

**CITY COUNCIL AGENDA ITEM COVER MEMO**

Agenda Item Number: \_\_\_\_\_

Meeting Type: Regular

Meeting Date: Nov 5, 2015

Action Requested By: Human Resources

Agenda Type: Ordinance

**Subject Matter:**

Section 18 Drug and Alcohol Policy of the Personnel Policies and Procedures Manual.

**Exact Wording for the Agenda:**

Ordinance amending Section 18 Drug & Alcohol Policy of Ordinance 04-315, Personnel Policies and Procedures in order to comply with the Department of Transportation Regulations.

**Note: If amendment, Please state title and number of the original**

Item to be considered for: Introduction

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: \_\_\_\_\_

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: \_\_\_\_\_

Department Head: *Boyan K. Zhenev*

Date: 11/3/15

**ORDINANCE NO. 15-\_\_\_\_\_**

**BE IT ORDAINED** by the City Council of the City of Huntsville, Alabama, that Section 18 of Ordinance No. 04-315 (Personnel Policies and Procedures Manual), as adopted and approved on December 16, 2004, as amended, is hereby further amended as follows:

**SECTION 18**

**DRUG AND ALCOHOL POLICIES (ORD. 08-776) (ORD. 09-26)  
(ORD. 10-922)**

**18.1 DRUG-FREE WORKPLACE ACT STATEMENT AND POLICY**

The federal government requires recipients of federal funds to notify its employees of its commitment to maintain a drug-free workplace. Pursuant to the Drug-Free Workplace Act of 1988, the City of Huntsville has certified to maintain a drug-free workplace. Employees are hereby notified that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the City of Huntsville workplace and considered to be a violation of the City's Drug and Alcohol Policies and Drug-Free Workplace Act Certification. All employees are to abide by the terms of these policies. Violations of these policies by an employee shall subject the employee to discipline which shall include suspension without pay, demotion, or termination of employment in accordance with the disciplinary procedures set forth in this Section 18 Drug and Alcohol Policies and in Section 13 Conduct and Disciplinary Policy. Employees shall neither use nor be under the influence of drugs, intoxicants, alcohol, or another controlled substance in the workplace. The City recognizes the importance of maintaining a safe, efficient, and healthful workplace, as well as the social responsibility to provide assistance to its employees to the extent possible. The City recognizes drug abuse as a serious threat to its employees. Substance abuse in the workplace may result in poor work attendance, unsatisfactory job performance, and may also create safety hazards for employees and the public at large. Therefore, employees are expected to report to work free from unlawful drugs that could inhibit their ability to perform their duties, could cause a workplace accident, or could cause the employee to endanger the lives of the employee or others. The City maintains a drug free awareness program which is administered by the Department of Human Resources through its Employee Assistance Program (see Section 19). All employees are encouraged to contact the Department of Human Resources to learn more about drug awareness.

The Drug-Free Workplace Act, Public Law 100-690, Title V, Subtitle D (41 USC §§ 701-707) makes it a condition of employment

that all City employees abide by the terms of this statement of policy and that each employee notify the City (the employee's immediate supervisor, Department Head, or the Human Resources Director) of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction. Within ten (10) days of receiving notice of conviction, the City will notify the appropriate federal contracting or granting agency, if any, as required. Within thirty (30) days of notice of the workplace drug conviction, the employee is required to satisfactorily participate in a drug abuse assistance or rehabilitation program that has been approved by a federal, state, or local health, law enforcement, other appropriate agency, or the City's Health Center Resources and Program Manager. Additionally, the City shall initiate appropriate disciplinary action against such employee up to and including termination. Definitions for the terms used in this Section 18.1 Drug-Free Workplace Act Statement shall be in accordance with 41 USC §706.

**18.2 DRUG AND ALCOHOL TESTING AS REQUIRED BY THE FEDERAL TRANSIT ADMINISTRATION (FTA) AND BY THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA)**

This drug and alcohol testing program complies with the requirements established in the U.S. Department of Transportation (DOT), 49 C.F.R. Part 40, as amended; the Federal Transit Authority (FTA), 49 C.F.R. part 655; and the Federal Motor Carrier Safety Administration (FMCSA), 49 C.F.R. part 382. Most of the requirements of the FMCSA regulations parallel the FTA regulations. Accordingly, the following policies and procedures enumerated hereinafter govern the conduct of the employees that fall within the regulatory purview of both the FTA and the FMCSA. However, those provisions which apply only to those employees that fall within the regulatory purview of the FMCSA shall appear in italics.

The City of Huntsville acknowledges the problem of drug and alcohol abuse in our society. Furthermore, the City recognizes drug and alcohol abuse as a serious threat to its employees. Substance abuse in the workplace may result in poor work attendance or unsatisfactory job performance and may also create safety hazards for employees and the public at large. It is the intention of the City to implement a FTA/FMCSA Drug and Alcohol Policy that will allow the City to effectively detect substance abuse by its employees. The City's goal is the following: (i) to ensure that its employee's ability to perform his/her job is not adversely affected or impaired; (ii) to create a workplace environment free from the adverse effects of drug and alcohol abuse; (iii) to prohibit the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace; and, (iv) to comply with all relevant and pertinent laws and regulations. In an effort to meet these goals, the City

is adopting this FTA/FMCSA Drug and Alcohol Policy. Participation by employees covered by this Policy in the City's FTA/FMCSA Drug and Alcohol Policy is required and is a condition of employment.

The City's contact person for information about this FTA/FMCSA Drug and Alcohol Policy is Pamela M. Stephens. She may be reached by telephone at (256) 883-3726.

(A) Prohibited Behavior

It shall be a violation of this policy for any employee defined as safety-sensitive within this FTA/FMCSA Drug and Alcohol Policy to engage in any of the following prohibited behavior:

- (1) Report for duty or remain on duty while having an alcohol concentration of 0.02 or greater;
- (2) Use alcohol while performing safety-sensitive functions;
- (3) Use alcohol within four (4) hours prior to performing safety-sensitive functions or while being "on-call" to perform safety-sensitive functions;
- (4) Report for duty or remain on duty while using, being under the influence of, or possessing prohibited drugs, including marijuana, cocaine, amphetamines, phencyclidine (PCP) and opiates, as may be amended from time to time by DOT in 49 C.F.R. Part 40, Section 40.87;
- (5) Alter, adulterate, or dilute or attempt to alter, adulterate, or dilute urine specimens;
- (6) Substitute or attempt to substitute a urine specimen;
- (7) Perform safety-sensitive functions within four (4) hours after using alcohol;
- (8) Refuse to take, consent to, submit to, or complete any drug or alcohol test as required by this FTA/FMCSA Drug and Alcohol Policy;
- (9) If required by this policy to take a post-accident test for alcohol, use alcohol within eight (8) hours following the accident or eight (8) hours before undergoing the post-accident alcohol test, whichever occurs first;
- (10) Allowing an employee known to be in violation of these rules to perform or continue to perform safety-sensitive functions;

(11) Report for duty or remain on duty requiring the performance of safety-sensitive functions as a FMCSA covered driver while using any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle;

(12) Report for duty, remain on duty, or perform safety-sensitive functions as a FMCSA covered driver after having tested positive for a controlled substance;

(13) Be on duty or operate a commercial motor vehicle while possessing alcohol, unless the alcohol is manifested and transported as part of a shipment;

(14) Be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of a commercial motor vehicle; or,

(15) Violate or fail to comply with any provisions, terms, conditions, procedures, or requirements of this policy.

