commerce.
  - Full Queries- for all new applicants under pre-employment and if a limited query results in information for existing employees then a full query is required.
- 2.8.3. When the City hires, promotes, or transfers an applicant/employee into a safety-sensitive position, the City will request a full query from the database. A full query discloses detailed information. It alerts the City of a CDL Driver's drug and/or alcohol violation(s) and completed steps in the return-to-duty process. If a full query is required, the applicant/employee will be required to log in to their clearinghouse account to grant their consent to the City to view their report.
- 2.8.4. Annually, the City must conduct a limited query on existing safety-sensitive employees. A limited query checks for the presence of DOT drug and testing history in the clearinghouse on the City's existing employees. Employee consent for a limited query is performed by the City outside the portal. Each CDL driver for the City must sign a consent form for the limited query. If an annual limited query shows that information exists, the City will perform a full query for that employee.
- 2.8.5. CDL drivers are not required to have an account unless the City is required to conduct a full query, then drivers must have a clearinghouse account, including those:
  - Applicants or promoting/transferring employees into a safety-sensitive position as defined under part 832;
  - CDL drivers who are subject to a full query when a limited annual query reveals additional information.
- 2.8.6. Drivers who refuse to provide consent for a limited or full query will be unable to perform a safety-sensitive function for the City and may be subject to disciplinary measures, up to and including termination.
- 2.8.7. The City is required to report to the FMSCA Clearinghouse the following reports:
  - Drug and alcohol violations. This will include alcohol test results with a concentration of 0.04 or greater, refuses to take an alcohol or drug test, as well as actual knowledge of a violation.
  - Employers will also report negative return-to-duty (RTD) test results and successful completion of a driver's follow-up testing plan.

2.9. Types of Alcohol and Controlled Substance Testing

- 2.9.1. Pre-employment Testing- After conditional offers of employment have been made, and all required pre-employment conditions have been met, all prospective employees for City employment in a classification requiring a commercial driver's license, as listed in this policy, will be required to undergo a DOT pre-employment drug test at a time and place designated by the City. The candidate shall be notified that his/her hiring is conditioned upon successful completion of a pre-employment medical examination



## CITY OF MILPITAS

Revision	Date
Original	04/14/1997
3	08/10/2021

### DOT DRUG AND ALCOHOL TESTING/POLICY NUMBER 2.4.2

that includes a controlled substance screening component. Prospective employees who then refuse a test, or who engage in any conduct that obstructs or impairs the testing process, or tests positive shall not be hired, and shall not be entitled to a second test.

A controlled substance test shall be conducted when a current employee, who is selected to transfer, demote or promote from a position not covered by this policy into a position listed in this policy. Employees transferring, demoting, or promoting into a position requiring controlled substance testing who test positive may, upon written request to the Medical Review Officer (MRO), have their specimen retested. If not request is received by the MRO or should the split test be confirmed, the employee shall remain in his/her current non-safety sensitive position, but may be subject to disciplinary action based on Personnel Rules and Regulations, Memorandum of Understanding, or other City policy. An employee who transfers, demotes, or promotes from one position covered by this policy to another covered by this policy shall not require testing at the time of transfer, demotion, or promotion.

- 2.9.2. Post-Accident Testing- Employees shall always be tested if an accident meets the definitions set forth in this policy. In addition, post-accident alcohol and controlled substance testing shall be conducted on employees following an accident in which the employee's performance cannot be discounted as a contributing factor. Not only shall the operator of the vehicle be tested, so shall any other covered employee whose performance may have contributed to the accident.

The decision as to whether or not to test the employee shall be the responsibility of a supervisor or management employee, in consultation with the on-scene peace officer. The presumption shall be for testing. The only reason an employee shall not be tested following an accident shall be if a determination is made that the employee's performance could not have been a contributing factor. If a fatality occurs, the employee shall be tested irrespective of whether his/her involvement may be discounted.

Post-accident alcohol tests shall be administered as soon as is practicable following an accident, preferably within two (2) hours and no test may be administered after eight hours. A post-accident controlled substance test shall be conducted as soon as is practicable, and no test may be administered after thirty-two (32) hours following the accident.

- 2.9.3. Random Testing- Testing rates will meet or exceed the minimum annual percent rate set each year by the FMCSA Administrator.

