

## **1.06 DRUG-FREE WORKPLACE POLICY**

The City of West Melbourne is committed to a safe and productive work environment and workplace. The use of illegal drugs and the abuse or improper use of drugs, including alcohol, causes many problems. Examples are on-the-job accidents, excessive workers' compensation costs, absenteeism, excessive health care costs, theft, decreased employee morale, decreased productivity, and decline in quality of work and services. With this in mind, the City hereby informs all employees and applicants of its employee drug and alcohol rules and policy. The City further advises and notifies all employees and applicants of the existence of Florida Statutes, Section 112.0455 (the Drug-Free Workplace Act); Florida Statutes, Section 440.102; Florida Administrative Code 59A-24 (the Drug-Free Workplace Standards); and the City's establishment and maintenance under such laws and rules of a DRUG-FREE WORKPLACE PROGRAM within the meaning of those materials. Employees are required to be thoroughly familiar with this program and its requirements.

As provided below, this program involves certain types of employee drug testing. However, drug testing of existing employees shall not begin until December 15, 2001.

The City will, effective immediately, as a condition of employment, maintain and enforce the following rules:

1. No employee shall at any time, whether engaged in work on behalf of the City or not, possess, use, sell or distribute any drug in which the possession, use, sale or distribution of is illegal under any law of any state or any law of the United States of America. This rule will be enforced regardless of whether the acts or events giving rise to its enforcement result in arrest, prosecution or conviction.
2. No employee will report for work or will engage in any work while under the influence of any drug, illegal or legal, including alcohol, except with prior knowledge and approval of management. Such approval will be limited to lawful medication, and will be based on an assessment of the ability of the employee to perform assigned duties safely and in accordance with the standards prescribed by the City.
3. The penalty for any violation of either rule will be discharge.

### Drug Testing and Confirmation Testing Procedures

To enforce these rules, and to meet the requirements of the Florida Statutes and the applicable rules, the City will, under the following described circumstances require employees to undergo drug testing and confirmation testing. Such testing will be for usage of illegal drugs, some of which are listed in this section, as well as for abuse of legal drugs, including alcohol.

Drug testing is conducted by qualified collection site personnel at a collection site designated by an approved laboratory. The current licensed laboratory name, address and

telephone number is listed in the supplemental information of Section 13. Drug testing will normally be accomplished by testing a sample of urine. Blood will be used as the initial and confirmation test for alcohol. The individuals collecting the samples shall, to the extent possible, respect your privacy. If, however, there is reason to believe that an employee has tampered with the sample, re-testing may be conducted in the presence of the collector.

Initial substance screening will be performed by enzyme multiplied immunoassay technique (“EMIT”) with confirmation by gas chromatography/mass spectrometry (“GC/MS”). Whole blood alcohol screening will be performed by enzyme oxidation methodology and confirmed by gas chromatography.

The City shall pay the cost of the initial and confirmation drug tests. Employees shall pay the cost of any additional drug tests. Employees shall be given the opportunity to disclose any lawful medication being taken which might affect the test results both before the collection and after specimen analysis if the test shows positive for any reason.

No employment decision will be made on the basis of the initial test result. A Medical Review Officer (“MRO”) will notify the employee of the results of his or her drug test. The current MRO name, address and telephone number is listed in the supplemental information of Section 13. Results of drug tests performed pursuant to this policy shall remain confidential as provided for under Florida Law. Within five (5) days of notification to the donor of the positive test result, the MRO will provide the opportunity for the applicant to discuss and submit documentation of reason for such results. A chain of custody record will be maintained for each sample to insure control and accountability. The testing laboratory will “split” the sample so as to be able to re-test and verify the results of the first test.

Specimen samples will be labeled, and collection, storage and transportation shall be performed in a manner which will reasonably preclude contamination. Approved collection site personnel will collect the sample. These personnel are limited to the following: physician, physician’s assistant, registered professional nurse, license practical nurse, nurse practitioner or certified paramedics or other qualified laboratory personnel.

The following are among the illegal drugs which may be the subject of drug testing and confirmation testing of employees:

1. Amphetamines
2. Cannabinoids
3. Cocaine
4. Phencyclidine (PCP)
5. Hallucinogens
6. Methaqualone
7. Opiates
8. Barbiturates
9. Benzodiazepines
10. Synthetic narcotics
11. Designer drugs

12. A metabolite of any of the substances listed above.

Detection levels for both drugs and alcohol will be consistent with the most current State and Federal regulations for drug testing. For a complete list of common and brand name drugs, please see the supplemental information in Section 13. Note also that the list of drugs may change from time to time.

A. Initial Test

The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five (5) drugs or classes of drugs:

<u>Initial Test Level</u>	<u>(ng/ml)</u>
Marijuana metabolites	50
Cocaine metabolites	300
Opiate metabolites	2,000
Phencyclidine	25
Amphetamines	1,000

B. Confirmatory Test

All specimens identified as positive on the initial test shall be confirmed for the class(es) of drugs screened positive on the initial test using GC/MS at the cutoff values listed in this paragraph. All confirmations shall be by quantitative analysis. Concentrations, which exceed the linear region of the standard curve, shall be documented in the laboratory record as “exceeds the linear range of the test.”

