



# **City of Madison Alcohol and Drug Testing Policy**

**Human Resources Department  
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## **BACKGROUND**

While misuse of alcohol and drugs among employees is the exception rather than the rule, the City is concerned over the growing issue of substance abuse in society and acknowledges the devastating impact of such abuse on the safety, health and efficiency of its workforce and those it serves. Alcohol and drug use can impair thinking and reasoning and may lead to behaviors that bring the user into severe conflict with their work environment. While the City has no intention of unreasonably intruding into the off-duty lives of its employees, it is necessary to establish policies and procedures for dealing with use and/or misuse of alcohol and/or drugs/controlled substances that may affect the workplace, thereby preventing potentially serious consequences to the public and employees.

## **WHO IS COVERED BY THIS POLICY**

All City of Madison employees are covered by this policy and are referred to as “covered employees,” with the exception of employees at Madison Metro working in safety sensitive positions who are covered by a separate policy.

However, not all requirements of this policy apply to all covered employees. Employees who are required to maintain a CDL for the performance of their job duties have stricter requirements than most other covered employees. Therefore, not all provisions of this policy apply equally to all covered employees. CDL holders are always considered covered employees under this policy, but where their terms differ from other covered employees, they will be referred to as CDL holders.

All employees will be provided a copy of this policy at orientation and this policy will be available on the City’s website.

## **PROHIBITIONS**

### **Alcohol-Covered Employees**

- Covered employees are prohibited from reporting for duty or remaining on duty when their ability to perform assigned functions is adversely affected by alcohol or when their blood alcohol concentration is 0.04 or greater.<sup>1</sup>
- Covered employees are prohibited from possessing or using alcohol while on duty.
- Covered employees are prohibited from using alcohol during the hours that they are receiving stand-by pay.
- Covered employees are prohibited from operating a City vehicle while the employee possesses alcohol unless the alcohol is being transported on City business.
- Covered employees are prohibited from returning to duty until they have successfully passed a return to duty test.

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<sup>1</sup> Note: Alcohol levels are affected by the amount of alcohol consumed, physical characteristics of the employee, and the employee’s rate of metabolizing alcohol which has been consumed.

## **Alcohol-CDL Holders**

In addition to the above:

- CDL holders are prohibited from having used alcohol within four (4) hours of reporting for duty. Employees are cautioned that refraining from alcohol for four (4) hours before reporting for duty may not result in a negative test.
- CDL holders are prohibited from performing safety-sensitive functions for 24 hours following an alcohol test result indicating an alcohol concentration of greater than 0.001 but less than 0.04.
- CDL holders are prohibited from possessing or using medication containing alcohol while on duty. CDL holders that test positive for alcohol will be removed from their position, and be subject to provisions of this Policy, even if the reason for the positive alcohol test is the fact that the employee's prescription medication contains alcohol.

## **Drugs/Controlled Substances- Covered Employees**

- Covered employees are prohibited from reporting for duty or remaining on duty when the covered employee uses or is under the influence of any drugs/controlled substance, except when 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 perform their duties.
- Covered employees are prohibited from reporting for duty or remaining on duty if the covered employee tests positive for drugs/controlled substances.
- Covered employees are prohibited from returning to duty until they have successfully passed a return to duty test.

## **Drugs/Controlled Substances-CDL Holders**

In addition to the above:

- CDL holders are prohibited from reporting for duty, remaining on duty, and/or performing safety-sensitive functions following a positive test for drugs/ controlled substances.
- CDL holders are prohibited from refusing to submit to a pre-employment, post-accident, random, reasonable suspicion, return-to-duty, or follow-up tests.

## **OTHER PROHIBITIONS AND REQUIREMENTS**

### **Covered Employees**

- Covered employees are required to maintain the appropriate qualifications for the performance of assigned job duties.
- Covered employees are required to report any loss or change in the status of any required qualifications.
- Covered employees are required, if reasonable suspicion exists, to provide access to City owned vehicles, tool boxes, lockers, desks, and/or other City equipment.
- Covered employees are prohibited from obstructing or interfering with the administration of any alcohol or drug/controlled substances test.

- Covered employees are prohibited from engaging in the unlawful manufacture, sale or attempted sale, distribution, dispensing, possession or use of alcohol, drugs/controlled substance, and/or drug paraphernalia in the workplace.
- Covered Employees are required to notify their supervisor if they are taking any legally prescribed or non-prescription drugs/controlled substances that may adversely impact their ability to perform their job duties in a safe and efficient manner.