- 2.9.3.1 The selection of DOT safety-sensitive employees ("drivers") for random alcohol and controlled substance testing shall be made by a scientifically valid method such as a random number table or a computer based random number generator that is matched with the drivers' payroll identification numbers or



## CITY OF MILPITAS

Revision	Date
Original	04/14/1997
3	08/10/2021

### DOT DRUG AND ALCOHOL TESTING/POLICY NUMBER 2.4.2

other comparable-identifying numbers. Under the selection process used, each driver shall have an equal chance of being tested each time selections are made. The City may establish a single pool for alcohol and controlled substance abuse testing which provides that all drivers have an equal chance for being selected and tested using the applicable random testing rate.

- 2.9.3.2 The City shall ensure that random alcohol and controlled substance tests shall be unannounced and spread reasonably throughout the calendar year.
- 2.9.3.3 A driver shall be notified after being selected for alcohol or controlled substance testing. The fact that a driver has been selected shall remain confidential until notification. The notification shall be by the supervisor or agent of the City, and shall be in person to the extent operationally feasible. Notification shall be both oral and in writing with a written acknowledgment of the notification.
- 2.9.3.4 The City shall ensure that drivers selected for alcohol or controlled substance testing shall proceed immediately to the test site upon notification of being selected. The testing location may be located off site or at the workplace.
- 2.9.3.5 A driver shall only be tested for alcohol while the driver is performing safety sensitive functions, immediately prior to performing safety sensitive functions, or immediately after performing safety sensitive functions. Drivers will be paid for all time incurred for the testing and travel time to and from the testing facility. Drivers are not to leave the testing facility until the testing has been completed. If a driver leaves without completing the testing, then the test is considered positive and will be handled accordingly.
- 2.9.3.6 In the event a driver, who is selected for a random alcohol or controlled substance test is on vacation, general leave, or on a more than two weeks medical absence, the City shall select another driver for testing or shall keep the original selection confidential until the driver returns. The City may keep the selection confidential and test the original driver up to the time of the next random selection period.

2.9.4. Reasonable Suspicion Testing- Covered employees shall also be required to submit to an alcohol or controlled substance test in accordance with City Policy (NUMBER TBD).

The reasonable suspicion alcohol test shall be administered within two hours of the observation. If not, the employer must provide written documentation as to why the test was not promptly conducted. No test may be administered after eight hours following the observation.

During the time while the employer makes arrangements for the employee to be tested for alcohol and/or controlled substances, the employee shall be allowed to confer with a representative, if so requested. The representative may accompany the employee to the test site as an observer only. Both the employee and the representative shall abide by the established testing procedures. Under no circumstances shall the



## CITY OF MILPITAS

Revision	Date
Original	04/14/1997
3	08/10/2021

### DOT DRUG AND ALCOHOL TESTING/POLICY NUMBER 2.4.2

representative interfere with, or delay, the testing process. In addition, the representative shall comply with any direction given by the individual(s) conducting the test, relating to the representative's presence at the testing facility.

Supervisors and managers making reasonable suspicion determinations shall be trained in the determination process and shall use the reasonable suspicion checklist. Examples of observations which may result in reasonable suspicion include, but are not limited to:

- Observable evidence of unsatisfactory work performance or on-the-job behavior under circumstances indicating the performance or behavior may be related to use of controlled substances or alcohol;
- Observations of physical signs and symptoms consistent with controlled substance or alcohol use, such as appearance, behavior, speech or odors;
- Evidence of the possession of and/or use of alcohol or controlled substances in the workplace.

2.9.5. **Return To Duty/Follow-up Testing-** A covered employee who has violated any of the articles of this policy must submit to a return to duty test before he/she may be returned to his/her position. The test result must indicate an alcohol concentration of less than 0.02 or a verified negative result on a controlled substance test. The employee shall be subject to at least six unannounced alcohol and controlled substance tests during the first year of the employee's return to the safety sensitive position following the violation. The Substance Abuse Professional (SAP) may continue to require follow-up tests for up to sixty (60) months.