(B) Covered Employees

(1) FTA employees

The FTA regulations apply to any employee who performs or will perform a safety-sensitive function. Under the FTA regulations, an employee is considered to be safety-sensitive if the employee's job functions include any of the following types of functions or duties:

(a) Operating a revenue service vehicle, including when not in revenue service;

(b) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;

(c) Controlling dispatch or movement of a revenue service vehicle;

(d) Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service; and,

(e) Carrying a firearm for security purposes.

(2) FMCSA employees

The FMCSA regulations apply to any employee who performs or will perform a safety-sensitive function. Under the FMCSA regulations

*an employee is considered to be safety-sensitive if the employee operates a commercial motor vehicle in commerce in any State, and is subject to commercial driver's license requirements. (Please note that the FMCSA regulations do not apply to employees covered under the FTA.) Safety-sensitive job functions include any of the following types of functions or duties:*

*(a) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;*

*(b) All time inspecting equipment or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;*

*(c) All time spent at the driving controls of a commercial motor vehicle in operation;*

*(d) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;*

*(e) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and,*

*(f) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.*

Employees occupying positions requiring the performance of the functions identified above as safety-sensitive shall be considered to be safety-sensitive employees, and shall be notified that they are in such positions and, therefore, subject to mandatory drug and alcohol testing. Human Resources shall maintain a listing designating which job classifications/positions within the City are considered to be safety-sensitive. Further, a Department Head or Division Manager who believes that a job position has safety-sensitive functions, as identified within this policy, shall identify each such position and submit it to the City's Health Center Resources and Program Manager who, in consultation with the City Attorney's Office and Human Resources Director, shall review the request before certifying that a position is safety-sensitive.

#### (C) Mandatory Testing

Drug and alcohol testing is mandatory for all safety-sensitive employees. The various types of testing required under the FTA and the FMCSA include pre-employment testing, reasonable

suspicion testing, post-accident testing, random testing, return to duty testing, and follow-up testing.

(1) Pre-employment testing

Mandatory drug (not alcohol) testing shall be required for all applicants who have received a contingent offer of employment for a safety-sensitive position, all City employees transferred to a safety-sensitive position, and all City employees who are promoted into a safety-sensitive position, if they are currently working in a non-safety-sensitive position. The drug test of the employee or applicant must result in a verified negative result in order for the employee or applicant to be placed in the safety-sensitive position. If a pre-employment drug test is canceled, the employee shall submit to another pre-employment drug test. The pre-employment drug test must be completed and must return a verified negative result in order for the employee or applicant to be placed in the safety-sensitive position. An employee who has a verified positive drug test result or equivalent based on promotional testing shall be subject to return to duty and follow-up testing imposed by these policies and federal regulations and guidelines. Further, if an employee assigned to a safety-sensitive position has previously failed or refused a pre-employment drug test, the employee must provide the employer with proof that he or she has successfully completed a referral, evaluation and treatment plan as provided in 49 C.F.R. Part 40, as amended.

Further, each applicant or employee who seeks a safety-sensitive position must provide a written consent which permits his or her previous employers to release drug and alcohol testing information to the City. If the previous employers do not have the necessary documentation relating to any alcohol test results of 0.04 concentration or greater; verified positive drug tests; refusals to test; other violations of the FTA/DOT regulations; and/or, as appropriate, documentation of the successful completion of DOT return-to-duty requirements including follow-up testing, then the applicant or employee must provide the documentation. If the applicant or employee refuses to provide the required written consent, the applicant or employee will not be placed in the safety-sensitive position.

Also, if an employee assigned to a safety-sensitive position has not performed a safety-sensitive function for ninety (90) consecutive calendar days regardless of the reason, and has not been included in the City's selection pool for random drug testing, the employee must submit to a pre-employment drug test. The test must return a verified negative result before the employee may return to safety-sensitive duty.

(2) Reasonable suspicion testing

A Department Head, Division Manager, or supervisor who has been trained to detect the symptoms of drug use and alcohol misuse may request and authorize the drug or alcohol testing of a safety-sensitive employee. A drug and/or alcohol test is authorized under this subsection only when there is a "reasonable suspicion" to believe that the employee has used a prohibited drug as defined herein or that the employee violated the prohibitions relating to alcohol usage identified in this policy.

The determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee including, but not limited to, the following:

(a) The presence of recognizable physical symptoms of drug or alcohol use, e.g., slurred speech, bloodshot eyes, alcohol on breath, inability to stand or to walk a straight line;

(b) Indications of the chronic and withdrawal effects of controlled substances;

(c) Direct knowledge or observation of drug or alcohol use or possession, or possession of drug paraphernalia; or,

(d) Aberrant conduct or behavior that is so unusual that it warrants summoning a supervisor or other assistance.

Alcohol testing under this subsection is authorized only if the observations leading to a determination of reasonable suspicion are made during, just preceding, or just after the period of the performance of safety-sensitive functions. Employees to be tested for reasonable suspicion with regard to alcohol misuse shall be escorted to the testing site by a supervisor, or the supervisor's designee, as soon as possible so that the test may be administered within two (2) hours of the determination to test. The supervisor who made the determination that reasonable suspicion exists shall not administer the breath alcohol test. If the alcohol test is not administered within two (2) hours following the determination of reasonable suspicion the supervisor or the supervisor's designee shall prepare and maintain on file a record stating the reason the alcohol test was not promptly administered. If the alcohol test is not administered within eight (8) hours of the determination to test, the efforts to administer the test shall cease, and the Health Center Resources and Program Manager shall maintain a record on file stating the reasons for failing to administer the test.

Pursuant to City policy, the determination that reasonable suspicion exists must be set out in writing based on the observations as indicated above.

An employee who has a verified positive drug or alcohol test result or equivalent based on reasonable suspicion testing shall be subject to return to duty and follow-up testing imposed by these policies and federal regulations and guidelines.

(3) Post-accident testing

Drug and alcohol testing shall be required as soon as practicable of all employees who are defined as safety-sensitive employees in the following circumstances:

(a) Fatal accidents. Following an accident involving the loss of human life as the result of the operation of a mass transit vehicle or a *commercial motor vehicle*, each surviving safety-sensitive employee shall be tested for the presence of drugs and alcohol. Any other safety-sensitive employee whose performance could have contributed to the accident (e.g., maintenance personnel) shall be tested for the presence of drugs and alcohol, as determined by the Department Head, Division Manager, or supervisor using the best information available at the time of the decision;

(b) Non-fatal accidents. Each employee involved in the operation of a mass transit vehicle or a *commercial motor vehicle* at the time of a non-fatal accident shall submit to drug and alcohol tests. A non-fatal accident is one in which: (i) an individual suffers bodily injury, and requires immediate medical treatment away from the scene of the accident; or, (ii) the mass transit vehicle or other vehicles involved in the accident suffer disabling damage which precludes departure from the scene of any involved vehicle by its usual manner of operation in daylight after simple repairs; (iii) or damage to any vehicle that could have been operated but which would have further damaged the vehicle if so operated; Post-accident testing is not required following a non-fatal accident, if the Department Head, Division Manager, or supervisor, using the best information available at the time, determines that the performance of the employee or employees can be completely discounted as a contributing factor to the accident. The decision not to administer a drug or alcohol test, including a description of the decision-making process, must be documented and maintained on file. An alcohol test required under this subsection must be administered within two (2) hours following the accident. If the test is not administered within two (2) hours, the supervisor shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If the alcohol test is not administered within eight (8) hours of the determination to test, the efforts to administer the test shall cease, and the Health Center Resources and Program Manager shall maintain a record on file stating the reasons for failing to administer the test. Further, an employee required to submit to an alcohol test under this subsection may not use alcohol for eight (8) hours following the

accident. If an employee who is subject to post-accident alcohol testing fails to remain readily available for such testing, including notifying his/her supervisor(s) of his/her location if he or she leaves the scene of the accident prior to submission to such test, it may be regarded as a refusal on the part of the employee to submit to testing.