### **CDL Holders**

In addition to the above:

- CDL holders must immediately report to their supervisor any arrest and/or conviction for operating a vehicle under the influence of alcohol, drugs/controlled substances, or any combination thereof.
- CDL holders must immediately report to their supervisor any conviction for a violation of a criminal drug statute.
- CDL holders must immediately report to their supervisor if they are taking any legally prescribed or non-prescription drug/controlled substance which contains any amount of alcohol or which carries a warning label that indicates the employee's mental functioning, motor skills, or judgment may be adversely affected by the use of this medication.<sup>2</sup>

### **TESTING PROCEDURES**

The City of Madison contracts with an external vendor to provide alcohol and drug/controlled substances testing for employees. Tests are generally done at specified City of Madison facilities. Testing sites shall provide visual and aural privacy for employees sufficient to prevent unauthorized persons from seeing or hearing test results. All necessary equipment, personnel and materials shall be provided at the location where the testing is conducted. No unauthorized person shall be permitted access to the testing location when the Evidential Breath Testing device (EBT) remains unsecured or, in order to prevent such person from seeing or hearing test results, at any time when testing is being conducted. In unusual circumstances (for example, when it is essential to conduct a test outdoors at the scene of an accident), a test may be conducted at a location that does not fully meet these requirements. In such cases employees shall be provided visual and aural privacy to the greatest extent practicable.

### **Alcohol Testing-Covered Employees**

Alcohol tests shall be administered by a Breath Alcohol Technician (BAT) using an EBT device<sup>3</sup> in accordance with the following procedures:

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<sup>2</sup> It is the responsibility of the employee to accurately inform their physician of the type of job duties that the employee performs in order that the physician may determine if the prescribed substance could interfere with the safe and effective performance of the employee's duties or operation of City equipment.

<sup>3</sup> If the Department of Transportation Federal Highway Administration approves administration of tests by persons other than a BAT, or approves the use of other methods or technologies for detecting the presence of alcohol, then the administration of tests by such other persons and/or the use of such other methods or technologies shall be permitted under this policy.

***Initial Testing***

- Covered employees directed to undergo alcohol testing shall proceed to the designated test site as instructed, and shall be accompanied by a supervisor.
- Upon entering the test site, covered employees shall be required to provide the BAT with positive identification. Positive identification may take the form of a photo ID card or identification by a supervisor or City official. On request of the covered employee, the BAT shall provide positive identification to the covered employee.
- Covered employees shall follow all procedures and instructions given by the BAT including completing, signing, initialing, and/or dating any required forms.
- If a covered employee fails to follow all procedures and instructions given by the BAT, it shall be considered a refusal to test.
- If the covered employee takes the test, but inadvertently neglects to sign the certification of the Breath Alcohol Testing Form, and the test shows a concentration of less than 0.04, it shall not be considered a refusal to test. If the test shows a concentration of greater than 0.04, it shall be considered a refusal to test.
- The BAT shall supervise only one covered employee's use of the EBT at a time and shall not leave the alcohol testing location while testing is in progress.
- If an initial test of a covered employee indicates a breath alcohol concentration of less than 0.04, no further alcohol testing shall be conducted and the covered employee shall return to work.
- If the initial test of a covered employee indicates a breath alcohol concentration of 0.04 or greater, a confirmation test shall be conducted as described below.

***Confirmation Testing***

- If the initial test indicates a breath alcohol concentration of 0.04 or greater, a confirmation test shall be conducted between 15 and 20 minutes following completion of the initial test.
- The covered employee shall not eat, drink, put any object or substance in their mouth, and, to the extent possible, not belch during the waiting period.
- If a BAT other than the one who conducted the initial test is conducting the confirmation test, the covered employee shall be required to provide positive identification, and the covered employee may request positive identification of the new BAT as described above. In addition, the new BAT shall initiate a new Breath Alcohol Testing form. The covered employee shall then complete the form and sign the certification as required. Failure to follow all procedures and instructions given by the BAT shall be considered a refusal to test during the initial or confirmation testing process.
- If the confirmation test of a covered employee indicates a breath alcohol concentration of less than 0.04, the covered employee shall return to work.
- If the confirmation test of a covered employee indicates a breath alcohol concentration of 0.04 or greater, the covered employee will be prohibited from returning to work until successfully passing a return to duty test, as described later in this policy.
- The BAT shall immediately notify the Designated Employer Representative (DER) of a confirmation test result of 0.04 or greater.