2.10. The following conduct is prohibited and will result in discipline, up to and including termination:

- Reporting for duty or remaining on duty requiring the performance of safety sensitive functions while having a breath alcohol concentration of 0.02 or greater;
- Performing a safety sensitive function within four (4) hours of using alcohol;
- Being on duty or operating a vehicle, while possessing alcohol or controlled substances;
- Using alcohol or controlled substances while performing a safety sensitive function;
- Reporting for duty or remaining on duty requiring the performance of safety sensitive functions when the employee used any controlled substance, except if the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a vehicle;
- Reporting for duty or remaining on duty requiring the performance of safety sensitive functions if the employee tests positive for controlled substances;
- Refusing to submit to any alcohol or controlled substance test required by this policy. A covered employee who refuses a required alcohol and controlled substance test shall be treated in the same manner as an employee who tested 0.02 or greater on an alcohol test or tested positively on a controlled substance test. A refusal to submit to an alcohol or controlled substance test required by this policy includes, but is not limited to:



## CITY OF MILPITAS

Revision	Date
Original	04/14/1997
3	08/10/2021

### DOT DRUG AND ALCOHOL TESTING/POLICY NUMBER 2.4.2

- A refusal to provide a urine sample for a controlled substance test;
- An inability to provide a urine sample without a valid medical explanation;
- A refusal to complete and sign the breath alcohol testing form, or to otherwise cooperate with the testing process in a way that prevents the completion of the test;
- An inability to provide breath or to provide an adequate amount of breath without a valid medical explanation;
- Tampering with or attempting to adulterate the urine specimen or collection procedure;
- Not reporting to the collection site in the time allotted by the supervisor or manager who directs the employee to be tested;
- Leaving the scene of an accident without obtaining authorization to leave from a supervisor or manager, and without a valid reason, since a supervisor or manager shall determine whether to send the employee for a post-accident alcohol and controlled substance test.
- Failure to report the accident to a City official.
- Refusing a referral for medical evaluation to determine whether there is a medical explanation for the employee's inability to provide a urine specimen and/or adequate amount of breath.
- Consuming alcohol during the eight (8) hours immediately following an accident, unless the employee has been informed by a responsible authority that his/her actions have been discounted as a contributing factor, or if the employee has been tested.

### 3. DEFINITIONS

- 3.1. The following definitions are provided solely as a guide to assist in the application of this policy and may be subject to change.
  - 3.1.1. Actual Knowledge – Actual knowledge by the City that a driver has used alcohol or controlled substances based on direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a commercial vehicle under the influence of alcohol or drugs, or an employee's admission of alcohol or drug use. Direct observation used in this definition means observation of alcohol or controlled substance use and does not include observation of employee behavior or physical characters sufficient to warrant reasonable suspicion testing.
  - 3.1.2. Alcohol – The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl and isopropyl alcohol, including any medication containing alcohol.
  - 3.1.3. Candidate - Person, both internal or external, being considered for a position, including new applicants and applicants for promotion, demotion or transfer.
  - 3.1.4. Controlled Substances – Those substances which contain marijuana (whether prescribed or not), cocaine, opiates, phencyclidine (PCP) amphetamines (including methamphetamines), and all derivatives of these drugs as described in DOT guidelines. Should the DOT add to this list of mandated drugs for testing, the additional



## CITY OF MILPITAS

Revision	Date
Original	04/14/1997
3	08/10/2021

### DOT DRUG AND ALCOHOL TESTING/POLICY NUMBER 2.4.2

drug(s) shall be included in the list of tested drugs following thirty (30) days written notice to affected employees. This term is used interchangeably with the term "drugs".