A drug test required under this subsection must be administered within thirty-two (32) hours of the accident. If the drug test is not administered within thirty-two (32) hours of the determination to test, the efforts to administer the test shall cease, and the Health Center Resources and Program Manager shall maintain a record on file stating the reasons for failing to administer the test.

*FMCSA additional requirement. In the case of an accident involving a commercial motor vehicle, each surviving driver who receives a citation under State or local law for a moving traffic violation arising from the accident shall be tested for alcohol and controlled substances.*

In the event that the City is unable to perform the required post-accident tests within the required time frames, the results of a blood, urine, or breath test conducted by federal, state, or local officials having independent authority for the test shall be considered to meet the requirements of this subsection, provided such tests conform to the applicable federal, state, or local testing requirements, and the result of these tests are obtainable by the City.

Nothing contained herein shall be construed to require the delay of necessary medical attention for injured people following an accident, to prohibit a covered employee from leaving the scene of an accident for a period of time necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

#### (4) Random testing

All safety-sensitive employees shall be tested on a random basis in accordance with federal protocol. The testing dates and times shall be unannounced and shall occur with unpredictable frequency throughout the year. With respect to random alcohol testing, an employee shall be randomly tested only while the employee is performing safety-sensitive duties, just prior to the performance of safety-sensitive duties, or just after the performance of safety-sensitive duties has ceased. With respect to random drug testing, an employee shall be randomly tested anytime while on duty.

The selection of safety-sensitive employees for random drug testing shall be made by a random computer selection process

utilizing assigned employee numbers. Employee names will not be utilized in the random computer selection process. Human intervention in this process shall be limited to the programming of the computer. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made. As a result of the random nature of the selection process, an employee may be randomly tested more than once in any given year or not at all.

A safety-sensitive employee selected for a random test shall be notified by his/her Department Head, Division Manager, or designated official to submit to a drug and/or alcohol test on the day of the test, immediately preceding the test. Once notified, the employee shall cease performance of his or her duties and immediately report to the testing site. An employee selected for a random test who is absent due to vacation, sick leave, other leave, or on urgent City business approved by his/her Department Head or Division Manager will not be notified to take the drug and/or alcohol test until the first day he/she returns to work after being randomly selected, even if the first day back occurs in a later month.

(5) Return to duty testing

Before returning to duty, each safety-sensitive employee: (i) who has refused to consent to or to take a drug or alcohol test, (ii) who has a verified positive drug test result, (iii) who has been found to have an alcohol concentration of 0.02 or greater during duty; or, (iv) who has otherwise violated the rules of this policy shall be required to undergo a return to duty drug test and/or a return to duty alcohol test, as applicable. In the case of an employee who has been found to have an alcohol concentration between 0.02 and 0.39, the employee may not return to duty until a minimum of eight (8) hours has elapsed, or until obtaining a test result indicating an alcohol concentration of less than 0.02. In the case of an employee who has been found to have an alcohol concentration of 0.04 or greater, the employee may not return to duty until obtaining a test result indicating an alcohol concentration of less than 0.02.

For each safety-sensitive employee who has refused to consent to or to take a drug test, has a verified positive drug test result, or has a positive alcohol test result of 0.04 or greater, before returning to safety sensitive duties, the employee must have signed a Return to Duty Agreement with the City of Huntsville that enumerates the recommendations of the Substance Abuse Professional (SAP) concerning treatment for the employee. The agreement must have been signed by the employee, the Health Center Resources and Program Manager and the SAP. The employee must have been evaluated by a Substance Abuse Professional (SAP) to determine whether the employee has properly followed the recommendations for action set out in the Return to Duty

Agreement, including participation in an SAP recommended educational program or rehabilitation program and have a verified negative result on a return to duty drug or alcohol test.

(6) Follow-up testing

Each safety-sensitive employee who has been subject to return to duty testing shall be subject to unannounced follow-up drug testing and/or alcohol testing as directed by a SAP. The number and frequency of such follow-up testing shall be as directed by the SAP and shall consist of at least six (6) tests in the first twelve (12) months following the employee's return to duty. Follow-up testing should be conducted just before, during, or after the employee is performing safety-sensitive functions. Follow-up testing shall not exceed sixty (60) months from the date of the employee's return to duty.

Employees to be tested under the provisions for post-accident testing, random testing, return to duty testing, or follow-up testing should be escorted to the testing site by a supervisor or the supervisor's designee.

(D) Submission To Drug and/or Alcohol Testing Required

An employee may not refuse to submit to a drug or alcohol test. A refusal to submit to testing shall be treated as though the employee tested positive for drugs or alcohol, and shall include one or more of the following consequences:

(1) Any employee defined as a safety-sensitive employee by this FTA/FMCSA Drug and Alcohol Policy who refuses to submit to a drug or alcohol test based on reasonable suspicion will not be permitted to continue his/her work shift and may be detained for a reasonable period of time until the employee can be safely transported home. Such an employee, subject to the discretion of his/her Department Head or Division Manager, may be: (i) placed on leave with pay until after the disposition of his/her disciplinary hearing; (ii) temporarily reassigned; or, (iii) requested to report back to work;

(2) Any employee defined as a safety-sensitive employee by this FTA/FMCSA Drug and Alcohol Policy who is subject to post-accident testing as defined by subsection 18.2(C)(3) and who refuses to submit to a drug or alcohol test shall be relieved of his/her job duties for the remainder of his/her shift or as otherwise provided herein; and, subject to the discretion of his/her Department Head or Division Manager, may be: (i) reassigned temporarily or (ii) placed on leave with pay until after the disposition of his/her disciplinary hearing;

(3) Any City employee requesting a transfer to a safety-sensitive position as defined by this FTA/FMCSA Drug and Alcohol Policy who

refuses to consent to or to take a drug or alcohol test as may be required shall not be considered for the transfer;

(4) Any applicant for a safety-sensitive position as defined by this FTA/FMCSA Drug and Alcohol Policy who refuses to consent to or to take a drug test shall not be considered for the position;

(5) Any employee defined as a safety-sensitive employee who refuses to submit to a drug or alcohol test upon being randomly selected for such test may be placed on leave with pay, or may be temporarily reassigned, subject to the discretion of his/her Department Head or Division Manager, pending the disposition of his/her disciplinary hearing; or,

(6) Any employee defined as a safety-sensitive employee who refuses to submit to return to duty or follow-up testing as required pursuant to this policy may be reassigned temporarily or may be placed on leave with pay subject to the discretion of his/her Department Head or Division Manager pending the disposition of his/her disciplinary hearing.

(E) Refusal To Test Defined

A refusal to submit to a drug or alcohol test includes any one or more of the following:

(1) Failure to appear within a reasonable time or failure to remain at the testing site until the testing is completed. (In the case of a pre-employment test, leaving prior to the commencement of the testing process, failure to appear, or aborting the collection before the test commences shall not be considered a refusal to test);

(2) Failure to remain at the testing site until the testing process is completed;

(3) Failure to complete a drug or alcohol test;

(4) Failure to provide an adequate urine sample for a drug test or an adequate breath sample for an alcohol test without a valid medical explanation;

(5) Engaging in behavior that obstructs or avoids the testing;

(6) Failure to permit observation or monitoring of a drug test in the event such is required;

(7) Failure to undergo a medical examination or evaluation directed by the Medical Review Officer (MRO) as part of the verification process. This subsection applies to all types of mandatory testing, including, but not limited to, pre-employment testing involving an applicant who has received a contingent offer of employment for a safety-sensitive position;

- (8) Determination by the MRO that the specimen has been adulterated or substituted;
- (9) Failure to relinquish items that could possibly contain adulterating or diluting agents;
- (10) Failure to undergo a second test, if required;
- (11) Failure to sign the certification at Step 2 of the Alcohol Testing Form;
- (12) Failure to cooperate with any part of the testing process; or,
- (13) Leaving the scene of an accident without just cause prior to submitting to a drug and alcohol test.
- (14) Failure to follow the observer's instructions during an observed collection including to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process;
- (15) Possess or wear a prosthetic or other device that could be used to interfere with the collection process; and
- (16) Admit to the collector or MRO that you adulterated or substituted the specimen.