***Failure to complete the testing***

- If an initial or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall begin a new initial or confirmation test, as applicable and practicable, using a new Breath Alcohol Testing form with a new sequential test number.
- If a covered employee is unable or alleges that they are unable to provide an amount of breath sufficient to permit a valid breath test because of a medical condition, the BAT shall again instruct the covered employee to attempt to provide an adequate amount of breath. If the covered employee refuses to make the attempt, it shall be considered a refusal to test. If the covered employee attempts and fails to provide an adequate amount of breath, the BAT shall note it in the “Remarks” section of the breath alcohol form, immediately inform the DER, and the employee shall be removed from duty for a minimum of 24 hours. The DER shall direct the covered employee to obtain, as soon as practicable after the attempted provision of breath, an evaluation from a licensed physician who is acceptable to the City concerning the covered employee’s medical ability to provide an adequate amount of breath.
- If the licensed physician determines that in their reasonable medical judgment, that a medical condition has, or with a high degree of probability could have precluded the covered employee from providing an adequate amount of breath, the covered employee’s failure to provide an adequate amount of breath shall not be considered a refusal to test. The physician shall provide to the City a written statement of the basis for their conclusion.
- If the licensed physician in their reasonable medical judgment is unable to determine that a medical condition has or with a high degree of probability, could have precluded the covered employee from providing an adequate amount of breath, the covered employee’s failure to provide an adequate amount of breath shall be considered a refusal to test. The physician shall provide to the City a written statement of the basis for their conclusion.
- The BAT shall immediately notify the DER of any refusal to test.
- A refusal to test shall be deemed a positive test.

***Confidentiality***

- All testing information/results shall be transmitted to the DER or designee in a confidential manner. Test results will be retained by the City for five (5) years.
- The DER or designee shall receive and store the information so as to ensure that confidentiality is maintained.

**Alcohol- CDL Holders**

In addition to the above:

- If the initial test of a CDL holder indicates a breath alcohol concentration greater than 0.001 but less than 0.04, a confirmation test will be conducted as described above.
- If the confirmation test of a CDL holder is negative (0.00), the CDL holder shall return to work.
- If the confirmation test indicates a breath alcohol concentration greater than 0.001 but less than 0.04, the CDL holder will be prohibited from performing safety sensitive functions for 24 hours following the test. The CDL holder may be assigned to other duties in the department/division if such duties are available, or may be sent home without pay.

## **Drugs/Controlled Substances- Covered Employees**

Drugs/controlled substances testing shall be conducted by a certified laboratory in accordance with the following procedures:

### ***Initial Testing***

- Covered employees directed to undergo drugs/controlled substances testing shall proceed to the designated test site as instructed, and shall be accompanied by a supervisor.
- Upon entering the test site, covered employees shall be required to provide the collection technician with positive identification. Positive identification may take the form of a photo ID card or identification by a supervisor or City official. On request of the covered employee, the collection technician shall provide positive identification to the covered employee.
- Covered employees shall follow all procedures and instructions given by the collection technician including completing, signing, initialing, and/or dating any required forms.
- If a covered employee fails to follow all procedures and instructions given by the collection technician, it shall be considered a refusal to test.
- The collection technician shall collect a urine sample from the covered employee in accordance with Federal Highway Administration procedures.
- The covered employee shall provide at least 45 ml of urine for testing.
- The collection technician shall divide the specimen into two containers. One container shall contain at least 30 ml of urine and shall be the primary specimen. The other container shall contain at least 15 ml of urine and shall be the split specimen.
- Both containers shall be shipped to the testing laboratory in a single shipping container, together with supporting documents and the split specimen copy of the chain of custody form.
- The laboratory shall log in the split specimen with the split specimen seal remaining intact.
- The laboratory shall store the split specimen securely in accordance with approved procedures.
- The primary specimen shall undergo a screening test for the presence of drugs/controlled substances per established cutoff levels. A Medical Review Officer (MRO) shall review all primary specimen results.
- If the initial test result is negative, the laboratory may discard the split specimen and no additional action will be taken by the MRO unless the MRO has reason to believe the primary specimen has been adulterated. All negative tests results will be forwarded to the City's DER.
- If the MRO has reason to believe the primary specimen has been adulterated the MRO shall have the authority to order an employee to undergo a retest for the presence of drugs/controlled substances. If the MRO orders a retest, the specimen collected for the retest shall be considered the primary specimen.
- If the initial screening test or retest detects the presence of drugs/controlled substances, the primary specimen shall undergo a confirmation test.