- 3.1.5. Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) – The FMCSA database that the City is required to report information to and to query regarding drivers who are subject to the DOT controlled substance and alcohol testing regulations.
- 3.1.6. Designated Employee Representative (DER) – Person designated by the employer to receive test results and other communication regarding the testing process. The DER is authorized to take immediate action regarding further testing and evaluation processes.
- 3.1.7. Driver – Any person employed in a position in a classification which requires the ability to operate a commercial vehicle. For the purposes of pre-employment testing, driver shall mean a person being considered for selection for a position in a classification which requires the ability to operate a commercial vehicle.
- 3.1.8. Employee – Any person employed by the City in a full-time, part-time, or temporary status.
- 3.1.9. Last Chance Agreement (LCA) – An agreement between the City and the employee delineating the requirements for the employee to remain employed.
- 3.1.10. Medical Review Officer (MRO) – A person who is a licensed physician with knowledge and expertise in the clinical and medical diagnosis and treatment of alcohol and drug related disorders, who has specific qualification and training/continuing education (per 49 CFR 40.121 as amended, from time to time), and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for drug test results.
- 3.1.11. Reasonable Suspicion – A good faith belief based on articulated, objective facts or evidence sufficient to lead the employer to suspect an employee is under the influence of drugs and/or alcohol in the workplace or while on duty.
- 3.1.12. Reportable Accident – An accident involving a vehicle wherein an individual die or when a State or local law enforcement authority issues a citation to the covered employee for a moving violation arising from the accident (Federal Highway Administration (FHWA) provision). Under the Federal Transit Administration (FTA) Provision, an accident occurs in the following circumstances:
  - When an individual die as a result of an occurrence involving the vehicle;
  - When an individual suffers bodily injury and a State or local law enforcement authority issues a citation to the covered employee for a moving violation arising from the accident; or
  - When a vehicle suffers disabling damage and a State or a local law enforcement issues a citation to the covered employee for a moving violation arising from the accident. Disabling damage means damage to the vehicle, which precludes departure from the scene, or damage to vehicles that could have been operated, but would have been further damaged if so operated.



## CITY OF MILPITAS

Revision	Date
Original	04/14/1997
3	08/10/2021

### DOT DRUG AND ALCOHOL TESTING/POLICY NUMBER 2.4.2

3.1.13. Safety Sensitive Function- Driving, operating, or repairing one of the following city vehicles:

- A vehicle with a gross combination weight of at least 26,001 pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
- A vehicle with a gross vehicle weight of at least 26,001 pounds;
- A vehicle designed to transport 16 or more passengers, including the driver; or
- A vehicle used to transport those hazardous materials found in the Hazardous Materials Transportation Act.

This definition includes all time from the time a driver begins to work or required to be in readiness to work until the time they are relieved from work, and all responsibility for performing work including those functions set forth in the definition of "Safety sensitive function" in 49 CFR 382.107 (as it may be amended from time to time.)

3.1.14. Substance Abuse Professional – A properly licensed physician, psychologist, social worker, EAP professional, or addiction counselor with knowledge of, and clinical experience in, the diagnosis and treatment of alcohol and controlled substances-related disorders, and with specific training, qualification and continuing education satisfying 49 CFR 40.283 (as amended from time to time), who evaluates employees who have tested positive on a drug or alcohol test and makes recommendations concerning education, treatment, follow-up testing and aftercare.

## 4. PROCEDURE

4.1. This procedure provides guidance on the application of the above policy.

4.1.1. Testing – Tests that will be conducted as part of this policy are Pre-Employment, Post-Accident, Random, Reasonable Suspicion, and Return-to-Duty/Follow-up testing. All testing will be completed only at a City approved collection/testing location and in accordance with City of Milpitas policy on Drug and Alcohol Testing, Policy Number TBD (ONCE POSTED, NEED TO LINK TO CITY POLICY HERE).

4.1.2. Testing for Detection of Alcohol and Drugs- Testing for detection of alcohol and drugs referred to in this policy will be performed in accordance with the "Procedures for Transportation Workplace Drug and Alcohol Testing" as outlined in 49 CFR Part 40 and Part 382.

4.1.2.1     Alcohol Testing – Alcohol testing shall be performed at designated collection/testing locations through the use of an Evidential Breath Testing (EBT) device approved by the National Highway Traffic Safety Administration.

- A screening test shall be conducted first. If the result is an alcohol concentration level of less than 0.02, the test shall be considered a negative test. If the alcohol concentration is 0.02 or greater, a confirmation test shall be conducted. Should the confirmation test result in an alcohol concentration level of less than 0.02, the test shall be considered a negative test. Should the confirmation test result in an alcohol concentration level of 0.02 or greater, the test shall be considered a positive test.