A refusal to test shall be treated as though the employee's urine or breath sample returned a positive result, and shall bear the same consequences of a positive test result.

(F) Observed Collections

Observed collections are required in the following circumstances:

- (1) Anytime the employee is directed to provide another specimen because the temperature on the original specimen was out of the accepted temperature range of 90F -100F;
- (2) Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with;
- (3) Anytime a collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;

(4) Anytime the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid and the MRO determined that there was not an adequate medical explanation for the result;

(5) Anytime the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated or substituted, but had to be cancelled because of the test of the split specimen could not be performed.

(G) Procedures for Alcohol Testing

Prior to all alcohol testing, the employee shall be notified that the test is required under 49 C.F.R. Part 40, as amended.

The breath test shall primarily be performed at the City of Huntsville Health and Wellness Center by the Nurse or the City's Drug and Alcohol Screening Technician or by one otherwise trained and qualified to conduct such testing. When a breath test is required by this policy, the following guidelines and procedures shall be followed:

(1) The collector shall not be an individual with direct or indirect supervisory control over the employee to be tested;

(2) The breath testing device shall be a breath analysis machine selected from those listed on the Conforming Products List of Evidential Breath Measurement Devices as published by the National Highway Traffic Safety Administration, Department of Transportation; and,

(3) All procedures for conducting an alcohol breath test shall be in conformance with the DOT and the FTA regulatory requirements governing such testing for employees performing safety-sensitive functions. Alcohol concentration levels included within this policy for the purpose of determining a positive test result are as set forth in the federal regulations. Therefore, any changes in those federal regulations shall govern and take precedent over the procedures and concentrations considered as positive. If a breath test cannot be administered, the employee must be removed from performing safety-sensitive duties for at least eight (8) hours.

Any result of 0.02 or greater alcohol concentration is considered a positive test. Employees in safety-sensitive positions who have an alcohol test result of 0.02 to 0.039, when tested just before, during, or after performing safety-sensitive functions, must be immediately removed from performing such duties for eight (8) hours or until another breath test is administered and the result is less than 0.02. *Commercial motor vehicle drivers must be removed from driving for at least twenty-four (24) hours.*

A safety-sensitive employee who is found to have an alcohol concentration of greater than 0.02 but less than 0.04 shall be immediately removed from all safety-sensitive duties, and may not be allowed to return to the performance of safety-sensitive duties until (i) the employee's alcohol concentration measures less than 0.02 or (ii) the start of the employee's next regularly scheduled duty period, but not less than eight (8) hours following the administration of the test.

If an employee has an alcohol test result of 0.04 or greater, the employee cannot return to safety-sensitive duties until a Substance Abuse Professional (SAP) has evaluated him or her. Once the evaluation is completed and the SAP has recommended whether a treatment program or educational program is appropriate, the SAP will ensure that treatment or education is coordinated. A follow-up evaluation is conducted to ensure that the employee complied with the SAP's recommendations. If the SAP's recommendations were followed, the SAP would then recommend a return to duty test date. If the employee does not comply with the recommendations, the SAP will not authorize a return to duty test date until the employee has complied. Failure of a safety-sensitive employee to comply with the recommendations of the SAP shall constitute a violation of this policy and shall subject the employee to further disciplinary action. Each time an employee in a safety sensitive position engages in prohibited alcohol conduct, he or she will be evaluated by a SAP.

In the event an employee tests positive for alcohol, arrangements shall be made to deliver the employee home. An employee whose test results are below the concentration established for a positive test result shall report back to work, unless otherwise directed by his/her Department Head or Division Manager.

An employee testing under this procedure is subject to temporary reassignment by his/her Department Head or Division Manager pending the disposition of his/her disciplinary hearing.

#### (H) Procedures for Drug Testing

The drugs for which testing is required under this policy are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates, as may be amended from time to time by DOT in 49 C.F.R. Part 40, Section 40.87. When an urinalysis is required by this policy, it shall be conducted and evaluated in accordance with the standards, procedures, and protocol adopted for drug testing by the DOT in 49 C.F.R. Part 40, as amended. Such guidelines include the following procedures:

(1) The collector shall not be an individual with direct or indirect supervisory control over the employee to be tested;

(2) The primary collection site for collecting the urine specimen for testing shall be the City of Huntsville Health and Wellness Center. The site shall be maintained with the necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and transportation of urine specimens to a drug testing laboratory;

(3) In order to promote the security of specimens, avoid distraction of the collection site person, and ensure against any confusion in the identification of specimens, a collection site person shall conduct only one collection procedure at any given time. For this purpose, a collection procedure is complete when the urine bottle has been sealed and initialed, the urine custody and control form has been executed, and the applicant or employee has departed the site;

(4) To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks so the reservoir of water in the toilet bowl always remains blue. Where practicable, there shall be no other sources of water (e.g., no shower or sink) in the enclosure where urination occurs. If there is another source of water in the enclosure, it shall be effectively secured or monitored to ensure it is not used (undetected) as a source for diluting the specimens. A separate method for washing hands shall be provided. No soap disinfectants, cleaning agents, or other possible adulterants shall be present. The collection site shall be inspected to ensure that no foreign unauthorized substances are present. There shall be only one access to the testing site;

(5) Specimen validity testing will be conducted by the City's designated drug testing laboratory on all urine specimens provided for testing under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

(6) When an applicant or employee arrives at the collection site, the collection site person shall ensure that the applicant or employee is positively identified as the employee or applicant selected for testing. Acceptable forms of identification are a photo ID issued by the employer or a federal, state, or local government (e.g., driver's license). Faxes or photocopies are not acceptable. A positive identification by an employer representative (not a co-worker or another employee who is also being tested) is also acceptable identification. If the applicant's or employee's identity cannot be established, the collection site person shall not proceed with the collection;

(7) If the applicant or employee fails to arrive at the assigned time, the collection site person may contact the Health Center Resources and Program Manager, or his/her designee, to obtain guidance on the action to be taken;

(8) As soon as the employee arrives at the collection site the testing process should commence without undue delay. If the employee is also to take an alcohol test, to the greatest extent possible, the alcohol test should be completed prior to the urine collection;

(9) When the employee arrives at the collection site, the collection site person shall explain the collection procedure to the employee, including showing the employee the instructions on the back of the Federal Drug Testing Custody and Control Form (CCF);

(10) The collection site person may ask the applicant or employee to remove any unnecessary bulky outer garments such as a coat, vest, or jacket that might conceal items or substances that could be used to tamper with or adulterate the applicant's or employee's urine specimen. The collection site person must also ask the employee to empty his or her pockets in order to ensure that there are no items which could adulterate or dilute the specimen. If no such items are found, the pocket contents may be returned to the pockets. The collection site person shall ensure that all personal belongings such as purses, bags, briefcases, and other containers remain with the outer garments and are not carried into the test area. Such items shall be left in an agreed upon location. The employee may request a receipt for items not allowed in the testing area. A refusal to relinquish such items shall be considered a refusal to test. The applicant or employee may retain his/her wallet;

(11) The collection site person shall direct a collection under direct observation from the employee if the drug test is a return-to-duty or a follow-up test. The collection site person shall request that the employee raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the collection site person, by turning around, that the employee does not have a prosthetic device. After the collection site person determines that the employee does not have such a device, he/she may permit the employee to return clothing to its proper position for observed urination;