### ***Confirmation Testing***

- The confirmation test shall be conducted in the same manner as the original test using the primary specimen.
- If the confirmation test result is negative, the laboratory may discard the split specimen and no additional action will be taken by the MRO.
- If the confirmation test result is positive the MRO will contact the employee directly to inform the employee of the positive test result. The MRO shall notify the covered employee that the covered employee has 72 hours in which to request a test of the split specimen if the confirmed positive test is verified as positive.
- The MRO shall immediately notify the Designated Employer Representative (DER) of a positive confirmation test result.
- If the covered employee chooses not to have the split specimen tested, the covered employee will be prohibited from returning to work until successfully passing a return to duty test, as described later in this policy
- If the confirmation test result is positive, the laboratory shall retain the split specimen in frozen storage for 60 days from the date on which the laboratory acquires it. Following the end of the 60-day period, if not informed by the MRO that the covered employee has requested a test of the split specimen, the laboratory may discard the split specimen.

### ***Split Specimen Testing***

- Within 72 hours of notification of a confirmed positive test, the covered employee may request that the MRO direct that the split specimen be tested in a different certified laboratory for presence of the drug/controlled substance that resulted in the positive test of the primary specimen.
- The covered employee shall be responsible for any and all costs associated with having the split specimen tested. If the covered employee does not contact the MRO within 72 hours, the covered employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the covered employee from contacting the MRO in a timely manner. If the MRO concludes that there is a legitimate explanation for the covered employee's failure to contact the MRO within 72 hours, the MRO shall honor the request for split specimen testing. If the covered employee fails to contact the MRO within 60 days, the split specimen will be destroyed, as outlined above, and a split specimen test will not be possible.
- A covered employee requesting a split specimen test shall not return to work and may use paid or unpaid leave until the results of the split specimen test become available. If the split specimen test does not reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the covered employee shall be paid straight time salary for all regularly-scheduled shifts the employee would have worked had the suspension not occurred, and shall be reimbursed for the costs associated with having the split specimen tested.
- When an MRO directs the first laboratory to forward the split specimen to a second certified laboratory, the second laboratory shall analyze the split specimen to reconfirm the presence of the drug(s)/controlled substance found in the primary specimen. Such confirmation shall be conducted without regard to cutoff levels.

- The split sample shall then be retained in long-term storage for one year by the laboratory conducting the analysis of the split specimen (or longer if litigation concerning the test is pending).
- The result of the test of the split specimen shall be transmitted by the second laboratory to the MRO.
- If the analysis of the split specimen fails to reconfirm the presence of the drug(s)/controlled substance(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report the cancellation and the reasons for it to the Center for Drug Reporting (CDR), the covered employee, the DER, and to DOT for CDL holders.

### ***Failure to complete the testing***

- If the covered employee is unable to provide the required 45 ml of urine, the covered employee shall be instructed to drink not more than 24 ounces of fluids and, after a period of up to two hours, again attempt to provide a complete sample using a fresh collection container. The original insufficient specimen shall be discarded.
- If the covered employee is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued, and the laboratory shall notify the DER of the covered employee's inability to provide an adequate sample.
- The MRO will refer the covered employee for a medical evaluation to develop pertinent information concerning whether the covered employee's inability to provide an adequate specimen is genuine or constitutes a refusal to test. (In pre-employment testing situations, the City will determine whether or not to hire the employee, and the MRO is not required to make such a referral). Upon completion of the examination, the MRO shall report their conclusions to the DER in writing.
- If the MRO determines that the covered employee's inability to provide an adequate sample is not genuine, the covered employee shall be deemed to have refused to test.
- A refusal to test shall be deemed a positive test.

### ***Confidentiality***

- All testing information/results shall be transmitted to the DER, or designee, in a confidential manner. Test results will be retained by the City for five (5) years.
- The DER or designee shall receive and store the information so as to ensure that confidentiality is maintained.

## **CONSEQUENCES AND DISCIPLINE**

### **Covered Employees**

As noted above, a covered employee who refuses to submit to a required drugs/controlled substance or a alcohol test shall be deemed to have tested positive for drugs/controlled substances and at a level 0.04 or greater for alcohol. Refusal by the covered employee to complete and sign the Breath Alcohol Testing Form, to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test shall be deemed a refusal to test. Refusal to submit to a required

drugs/controlled substance or alcohol test shall be deemed just cause for discipline up to and including discharge.

Covered employees who have a positive test as outlined above will not be permitted to return to work until undergoing evaluation by a Substance Abuse Professional (SAP) and successfully passing a return to duty test. If the positive test was for alcohol, the employee must have a BAC of 0.00 in order to pass the return to duty test. If the positive test was for drugs/controlled substances, the return to duty test must be negative in order to pass the return to duty test.

Just cause for discipline up to and including discharge shall be established when a covered employee engages in any conduct in violation of the provisions of this policy or when a covered employee uses drug/controlled substance or misuses alcohol in violation of the FHWA rules and regulations or in violation of this policy or City work rules. Failure to comply with any required evaluation by a substance abuse professional or failure to comply and remain in compliance with any and all prescribed or recommended rehabilitation and/or treatment programs shall establish just cause for discipline up to and including discharge.