## CITY OF MILPITAS

Revision	Date
Original	04/14/1997
3	08/10/2021

### DOT DRUG AND ALCOHOL TESTING/POLICY NUMBER 2.4.2

- Employees will be required to complete and sign various forms used to document the testing process. Refusal to sign the test form(s) will be regarded as a refusal to take the test.
- In the event of conflicting results between the screening test and the confirmation test, the confirmation test result shall determine the outcome of the test.
- All tests will be conducted in accordance with the procedures established by the Federal Highway Administration (FHWA) regulations implementing alcohol and controlled substance testing under federal law.
- Refusal by an employee to complete and sign the test form, to provide an adequate amount of breath without a valid medical explanation, or otherwise fail to cooperate with the testing will be considered a disciplinable offense, up to and including termination.
- An employee with a positive test is in violation of this Policy and will be immediately removed from duty and required to be evaluated by a Substance Abuse Professional (SAP), as well as subjected to other post-positive requirements of this Policy.

#### 4.1.2.2

Controlled Substance Testing – Testing for Controlled Substances will be performed through the use of urine testing. All tests will be completed at a designated collection/testing location or at the workplace, if appropriate. Designated collection/testing locations shall meet Criteria for Collectors and Collection Sites established under the Department of Transportation (DOT).

A Chain of Custody Form will be used to document any urine collection. Urine specimens for drug testing will be sent to laboratories that are certified for urine drug testing by the Federal Department of Health and Human Services.

- The employee's urine specimen shall be tested for the following: metabolites of marijuana (with or without a prescription), cocaine, opiates, amphetamines (including methamphetamines), phencyclidine, and all derivatives of these drugs as described in DOT guidelines. Specimen validity tests will also be completed on all urine specimens. Validity tests include creatinine, specific gravity, PH and interfering substances/adulterants.
- The employee's urine specimen shall be divided into two bottles labeled as "primary" and "split" specimen. Both bottles shall be sent to the laboratory for urinalysis.
- If the initial screening test is positive for one or more of the above drugs, a confirmation test will be performed using gas chromatography/mass spectrometry analysis.
- All controlled substance test results shall be reviewed and interpreted by a MRO before the test results are reported to the employee and then to the



## CITY OF MILPITAS

Revision	Date
Original	04/14/1997
3	08/10/2021

### DOT DRUG AND ALCOHOL TESTING/POLICY NUMBER 2.4.2

City. The MRO will be designated by the City and must meet qualifications established under DOT regulations.

- If the urinalysis of the primary specimen tests positive for the presence of illegal controlled substances, the employee shall have 72 hours to request in writing that the MRO direct that the split specimen be analyzed, but a different certified laboratory, for presence of the controlled substance(s) for which a positive result was obtained in the test of the primary specimen.
- The employee shall remain off of work with pay pending the result of the split specimen.
- If the test is determined to be positive for one or more of the controlled substances, a confirmation test shall be performed using gas chromatography/mass spectrometry analysis.
- With all positive controlled substance tests, the MRO shall first contact the employee to determine whether there is an alternative medical explanation for the positive test result. If the MRO cannot reach the employee directly after making reasonable efforts to do so, the MRO must contact the Designated Employee Representative (DER) and direct the DER to inform the employee to contact the MRO. If documentation is provided and if the MRO determines that there was a legitimate medical use for the prohibited controlled substance, the test result may be reported to the City as "negative" to the extent authorized by the law.
- Supervisors or managers must notify Human Resources at 408-586-3090 when an employee is sent for reasonable suspicion or post-accident testing.
- Results of all urine drug tests and breath alcohol tests will be sent to Human Resources. The Human Resources Director or designee will notify the employee's supervisor or manager of the results. Results of breath alcohol tests are known immediately after the tests are administered. Results of urine drug tests are typically available in 5-7 working days.
- The Director of Human Resources or designee will send written notification of the positive test to the employee.

#### 4.1.2.3 Refusal to Submit to an Alcohol and/or Substance Test

4.1.2.3.1. A covered employee who refuses to submit to any required alcohol and controlled substance testing shall be treated in the same manner as an employee who tested 0.02 or greater on an alcohol test or who tested positively on a controlled substance test.