(12) As the observer, you must watch the employee urinate into the collection container. Specifically, you are to watch the urine go from the employee's body into the collection container;

(13) As the observer but not the collector, you must not take the collection container from the employee, but you must observe the specimen as the employee takes it to the collector;

(14) The applicant or employee shall be instructed to wash and dry his/her hands prior to urination;

(15) After washing his/her hands, the applicant or employee shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent, or any other materials which could be used to adulterate the specimen;

(16) The applicant or employee shall provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy, unless direct observation is required;

(17) Catheterization may not be used to collect a urine specimen unless an employee normally voids through self-catheterization in which case the employee is required to provide a specimen in that manner. A refusal to give a sample in that manner shall constitute a refusal to test;

(18) The collection site person shall note any unusual behavior or appearance on the CCF;

(19) In the exceptional event that an employer designated collection site is not accessible and there is an immediate requirement for specimen collection (e.g., an accident investigation), a public rest room may be used according to the following procedures: a collection site person of the same gender as the applicant or employee shall accompany the applicant or employee into the public rest room which shall be made as secure as possible during the collection procedure. If possible, a toilet bluing agent shall be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the applicant or employee not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the applicant or employee will be instructed to flush the toilet and to participate with the collection site person in completing the chain of custody procedures;

(20) The applicant or employee shall be asked to read and sign a statement on the CCF certifying that the specimen identified as having been collected from him or her is in fact the same specimen he or she provided;

(21) The collection site person shall complete the chain of custody portion of the CCF to indicate receipt from the applicant or employee, and shall certify proper completion of the collection;

(22) The collection site person shall not leave the collection site before the presentation of the specimen by the applicant or employee, the securing of the sample with an identifying label bearing the applicant's or employee's specimen identification number (shown on the CCF), and the sealing and initialing by the applicant or employee is completed. If it becomes necessary for the collection site person to leave the site during this interval, the collection shall be nullified and, at the election of the City, a new collection begun;

(23) To the maximum extent possible, collection site personnel shall keep the applicant's or employee's specimen bottle within sight both before and after the applicant or employee has urinated. After the specimen is collected, it shall be properly sealed and labeled. The CCF shall be used for maintaining control and accountability for each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on an approved CCF each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of individuals handling specimens;

(24) If the applicant or employee refuses to cooperate with the collection process (e.g., refusal to provide a complete specimen, complete paperwork, initial specimen, etc.) the collection site person shall proceed in accordance with the federal regulations;

(25) Upon receiving the specimen from the applicant or employee, the collection site person shall proceed in accordance with the procedures and protocol set forth in the DOT federal regulations;

(26) Whenever there is verification that a particular specimen has been altered, substituted or adulterated, or an employee or applicant attempts to tamper with a specimen, federal protocol will be followed;

(27) Upon receipt of a drug test result indicating that the specimen of an employee or applicant was invalid, with no valid medical explanation, the employee or applicant must immediately provide a new specimen under direct observation without being notified in advance of the need for a second collection. The same reasons for the original test (i.e., pre-employment, return to duty, or follow-up, etc.) shall be attributed to the second testing;

(28) In the case of pre-employment, return-to-duty, or follow-up testing, the employee or applicant shall be directed upon notice

of a cancelled test or upon notice that the specimen has been rejected for testing to provide another specimen immediately;

(29) Upon notice of a positive test, the MRO shall interview the employee or applicant to determine whether the positive drug test resulted from a valid medical explanation;

(30) The drug testing laboratories to be utilized under this policy shall be certified according to the Department of Health and Human Services under the National Laboratory Certification Program (NLCP), as may be amended from time to time;

(31) Specimens received by the City's designated laboratory shall be tested at a minimum for the presence of marijuana, cocaine, opiates, amphetamines, and phencyclidine as may be amended from time to time by DOT in 49 C.F.R. Part 40, Section 40.87. The laboratory shall report all test results in writing directly and only to the designated MRO for the City; and,

(32) Following a negative dilute result the employee will be required to undergo another test immediately. If an employee or applicant is directed to take another test, the result of the second test, not that of the original test, becomes the test of record. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO. If the employee or applicant declines to take another test, the employee or applicant has refused the test.

Thereafter, the MRO shall, after verifying the results, report the test results to the Health Center Resources and Program Manager or his/her designee. All results and testing information shall be maintained as confidential by the laboratory. The specimens, tests, and test results are deemed property of the City.

The initial drug screening test shall be a type which is in conformance with the DOT federal regulations which shall be administered at City expense. An employee whose drug test yields an initial positive result shall be given a second test at City expense in conformance with the DOT federal regulations. The second test shall use a portion of the same test sample, provided by the applicant or employee for use in the first test. An employee whose second test confirms the original positive test result may, at the employee's expense, have a third test conducted on the split specimen at a laboratory selected by the employee. The employee must contact the Medical Review Officer within seventy-two (72) hours of notification about the positive test result to request a test on the split specimen and select a laboratory certified and monitored by the Department of Health and Human Services. If the results of the employee's third test do not confirm the positive results of the initial and

confirmation test results, then the employee's test results of the split specimen shall be considered negative. Employees do not have access to a test of their split specimen following an invalid test result. A safety-sensitive employee with a verified positive test result shall be removed from safety sensitive duty and shall not be returned to safety-sensitive duties until he or she has been evaluated by a SAP, and he or she has complied with recommended rehabilitation. The employee must also submit to return to duty and follow-up testing.

An employee testing under this procedure is subject to temporary reassignment by his/her Department Head or Division Manager pending the disposition of his/her disciplinary hearing.

Subject to the discretion of the Department Head, Division Manager, or other designated official, arrangements shall be made to transport home an employee who is not directed by his/her Department Head, Division Manager, or other designated official to report back to work. An employee who is not directed to return back to work and who is not reassigned to a nonsafety-sensitive position shall be placed on leave with pay until such time as the employee is directed to return to work.

In the case of an applicant who fails a pre-employment drug test, following a contingent offer of employment to work in a safety sensitive position, the applicant shall be advised as to the resources available for evaluating and resolving problems with prohibited drug use and/or alcohol misuses, including the names, addresses, and telephone numbers of Substance Abuse Professionals and counseling or treatment programs.

(I) Medical Review Officer

A licensed physician or a roster of licensed physicians with knowledge of substance abuse disorders will be selected by the City to act as Medical Review Officer(s) for the City's Drug and Alcohol Program. A Medical Review Officer (MRO) will perform his/her responsibilities in accordance with the federal protocols and procedures for all City employees being tested.

In the performance of his/her responsibilities relative to notification and verification, if the MRO's reasonable efforts to notify the applicant or employee of the test results are not successful, the MRO may contact the Health Center Resources and Program Manager. (The MRO shall document the number of times he/she attempted to contact the applicant or employee.) The Health Center Resources and Program Manager, once contacted by the MRO, shall attempt to contact the applicant or employee and have him or her contact the MRO. The fact that the applicant or employee has been requested to contact the MRO will be held in confidence to the maximum extent practical. The MRO may verify a test as positive or a refusal to test because of adulteration or

substitution without having communicated directly with the applicant or employee about the test under the following circumstances:

- (1) The MRO has documented that the applicant or employee expressly declines the opportunity to discuss the test(s);
- (2) The Health Center Resources and Program Manager has successfully made and documented contact with the applicant or employee, has instructed the applicant or employee to contact the MRO, and seventy-two (72) hours have passed since the Health Center Resources and Program Manager made contact with the applicant or employee; or,
- (3) The MRO and the Health Center Resources and Program Manager have thoroughly documented their respective attempts to contact the applicant or employee, that those attempts have been unsuccessful, and that ten (10) days from the date the MRO received notice of a confirmed test result from the laboratory have passed.