### **CDL Holders**

In addition to the above, a CDL holder shall not be permitted to perform a safety-sensitive function if the driver has engaged in conduct prohibited by this policy. A CDL holder who violates any of the requirements of Title 49 CFR Part 382 shall be subject to the penalty provisions of 49 U.S.C. 521(b), and may be subject to disciplinary action.

A CDL holder who tested positive for alcohol must pass the return to duty test with a BAC of 0.00 in order to return to work in a position that requires the employee to perform safety-sensitive functions.

### **REFERRAL, EVALUATION AND TREATMENT**

A covered employee who has a positive drugs/controlled substances test or a BAC test of 0.04 or greater shall be referred to a Substance Abuse Professional (SAP). The SAP shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and drugs/controlled substances use. An employee's SAP would ordinarily be available through their health care provider. A listing of SAPs will be provided in training and/or posted in work sites. Employees who do not know what substance abuse services are provided under their health care plan or who do not have a health care plan, are encouraged to contact the Employee Assistance Program for this information.

The Employee Assistance Program, in accordance with APM 2-12, is available to provide information, referral and support to employees seeking alcohol and drug abuse services, including treatment. Available information includes methods of intervening when an alcohol or drugs/controlled substances problem is suspected and a listing of alcohol and drug abuse services. For more information call the Employee Assistance Program office at 266-6561 or our external EAP provider, Impact, at 800-236-7905. Impact has representatives available at all times.

## **TYPES OF TESTING**

### **Pre-Employment Testing—Covered Employees**

Any candidate or employee may be subject to testing prior to appointment into any City position.

The City of Madison shall notify an applicant/covered employee of the results of a pre-employment drugs/controlled substances test conducted under this part, if the applicant/covered employee requests such results within 60 calendar days of being notified of the disposition of the employment application.

### **Pre-Employment Testing—CDL Holders**

Prior to appointment to a CDL holder position, any candidate selected for a position that requires a CDL shall undergo testing for drugs/controlled substances, as outlined above. The results of test shall be negative (meaning a verified negative result for drugs/controlled substances). If the test does not meet this standard, the candidate shall be disqualified from further consideration for the position(s). In addition, if the result was positive, the candidate will not be considered for any CDL holder position for a period of 12 months from the date of the positive test. If a confirmed result is not possible due to a diluted sample, the candidate will not be considered for the immediate position but may apply for future CDL holder positions without restriction.

Immediately prior to the performance of any safety sensitive functions, an employee appointed to a position that requires a CDL shall undergo an alcohol test, as outlined above. The results of the test should be negative (meaning a BAC of 0.00). If the test does not meet this standard, the candidate shall be disqualified from further consideration for the position(s).

Candidates for a position requiring possession of a CDL shall, at the request of the City, provide written authorization for previous employers to release to the City any and all test results administered in accordance with the FHWA's Rules and Regulations concerning alcohol and/or drugs/controlled substances, including records of the individual's refusal to test.

The Human Resources Director, or designee, shall verify the information, obtain proof that the candidate has completed a rehabilitation program and the return-to-duty test requirements, and shall furnish the information to the manager or supervisor involved. No manager or supervisor shall allow a CDL holder to drive if they know the individual has tested positive and has not been recertified and tested negative in return-to-duty testing.

### **Random Testing—CDL Holders only**

In accordance with Drug Free Workplace Act of 1988 and the Transportation Employee Testing Act of 1991, the City conducts regular random testing of all CDL holders. The City will randomly test no less than 10% of the average number of occupied City CDL positions for alcohol each year. The City will randomly test no less than 50% of the average number of occupied City CDL positions for drugs/controlled substances each year. This rate may be adjusted in order to maintain the minimum annual percentage determined by the Federal Highway Administration Administrator. These percentages for testing will be reviewed annually

and adjusted as per the direction of the Federal Department of Transportation and the Federal Motor Carrier Safety Administration (FMCSA).

Random alcohol and drugs/controlled substances tests shall be unannounced and shall be spread reasonably throughout the year. The selection of CDL holders for random testing, the timing and frequency of random tests, and the number of CDL holders to be tested on any given day shall be determined by the City. The selection of CDL holders for random testing shall be made by a scientifically valid method. Each CDL holder shall have an equal chance of being selected for testing each time selections are made. When randomly selected, a CDL holder may be required to submit to either an alcohol or drugs/controlled substance test, or both. A CDL holder will only be required to undergo alcohol testing just prior to, during, or just after the performance of safety sensitive functions.