#### 4.1.2.4 Positive Test Results/Refusal to Test/Obstructing or Impairing Test

4.1.2.4.1. Any candidate for employment in a safety sensitive position who fails to obtain satisfactory results on a pre-employment urine drug testing will not be hired. The Human Resources Department will notify a prospective employee regarding positive test results. Candidates who refuse the pre-employment test or attempt to



## CITY OF MILPITAS

Revision	Date
Original	04/14/1997
3	08/10/2021

### DOT DRUG AND ALCOHOL TESTING/POLICY NUMBER 2.4.2

obstruct or impair the test will not be hired. Employees who are moving into a position which requires a pre-employment alcohol and drug examination who test positive may be subject to disciplinary action for a positive or diluted test.

- 4.1.2.4.2. Employees covered by this policy may not refuse to undergo pre-employment, random, post-accident, reasonable suspicion, return to duty or follow-up testing as outlined in this policy. Employees who refuse to undergo any of the required testing or who engage in any conduct that obstructs or impairs the testing process will be deemed to be in violation of this policy and will be subject to discipline up to and including termination.
- 4.1.2.4.3. Test results that are returned dilute positive will be considered positive. Test results that are returned as dilute negative will require an immediate second test.
- 4.1.2.4.4. The Director of Human Resources or designee will send a written notification of the positive test to the employee.
- 4.1.2.4.5. Employees who test positive for drugs or who have BAC level of .02% or greater will be referred for evaluation to a Substance Abuse Professional (SAP) to determine what assistance the employee needs to resolve the alcohol misuse and/or drug use. The SAP will be an independent third party designated and paid for by the City. The employee will be responsible for all costs associated with actual treatment and program participation.
- 4.1.2.4.6. Employees covered by this policy will not be authorized to use vacation, sick, administrative leave or compensatory time off without notification from a physician or SAP providing treatment related to substance and/or alcohol use. If the employee is under the treatment of a physician or a substance abuse professional for substance and/or alcohol use and provides appropriate medical authorization for the use of leave, the employee may be entitled to leave and benefits under the Family and Medical Leave Act (FMLA) and/or the Americans with Disabilities Act (ADA). Criteria for eligibility under FMLA are outlined in the City's FMLA Policy. Employees may also elect to use benefits through the City's Employee Assistance Program (EAP). An employee who is temporarily disabled due to a controlled substance and/or alcohol abuse condition may also be entitled to benefits through the City's Short-Term Disability (STD) plan or other disability benefit plan(s) provided through an employee organization.
- 4.1.2.4.7. An employee who tested positive may be given the opportunity to resume his/her job duties at the discretion of the department head and only when specific conditions/requirements have been met. In



## CITY OF MILPITAS

Revision	Date
Original	04/14/1997
3	08/10/2021

### DOT DRUG AND ALCOHOL TESTING/POLICY NUMBER 2.4.2

order to resume his/her job duties, an employee, who has tested positive, will be required to undergo a return to work test for alcohol, drugs, or both, depending on the initial positive test. If a breath alcohol test is completed, the test result must indicate a BAC level of less than 0.02%. If a urine drug test is completed, the results must be verified negative. Before returning to work, the employee who has tested positive will be required to:

- Provide documentation of an evaluation by a Substance Abuse Professional (SAP) and agree to participate in some form of treatment.
- Execute a Last Chance Agreement (LCA)
- Be subject to at least six (6) random follow-up tests within the first twelve (12) months after returning to work. The follow-up tests would be for alcohol, drugs, or both, depending on the initial positive test. If the employee is randomly chosen to participate in a random test under this policy, that test(s) will not count towards the six random follow-up tests.
- Follow up testing may continue beyond the initial twelve (12) month period, or may be terminated upon the determination of the SAP that follow-up testing is no longer necessary.

4.1.2.5 The City may enter into a Last Chance Agreement (LCA) at the recommendation of the Director of Human Resources upon the concurrence of the Department Head and the City Manager. Once approved, the LCA will be executed after the employee has been evaluated by a SAP, and it has been determined that the employee must participate in some form of treatment. A LCA will only be available to an employee who participates and cooperates with the SAP and who has not had a previous positive test for alcohol and/or drugs within the last 5 years. The City Attorney's Office and Human Resources will prepare the LCA document.

4.2. Once an employee successfully completes the terms and conditions of the LCA, the document shall remain in the employee's personnel file.