(J) Confidentiality of Test Results

Results of an applicant's or employee's alcohol or drug test(s) are confidential. The drug testing laboratory is prohibited from releasing individual test(s) results to anyone except the designated MRO. The MRO shall make his/her determination/verification of all drug tests prior to disclosure of the results to the Health Center Resources and Program Manager. If the laboratory reports a positive result or a result involving adulteration or substitution to the MRO, the MRO must confidentially contact the employee or applicant (in person or by telephone), and conduct an interview to determine if there is a valid medical explanation for the drugs in the employee's or applicant's urine specimen. If the employee or applicant provides appropriate documentation and the MRO determines that it is legitimate medical use of the prohibited drug, the drug test result is reported as negative to the Health Center Resources and Program Manager. If the employee or applicant refuses to participate in the interview process, or fails to provide appropriate documentation explaining the presence of the drug or drugs found in the urine specimen, the drug test result will be reported as a positive or a refusal to test, as applicable, to the Health Center Resources and Program Manager. The Health Center Resources and Program Manager is the City's custodian of all drug and alcohol test results and, as such, maintains all drug and alcohol test records.

Where the employee has violated this drug and alcohol policy, the Health Center Resources and Program Manager or his/her designee shall notify the employee's Department Head, Division Manager, or his/her designated official and, in the case of applicants, the

Department of Human Resources that the policy has been violated. The policy violation may be released to the employee's supervisory chain and their legal representative(s), where necessary, to administer the provisions of this policy, including, but not limited to, disciplinary action associated with a policy violation. In addition, information of the policy violation may be released to the decision maker in a disciplinary action, or in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee tested. Also, the City is required to report results of testing programs to the Department of Transportation (DOT), DOT regulatory authorities, or in some cases the National Transportation Board.

Disclosure of test(s) results to any other person, agency, or organization is prohibited unless written authorization is obtained from the applicant or employee or ordered from an appropriate legal authority. All records relating to the taking of a drug or alcohol test(s) or the order to take a drug or alcohol test(s) shall be kept confidential. The records shall not be made a part of an individual's personnel file; provided, however, in the event of a disciplinary action arising from a positive test result such records may be made a part of the employee's personnel file to the extent that such records form a part of the Finding of Facts of the disciplinary action. The official custodian of all test results shall be the Health Center Resources and Program Manager.

(K) Retention of Records

(1) Records related to test results

In the case of an applicant or employee whose drug or alcohol test results are positive, all collection and test records will be retained for at least five (5) years. Records for an applicant or an employee whose drug or alcohol test results are negative will be retained for at least one (1) year. Such records shall include the following: (i) the employer's copy of the custody and control form; (ii) documents related to the refusal of any covered employee to submit to a required drug or alcohol test; (iii) documents presented by a covered employee to dispute the result of a test administered; and, (iv) any documents relating to a covered employee's entry into and completion of the treatment program recommended by the Substance Abuse Professional.

(2) Records related to the collection process

Records related to the collection process. Such records shall include the following: (i) collection logbooks, if used; (ii) documents relating to the random selection process; (iii) documents generated in connection with decisions to administer reasonable suspicion drug or alcohol tests; (iv) documents

generated in connection with decisions on post-accident drug and alcohol testing; and, (v) MRO documents verifying existence of a medical explanation of the inability of a covered employee to provide an adequate urine or breath sample.

(3) Records related to employee training

Records related to employee training shall include the following: (i) training materials on drug use awareness and alcohol misuse, including a copy of the employer's policy on prohibited drug use and alcohol misuse; (ii) names of covered employees attending training on prohibited drug use and alcohol misuse and the dates and times of such training; (iii) documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug and alcohol testing based on reasonable suspicion; and, (iv) certification that any training conducted under this part complies with requirements for such training.

(4) Copies of annual MIS reports submitted to the FTA shall also be maintained. Further, all records shall be maintained in a secure location with controlled access. See 49 C.F.R. part 655.71.

(L) Disciplinary Proceedings

A safety-sensitive employee who tests positive for drugs or alcohol with a concentration of 0.04 or greater shall be subject to one or more of the following disciplinary actions:

(1) Suspension without pay for ten (10) days or more and successful completion of a SAP recommended education or Drug or Alcohol Treatment Program within eight (8) weeks of beginning the program. The City shall pay in accordance with the Group Health Plan under which the employee is covered;

(2) Demotion and successful completion of a SAP recommended education or Drug or Alcohol Treatment Program within eight (8) weeks of beginning the program. The City shall pay in accordance with the Group Health Plan under which the employee is covered; or,

(3) Termination.

Failure of the employee to complete the SAP recommended education or Drug or Alcohol Treatment Program as referenced within this policy, or failure of the employee to complete additional requirements as recommended by the SAP, (e.g., additional treatment, aftercare or support group services) even after the employee returns to safety-sensitive duties, shall be grounds for further disciplinary action up to and including termination.

The factors to be considered in determining the appropriate disciplinary response include, but are not limited to, the circumstances giving rise to the drug or alcohol test as required herein, the employee's work history, length of employment, current job performance, and the existence of past official disciplinary actions. A safety-sensitive employee who tests positive a second time for drugs or alcohol with a concentration of 0.04 or greater shall be terminated, if the violation is consistent with the Finding of Facts rendered by the Hearing Officer.

An employee, prior to receiving notice of the requirement to be tested, who voluntarily identifies himself or herself as a substance abuser, obtains counseling and rehabilitation through a qualified substance abuse treatment facility approved by the Health Center Resources and Program Manager or the SAP, and thereafter refrains from violating this FTA/FMCSA Drug and Alcohol Policy is not subject to disciplinary action under this policy. However, this provision does not preclude the employee from disciplinary action related to misconduct otherwise in violation of the City's Personnel Policies and Procedures.

(M) Drug Awareness Education Program

The City will conduct a Drug Awareness Education Program for its employees which will inform employees about the dangers of drug and alcohol abuse, the indicators of drug and alcohol use, the City's policy of maintaining a drug-free workplace, and the availability of community drug and alcohol counseling and rehabilitation resources. The program will consist of at least one-hour of training. Safety-sensitive employees will receive a policy statement regarding the City of Huntsville's drug and alcohol abuse policies and testing programs in accordance with 49 C.F.R. part 655 and other applicable regulations, and notification of the positions designated as safety-sensitive.

(N) Covered Employee Training

Covered employees will receive at least one (1) hour of training regarding the effects and consequences of prohibited drug and alcohol use on personal safety, health, and the work environment. Training will also include the identification of symptoms that may indicate the prohibited use of drugs or alcohol. See 49 C.F.R. Part 40, as amended.

(O) Supervisor Training

Supervisory personnel will receive at least one (1) hour of training in identifying the physical, behavioral, speech, and

performance indicators of drug use, and one additional hour in identifying the physical, behavioral, and performance indicators of alcohol use among employees. Such training will be directed towards helping supervisors recognize the conduct and behavior that gives rise to a reasonable suspicion of drug or alcohol use.

(P) Health Center Resources and Program Manager Referral

Employees having a verified positive drug test or alcohol test result of 0.04 or greater, or a refusal to test (including the adulteration or substitution of a urine specimen) and who are covered by the Federal Transit Administration or the Federal Motor Carrier Safety Administration shall be referred to a Substance Abuse Professional.

(Q) Interpretations

To the extent that any portion or provision of this policy conflicts with any applicable federal or state laws or regulations, such federal or state laws or regulations will be controlling. Definitions of terms used herein shall be consistent with those set forth in the relevant federal regulations referenced in 49 CFR Part 40, as amended.