### **Reasonable Suspicion Testing—Covered Employees**

The City has the right to order any employee to undergo an alcohol and/or a drug/controlled substances test whenever there is reasonable suspicion that the employee may be under the influence of alcohol or drugs/controlled substances while at work. A covered employee shall promptly submit to an alcohol and/or drugs/controlled substances test when a trained supervisor/City official has a reasonable suspicion that the covered employee is in violation of or has violated the drug, alcohol or controlled substances prohibitions of this policy. This means that the trained supervisor/City official has observed behaviors at the workplace consistent with alcohol and/or drugs/controlled substances use. These observations must be made just preceding, during, or just after the period of the work day that the covered employee is required to be in compliance with this policy.

Refusal to submit to a reasonable suspicion alcohol or drugs/controlled substance test shall be considered a positive test and deemed just cause for discipline up to and including discharge.

*Alcohol*—After reasonable suspicion is established, the alcohol test should be administered within two hours, but may be conducted up to 8 hours after the reasonable suspicion determination is made.

If the test is not administered within 2 hours, the supervisor/City official must prepare and maintain on file a statement outlining why the test was not administered within that time. If the test is not administered within eight hours, the test may not be conducted and the supervisor/City official shall record and maintain on file the reasons why the test was not conducted. A written record shall be made of the observations leading to an alcohol reasonable suspicion test and shall be signed by the trained supervisor/City official who made the observations within 24 hours of the observed behavior or before the results of the alcohol test are released, whichever is earlier.

*Drugs*— After reasonable suspicion is established, the drugs/controlled substances test should be administered within 24 hours after the reasonable suspicion determination is made.

If the test is not administered within 24 hours, the test may not be conducted and the supervisor/City official shall record and maintain on file the reasons why the test was not conducted. A written record shall be made of the observations leading to a drugs/controlled

substances reasonable suspicion test and shall be signed by the trained supervisor/City official who made the observations within 32 hours of the observed behavior or before the results of the drugs/controlled substances test are released, whichever is earlier.

Nothing herein shall prohibit a supervisor or a City official from determining that a covered employee is unfit for duty. Nothing in this paragraph shall be used to circumvent the requirements stated in this section.

### **Post-Accident Testing—CDL Holders Only**

Federal law requires that following an accident, as defined in the glossary under Post Accident Test, a CDL holder must undergo an alcohol and drug/controlled substance test. A surviving CDL holder shall be subject to post-accident testing as soon as practicable following the accident. However, nothing herein shall be construed to require the delay of necessary medical attention or to prohibit the CDL holder from leaving the scene of the accident for the period of time necessary to obtain assistance in responding to the accident, obtain necessary medical treatment for injured people, or to obtain materials necessary to secure the accident site.

A CDL holder subject to post-accident testing shall be subject to a breath alcohol test no later than 8 hours following the accident and to a drugs/controlled substances test no later than 32 hours following the accident. A CDL holder subject to post-accident testing shall remain available for such testing. Failure to be available for testing shall be considered a positive test and deemed just cause for discipline up to and including discharge

If the alcohol test is not administered within 2 hours, the supervisor/City official must prepare and maintain on file a statement outlining why the test was not administered within that time. If the test is not administered within 8 hours, the test may not be conducted and the supervisor/City official shall record and maintain on file the reasons why the test was not conducted. If the drug/controlled substances test is not administered within 32 hours following the accident, the test may not be conducted and the supervisor/City official shall record and maintain on file the reasons why the test was not conducted.

### **Return-to-Duty and Follow-Up Testing—Covered Employees**

Following a positive test for alcohol or drugs/controlled substances, as defined in the testing procedures section, a covered employee shall be evaluated by a Substance Abuse Professional (SAP) who shall determine what assistance, if any, the covered employee needs in resolving problems associated with alcohol misuse and drugs/controlled substances use.

Prior to returning to work, the employee shall be subject to return to duty testing. The covered employee shall also comply with all requirements prescribed by the SAP and shall remain in compliance with any and all prescribed and recommended rehabilitation and/or treatment programs. The covered employee may also be subject to follow-up testing as determined by the SAP.

*Return-to-Duty Testing:*

If a covered employee has violated the alcohol prohibitions of this policy, they shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of 0.00 before returning to duty. If the covered employee has violated the drugs/controlled substances prohibitions they shall undergo a return-to-duty drugs/controlled substances test with a result indicating a verified negative result for drugs/controlled substances use before returning to duty.

The covered employee shall be subject to return-to-duty testing for both alcohol misuse and use of drugs/controlled substances if the SAP recommends testing for both alcohol and drugs/controlled substances.