This policy shall not be construed to confer to any employee any property interest in such employee's continued employment, unless such employee falls within a class of employees which has been granted such rights under the City's Personnel Policy and Procedures Manual. Any requirements or obligations imposed by this policy on third parties shall not confer any rights or benefits upon the employee or applicants unless otherwise conferred by law.

(R) Severable

The provisions of this policy are severable. If any part of this policy is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

**18.3 CITY OF HUNTSVILLE'S DRUG AND ALCOHOL POLICY FOR ALL EMPLOYEES** (excluding employees tested pursuant to the authority of the Federal Transit Administration and Federal Motor Carrier Safety Administration requirements set forth in Section 18.2)

The City of Huntsville acknowledges the problem of drug and alcohol abuse in our society. Furthermore, the City recognizes drug and alcohol abuse as a serious threat to its employees. Substance abuse in the workplace may result in poor work attendance or unsatisfactory job performance and may also create safety hazards for employees and the public at large. It is the intention of the City to implement a Drug and Alcohol Policy that will allow the City to effectively detect substance abuse by its

employees. The City's goal is the following: (i) to assure that its employee's ability to perform his/her job is not adversely affected or impaired; (ii) to create a workplace environment free from the adverse effects of drug and alcohol abuse; and, (iii) to prohibit the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace. In an effort to meet these goals, the City is adopting this City of Huntsville Drug and Alcohol Policy. Employee participation in the City's Drug and Alcohol Policy is required and is a condition of employment.

The City's contact person for information about this City of Huntsville Drug and Alcohol Policy is Pamela M. Stephens. She may be reached by telephone at (256) 883-3726.

(A) Prohibited Behavior

(1) It shall be a violation of City policy for any employee to manufacture, distribute, sell, purchase, use, or possess alcohol, marijuana, cocaine, opiates, amphetamines, phencyclidine, non-prescribed controlled substances (including but not limited to anabolic steroids), or any unlawful substances while on duty or while in the workplace.

(2) It shall be a violation of City policy for any employee to report to work, be at work under the influence of, adversely affected by, or impaired by alcohol, marijuana, cocaine, opiates, amphetamines, phencyclidine, non-prescribed controlled substances (including but not limited to anabolic steroids), or any unlawful substances while on duty or while in the workplace.

(3) It shall be a violation of City policy for any employee to use prescription drugs unlawfully. It is not a violation of our policy for an employee to use lawfully prescribed medications, where those medications were lawfully prescribed for the individual employee. However, the employee shall notify his/her supervisor if the prescribed medication may affect the employee's ability to perform his/her job.

(4) It shall be a violation of City policy for an employee to report to or to be at work with prescribed or over-the-counter drugs in the blood or urine or taking prescribed or over-the-counter drugs where the use of such has adversely affected or impaired the employee's ability to perform the duties of his/her job or has posed a safety risk. Each employee shall advise his/her supervisor in writing of the taking of a prescribed or over-the-counter drug which may adversely affect or impair his/her ability to perform the duties of his/her job or which may create a safety risk. Failure of the employee to promptly notify his/her supervisor in writing of the taking of a prescribed or an over-the-counter drug which may adversely affect or impair the employee's ability to perform his/her job or which may create a

safety risk is also considered to be a violation of City policy. An employee who takes a prescribed or over the counter drug which may impair or adversely affect the employee's ability to perform his/her job or which may create a safety risk may remain on his/her job, may be required to take sick leave or a leave of absence or may be subject to other appropriate action, such as temporary reassignment, as determined by his/her Department Head or Division Manager.

(5) It shall be a violation of City policy for an employee who is convicted of any violation of a criminal drug statute or alcohol statute to fail to notify his/her supervisor in writing within five (5) days after such conviction.

(6) It shall be a violation of City policy to alter, adulterate, or dilute or attempt to alter, adulterate, or dilute urine specimens. It shall also be a violation of City policy to substitute or attempt to substitute a urine specimen.

(7) It shall be a violation of City policy for any employee to report for duty or remain on duty while having an alcohol concentration of 0.02 or greater.

(8) It shall be a violation of City policy for any safety-sensitive employee, as hereinafter defined, to use alcohol within four (4) hours prior to performing safety-sensitive functions or while being "on-call" to perform safety-sensitive functions, to perform safety-sensitive functions within four (4) hours after using alcohol, or to use alcohol while performing safety-sensitive functions.

(9) It shall be a violation of City policy for an employee to refuse to take, consent to, or complete any drug or alcohol test as required by this Drug and Alcohol Policy. Refusal to take, consent to, or complete a drug or alcohol test means that the employee fails to provide an adequate urine sample for a drug test or an adequate breath sample for an alcohol test without a valid medical explanation after he or she had received notice of the requirement to be tested; or the employee engages in conduct that obstructs or avoids the testing process after receiving notice of the requirement to be tested. For the purpose of this policy and for disciplinary purposes, a violation of this rule shall be treated as though it were a positive drug or alcohol test result.

(10) It shall be a violation of City policy for a supervisor to allow an employee known to be in violation of these rules to perform or continue to perform safety-sensitive functions.

(11) It shall be a violation of City policy for an employee to violate or fail to comply with any provisions, terms, conditions, procedures, or requirements of this policy.

## (B) Disciplinary Proceedings

A City employee in violation of this drug and alcohol policy shall be subject to one or more of the following as disciplinary actions:

(1) Suspension without pay for ten (10) days or more and successful completion of a SAP recommended education or Drug or Alcohol Treatment Program within eight (8) weeks of beginning the program. The City shall pay in accordance with the Group Health Plan under which the employee is covered;

(2) Demotion and successful completion of a SAP recommended education or a Drug or Alcohol Treatment Program within eight (8) weeks of beginning the program. The City shall pay in accordance with the Group Health Plan under which the employee is covered;  
or,

(3) Termination.

Failure of the employee to complete the SAP recommended education or Drug or Alcohol Treatment Program as referenced within this policy, or failure of the employee to complete additional requirements as recommended by the SAP, (e.g., additional treatment, aftercare or support group services), even after the employee returns to safety-sensitive duties shall be grounds for further disciplinary action up to and including termination.

The factors to be considered in determining the appropriate disciplinary response include, but are not limited to, the circumstances giving rise to the drug or alcohol test as required herein, the employee's work history, length of employment, current job performance, and the existence of past official disciplinary actions. An employee who is in violation of this Drug and Alcohol Policy a second time shall be terminated, if the violation is consistent with the Finding of Facts rendered by the Hearing Officer.

An employee, prior to receiving notice of the requirement to be tested, who voluntarily identifies himself or herself as a substance abuser, obtains counseling and rehabilitation through a qualified substance abuse treatment facility approved by the Health Center Resources and Program Manager or the Substance Abuse Professional (SAP), and thereafter refrains from violating this Section 18.3 is not subject to disciplinary action under this policy. However, this provision does not preclude the employee from disciplinary action related to misconduct otherwise in violation of the City's Personnel Policies and Procedures.

## (C) Submission to Drug and Alcohol Testing

For the purpose of the City's Drug and Alcohol Policy, the policy and procedure for submission to drug and alcohol testing shall be as set forth in subsection 18.2(D) of the FTA/FMCSA Drug and Alcohol Policy.

(D) Testing Based on Reasonable Suspicion

A Department Head, Division Manager or his/her designated representative may request and authorize the drug or alcohol testing of any City employee where there is a "reasonable suspicion" that the employee has violated this drug and alcohol policy by the use of alcohol or prohibited drugs. The request for reasonable suspicion testing and determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable, observations concerning the appearance, behavior, speech, or body odors of the employee including, but not limited to, the following:

- (1) The presence of recognizable physical symptoms of drug or alcohol use, e.g., slurred speech, bloodshot eyes, alcohol on breath, inability to stand or to walk a straight line;
- (2) Indications of the chronic and withdrawal effects of controlled substances;
- (3) Direct knowledge or observation of drug or alcohol use or possession, or possession of drug paraphernalia; or,
- (4) Aberrant conduct or behavior that is so unusual that it warrants summoning a supervisor or other assistance.

The required observations must be made by a supervisor who has been trained in detecting the symptoms of drug use and alcohol misuse. The Department Head, Division Manager or his/her designated representative shall make a written determination of reasonable suspicion based on the observation as indicated above. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on the employee.

Employees to be tested for "reasonable suspicion" shall be escorted to the testing site by a supervisor or the supervisor's designee as soon as possible so that the test may be administered within two (2) hours of the determination to test. Employees may still be tested if the test can be accomplished within eight (8) hours of the reasonable suspicion determination; however, if employees are not tested within eight (8) hours of the determination that reasonable suspicion exists for testing, then such event must be reported to the Health Center Resources and Program Manager and an investigation must be conducted to determine why the employee was not tested as required herein.

An employee who has a positive drug or alcohol test result or equivalent based on reasonable suspicion testing shall be subject to the same disciplinary proceedings, return to duty, and follow-up testing imposed upon safety-sensitive employees, including the Return to Duty Agreement.

(E) Testing for Safety-Sensitive Positions

In addition to the reasonable suspicion testing provided for all City employees in the foregoing paragraph, additional drug and alcohol testing is required by the City for employees performing safety-sensitive functions.

For the purposes of this policy set forth in this Section 18.3, the following types of functions or jobs are considered safety-sensitive: (i) a position requiring or having regular, direct access to a controlled substance; (ii) a position requiring having access to NCIC information; (iii) a position where the employee's action or inaction directly affects public safety; and, (iv) supervisors performing or directly supervising an employee performing those safety-sensitive functions listed in (i), (ii), and, (iii) herein.

A Department Head or Division Manager who believes that a job position has safety-sensitive functions shall identify each such position and submit it to the Health Center Resources and Program Manager who, in consultation with the City Attorney's Office and Human Resources Director shall review the request before certifying that a position is safety-sensitive. Human Resources shall maintain a list designating which job classifications/positions are considered to be safety-sensitive.

Employees in safety-sensitive positions as defined in this subsection 18.3(E) shall be notified that they are in such positions and that they are subject to pre-employment, post-accident, random, return to duty, follow-up, and reasonable suspicion testing.

Pre-employment, post-accident, random, return to duty, reasonable suspicion and follow-up drug and alcohol testing for employees in safety-sensitive jobs as defined above in this subsection 18.3(E) shall be in accordance with the procedures set forth in subsection 18.2(C) of the FTA/FMCSA Drug and Alcohol Policy except as modified herein.

(1) Pre-employment testing

Testing shall be in accordance with subsection 18.2 (C) (1).

(2) Post-accident testing

Mandatory drug and alcohol testing shall be required of all employees who are in safety-sensitive job classifications as defined in this subsection 18.3(E), after the occurrence of a workplace accident which results in personal injury to any person, damage to any property, or after the occurrence of any event or action which could reasonably be foreseen to cause an accident likely to result in personal injury to any person or damage to any property, unless the employee's performance can be discounted as a causative or contributing factor. Employees shall report for post-accident alcohol testing as soon as practicable following the accident, but not later than two (2) hours after the accident. Failure to report for post-accident testing within the two (2) hour post-accident period shall be deemed a refusal to submit to testing unless the employee was detained in order to seek emergency medical care, to obtain assistance in responding to the accident, or was physically unable to report due to injuries received in the accident. No post-accident alcohol testing shall be performed later than eight (8) hours after the accident.

Employees required to take a post-accident alcohol test shall not use alcohol for eight (8) hours following the accident, or until he or she undergoes a post-accident alcohol test, whichever occurs first.

Employees required to undergo post-accident drug tests shall report to the test facility in sufficient time for the test to be administered within thirty-two (32) hours of the accident. Failure to report for testing within the thirty-two (32) hour time frame subsequent to the accident shall be deemed a refusal to submit to testing unless the employee was detained in order to seek emergency medical care, to obtain assistance in responding to the accident, or was physically unable to report due to injuries received in the accident.

Nothing contained herein shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

### (3) Random testing

Subject to the availability of funding, all safety-sensitive employees as defined in this subsection 18.3(E) above shall also be tested on a random basis. Random drug and alcohol testing shall be conducted in accordance with subsection 18.2(C)(4). Random testing pursuant to this subsection shall be based on a random testing pool separate from the random testing pools established for employees tested pursuant to subsection 18.2(C)(4).

(4) Return to duty testing

Return to duty testing shall be in accordance with subsection 18.2(C)(5).

(5) Follow-up testing

Follow-up testing shall be in accordance with subsection 18.2(C)(6).

Employees to be tested under the provisions for post-accident testing, random testing, return to duty testing, or follow-up testing should be escorted to the testing site by a supervisor or the supervisor's designee.

(6) Reasonable Suspicion

Reasonable Suspicion shall be in accordance with subsection 18.2(C)(2)

(F) Procedures for Alcohol Testing

Procedures for Alcohol Testing shall be in accordance with subsection 18.2(G).

(G) Procedures for Drug Testing

Procedures for Drug Testing shall be in accordance with subsection 18.2(H).

(H) Confidentiality of Test Results

Policies and procedures to be followed for confidentiality of test results shall be in accordance with subsection 18.2(J).

(I) Medical Review Officer

Policies and procedures for the Medical Review Officer shall be in accordance with subsection 18.2(I).

(J) Searches

When an employee's ability to perform his/her job leads to the request for a drug and alcohol test and results of the test(s) are positive, the City reserves the right to search, without the employee's consent, all areas and property in which the City maintains full control or joint control with the employee.

(K) Drug Awareness Education Program

The City will conduct a Drug Awareness Education Program for its employees which will inform employees about the dangers of drug

and alcohol abuse, the indicators of drug and alcohol use, the City's policy of maintaining a drug-free workplace, and the availability of community drug and alcohol counseling and rehabilitation resources. Safety-sensitive employees will receive a policy statement regarding the City of Huntsville's drug and alcohol abuse policy and testing program and notification of the positions designated as safety-sensitive.

(L) Supervisor Training

Supervisory personnel will receive at least one hour of training in identifying drug use, and one (1) additional hour in identifying alcohol use among employees. Such training will be directed towards helping supervisors recognize the conduct and behavior that gives rise to a reasonable suspicion of drug or alcohol use.

(M) Health Center Resources and Program Manager Referral

Employees may be referred to an Health Center Resources and Program Manager or appropriate community resource for assessment, counseling, and rehabilitation.

(N) Interpretations

To the extent that any portion or provision of this policy conflicts with any applicable federal or state laws or regulations, such federal or state laws or regulations will be controlling.

This policy shall not be construed to confer to any employee any property interest in such employee's continued employment, unless such employee falls within a class of employees which has been granted such rights under the City's Personnel Policy and Procedures Manual. Any requirements or obligations imposed by this policy on third parties shall not confer any rights or benefits upon the employee or applicants unless otherwise conferred by law.

(O) Severable

The provisions of this City of Huntsville Drug and Alcohol Policy are severable. If any part of the City of Huntsville Drug and Alcohol Policy is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

**ADOPTED** this the \_\_\_\_ day of November, 2015.

\_\_\_\_\_  
President of the City Council of  
the City of Huntsville, Alabama

**APPROVED** this the \_\_\_\_ day of November, 2015.

\_\_\_\_\_  
Mayor of the City of  
Huntsville, Alabama