*Follow-up Testing:*

Upon returning to work, a covered employee shall be subject to unannounced follow-up testing as recommended by the SAP. The covered employee shall be subject to such follow-up testing for both alcohol misuse and use of drugs/controlled substances if the SAP recommends testing for both alcohol and drugs/controlled substances. The number and frequency of follow-up tests shall be determined by the SAP, and shall consist of at least six tests in the first 12 months following the covered employee's return to duty. Follow-up testing shall not exceed 60 months after the covered employee's return to duty. The SAP may recommend terminating such tests at any time after the first six tests have been administered if the SAP determines the tests are no longer necessary.

*Return from Extended Leave Testing—CDL Holders*

Any CDL holder on a leave of absence exceeding six (6) months shall undergo a controlled substance test prior to returning to work.

**CONFIDENTIALITY**

The City takes the confidentiality of all records pertaining to alcohol and/or drugs/controlled substances very seriously, and the following steps will be taken to ensure that records are secure:

- All records required to be maintained under the FHWA Rules and Regulations shall be maintained in a secure location with controlled access.
- Except as required or permitted by law or expressly authorized or required by Title 49, CFR subtitle B, Chapter III, Section 382.405, the City shall not release information that is contained in records required to be maintained under the FHWA Rules and Regulations.
- Records shall be made available to a subsequent employer upon receipt of a written request from a CDL holder. Disclosure to the subsequent employer is permitted only as expressly authorized by the terms of the CDL holder's request.
- Upon written request, a covered employee is entitled to copies of any records pertaining to the covered employee's use of drugs/controlled substances or alcohol, including any records pertaining to their drug, alcohol or drugs/controlled substances tests. Upon the

covered employee's written request, the City shall release information regarding a covered employee's records authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's specific written consent as outlined in Act §40.321(b).

- All results of alcohol and/or drugs/controlled substances testing conducted pursuant to this policy shall be made available, upon request, to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the City or any of its employees.
- Information related to post-accident test results administered following an accident which is under investigation by the National Transportation Safety Board shall be released to the Board upon request.
- The City may disclose information pertaining to a covered employee that is required to be maintained under the FHWA Rules and Regulations to the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the covered employee, and arising from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results), and including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the covered employee and arising from the results of an alcohol and/or drugs/controlled substances test administered in accordance with the FHWA. Additionally, the City may disclose information in criminal or civil actions in accordance with Act§40.323(a)(2) of this title.

***This policy was put into effect January 1995 and was last updated in July, 2013 and will be updated from time to time as necessary by the Human Resources Director or their designee.***

## GLOSSARY

**Alcohol** - The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

**Alcohol Concentration (Or Content)** - The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

**Alcohol Test** - A test conducted by a Breath Alcohol Technician, or any other person approved by the Department of Transportation rules, using an Evidential Breath Testing Device to measure the amount of alcohol concentration in a volume of breath, or any other test used to detect the presence of alcohol that is approved by the Federal Highway Administration (FHWA).

**Alcohol Use** - The consumption of any beverage, mixture, or preparation, including medication, containing alcohol.

**Breath Alcohol Technician (BAT)** - An individual who instructs and assists individuals in the alcohol testing process and operates the evidential breath testing device.

**Commercial Motor Vehicle** - A motor vehicle or a combination of motor vehicles used in a commerce to transport passengers or property if the motor vehicle:

- Has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- Has a gross combination weight of 26,001 or more pounds; or
- Is designed to transport 16 or more passengers, including the driver; or
- Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (149 CFR 172, sub F).

### Confirmation Test

- For alcohol testing, a confirmation test means a second test following a screening test with a result greater than 0.00 that provides quantitative data of alcohol concentration. Confirmation of the screening test must be by an Evidential Breath Testing (EBT) device listed on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL), and must be capable of printing out each test result and air blank, and must sequentially number each test.
- For drugs/controlled substances testing, a confirmation test means a second analytical procedure to identify the presence of a specific drug or drug metabolite which is independent of the screen test and which uses a different technique and chemical principal from that of the screen test in order to ensure reliability and accuracy. (Gas Chromatography/Mass Spectrometry (GC/MS) is the authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine).

**Covered Employee** - All City of Madison employees except employees of Madison Metro who perform safety sensitive functions are covered by this policy.

**CDL Holder** - Any employee required to have and maintain a Commercial Driver's License (CDL) and who is subject to operating a Commercial Motor Vehicle at the direction of, or with the consent of the City including, but not limited to, full-time, part-time, regularly employed drivers, casual, intermittent or occasional drivers, any person applying to the City to drive a commercial motor vehicle, and any person who has received a reimbursement in part or whole from the City for securing a CDL.

**Designated Employer Representative (DER)** - The primary contact person designated by the City to receive all information and/or reports from the Medical Review Officer, the Breath Alcohol Technician, the Substance Abuse Professional and the laboratories. The DER is also the designated contact person for inquiries regarding this policy.

### **Drug/Controlled Substance**

- Any substance recognized as a drug in the official U.S. pharmacopoeia and national formulary or official homeopathic pharmacopoeia of the United States or any supplement to either of them;
- Cocaine, marijuana, opiates, amphetamines, and phencyclidine and any other substance determined by the U.S. or Wisconsin Department of Transportation to be a drug/controlled substance.
- Any substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or other conditions in persons or other animals;
- Any substance other than a device or food intended to affect the structure or any function of the body of persons or other animals; or
- Any substance intended for use as a component of any article specified in pars. (1) to (3) but does not include gases or devices or articles intended for use or consumption in or for mechanical, industrial, manufacturing or scientific applications or purposes.
- Although this Appendix uses the term singularly a covered employee may test positive for drugs/controlled substances and the terms should be considered interchangeable for purposes of interpretation.

**Drugs/Controlled Substance Test** - A method for determining the presence of drugs/controlled substances in a urine sample using a scientifically reliable method performed in accordance with procedures specified in 49 CFR 40.

**Evidential Breath Testing Device (EBT)** - A device approved by the National Highway Traffic Safety Administration (NHTSA), placed on the NHTSA's Conforming Products List, and is used for the evidential testing of breath.

**Follow-up Test** - An alcohol and/or drugs/controlled substances test administered to a covered employee at the direction of a SAP who has violated the prohibitions of this policy and who has been permitted to return to duty after passing a return-to-duty alcohol and/or drugs/controlled substances test.

**Medical Review Officer (MRO)** - A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the City's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with their medical history and any other relevant biomedical information.

**On-Duty Time** - All time spent providing a breath sample or primary urine specimen, including travel time to and from the collection site, in order to comply with random, reasonable suspicion, post-accident or follow-up testing as directed by the City.

**Post-Accident Test** - An alcohol and/or drugs/controlled substances test administered to a CDL holder following an accident involving a CDL vehicle used in the performance of City business under the following circumstances:

- The driver was performing safety-sensitive functions with respect to the vehicle and the accident involved a loss of human life or serious injury that results in hospitalization; or
- The driver receives a citation under State or Local law for a moving traffic violation arising from the accident; or
- One or more vehicle(s) in the accident received disabling property damage (damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner, in daylight, after simple repairs) and was towed from the scene of the accident, or there was major economic damage to non-City owned property.

**Pre-Employment Test** - An alcohol or drugs/controlled substances test administered to an individual prior to starting employment with the City of Madison or prior to performing a safety sensitive function for the first time in a position that requires a CDL.

**Random Test** - An alcohol or drugs/controlled substances test administered to a CDL holder who has been randomly selected by a scientifically valid method from among the pool of City occupied CDL positions.

**Reasonable Suspicion Test** - An alcohol or drugs/controlled substance test administered to a covered employee as a result of a trained supervisor's or trained City official's reasonable belief that the covered employee is in violation or has violated the drug, alcohol or controlled substances prohibitions of this policy.

**Return-to-Duty Test** - An alcohol and/or drugs/controlled substances test administered prior to a covered employee being permitted to return to duty, when the covered employee has violated this policy.

**Safety-Sensitive Function** - A CDL holder shall be considered to be performing safety-sensitive functions whenever:

- the employee begins work until the time they are relieved from work including time spent at a facility waiting to be dispatched, or
- inspecting or servicing the vehicle, or
- driving or at the controls of the vehicle, or

- resting in the vehicle, or
- loading or unloading the vehicle including the performance of any related paperwork, or
- performing those duties required of a driver involved in a vehicle accident, or
- repairing or attending to a disabled vehicle, or
- during all time while providing a breath sample or urine specimen including travel time to and from the collection site in order to comply with testing directed by the City.

### **Screening Test (Also Known as an Initial Test)**

- In alcohol testing, a screening test means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in their system.
- In drugs/controlled substances testing, a screening test means an immunoassay screen (or other DHHS-approved test) to eliminate “negative” urine specimens from further consideration.

**Substance Abuse Professional (SAP)** - A licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drugs/controlled substances-related disorders.

**Supervisor** - A management or supervisory employee of the City of Madison.

**Trained Supervisor/City Official** - Any City supervisor or any City management employee who has received the requisite training in identifying the signs and symptoms of alcohol abuse and/or drugs/controlled substance abuse.