<u>Confirmatory Test Level</u>	<u>(ng/ml)</u>
Marijuana metabolite (1)	15
Cocaine metabolite (2)	150
Opiates	
Morphine	2,000
Codeine	2,000
Acetylmorphine (4)	10
Phencyclidine	25
Amphetamines	
Amphetamine	500
Methamphetamine (3)	500

(1) Delta-9-tetrahydrocannabinol-9-carboxylic acid

(2) Benzoylecgonine

(3) Specimen must also contain amphetamine at a concentration > 200 ng/ml

(4) Test for 6-AM when the morphine concentration exceeds 2,000 ng/ml

C. Job Applicant Testing

All applicants for employment will be required to take a drug test as part of the

pre-employment process. The City may refuse to employ any applicant who refuses, after being asked, to take such a test.

D. Reasonable Suspicion

The City will require testing of all employees for illegal drug use and for improper use or abuse of legal drugs upon reasonable suspicion that an employee has used an illegal drug or has engaged in improper use or abuse of a legal drug, such as, but not limited to, alcohol. As used and applied in this program, the term “reasonable suspicion drug testing” means drug testing based on a belief that an employee is using or has used (or is abusing or has abused) drugs in violation of the City’s rules and program drawn from specific objectives and articulable facts and reasonable inferences drawn from those facts in light of experience. Such facts and observations may include reliable and credible reports of drug use or information that an employee has caused or contributed to causing an accident while at work. Reasonable suspicion drug testing shall not be required except upon the recommendation of a Department Head.

E. Routine Fitness for Duty

Employees, if any, who are subject to a routinely scheduled employee fitness-for duty medical examination will take a drug test as part of such medical examination.

F. Follow-up Testing

Any employee who, in the course of employment, enters an employee assistance program for drug-related problems or an alcohol and drug rehabilitation program must be tested as a follow-up to such program and periodically thereafter for up to two (2) years. “Periodically” is meant at the City’s discretion, quarterly, semi-annually or annually.

G. Special Requirements For Drivers

Employees who drive City vehicles or who transport hazardous materials in City vehicles are subject to any drug testing requirements which exist from time to time under federal or state laws or regulations, including regulations relating to obtaining or renewing commercial driver’s licenses.

All testing will be done by a qualified medical laboratory licensed by the Agency for Health Care Administration to serve as a drug-testing laboratory.

H. Confidentiality

All information, interviews, reports, statements, memoranda and drug test results, written or otherwise, and all related matters received or learned by the City in

connection with or as a result of this program or any drug testing of any City employee are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with rules developed under the Workers' Compensation Law or in determining compensability under that law. Management and all other personnel who know of the drug testing of an employee or of the results are required to maintain total confidentiality; the results and related matters are to be discussed and known only by those who are required to have such knowledge in the course of their duties on behalf of the City. Written materials pertaining to testing do not go into personnel files, but will be sealed and kept until no longer necessary.

I. Medication Reporting

The City knows that eventually most people need to take medications to combat various illnesses. Employees must realize, however, that many medications will alter or affect a drug test. An employee could possibly test positive for a drug when taking medications prescribed by a doctor or bought over the counter at a pharmacy. Attached to this document is list of medications known to alter or affect a drug test. Employees who want more technical information about medications may consult the testing laboratory. To avoid the potential problems created by a false test result, the company has implemented procedures to enable employees to confidentially report the use of medications. You may report the use of medications on the back of your copy of the chain of custody form after your specimen is collected and discuss only with the MRO.

J. Consequences of Refusal to Submit to Drug Test or "Testing Positive" for a Drug/Loss of Benefits

An employee injured on the job ("on the job" meaning arising out of and in the course of employment) who refuses to submit to a test under this program for drugs or alcohol forfeits and will lose his or her eligibility for medical and indemnity benefits. An employee injured on the job who, at the time of injury, has 0.08 percent or more by weight of alcohol in the blood or who has a positive confirmation of a drug as defined herein will lose his or her eligibility for medical indemnity benefits. The City may discipline, up to and including discharge, any employee who is asked to undergo drug testing in accordance with this program and who refuses or who tests positive for a drug in the initial and confirmation drug test.

K. Employee Assistance Programs/Alcohol and Drug Rehabilitation Programs

The following is the name and telephone number of the employee assistance program which employees may utilize, as appropriate.

EFAC - Employee & Family Assistance Consultants, Inc.

1501 Robert J. Conlan Boulevard, Suite 100  
Palm Bay, Florida 32905  
(321) 723-8823

L. Contest Procedure

A job applicant or employee will receive written notification of positive confirmed test results from the company within five (5) working days of the City's receipt of a report of a positive confirmed test result from the MRO. This notification will also state the consequences of the positive confirmed test result. A job applicant or employee who receives written notification of (1) a positive confirmed test result, and (2) the consequences to the employee of that result, will have the opportunity within five (5) working days to explain or contest the result. If the explanation or challenge of the positive test result is judged unsatisfactory by the company, the job applicant or employee will be provided with a written explanation as to why the explanation of the positive test result was unsatisfactory, along with a written report of the positive test results within fifteen (15) working days. If the test was for reasonable suspicion, the employee will receive in writing within seven (7) days after the test, if requested, a detail of the circumstances, which formed the basis of the determination that enough reasonable suspicion existed to warrant the testing. During the 180-day period after written notification of a positive test result, the employee who provided the specimen shall be permitted by the City to have a portion of the specimen re-tested at the employees' expense. Such re-testing shall be done at another Florida HRS licensed or NIDA approved laboratory, as appropriate, chosen by the City or job applicant. All such documentation will be kept confidential and retained by the company for at least one (1) year. Should the job applicant or employee then choose to further pursue the challenge, the following options to the employee are available: (1) a claim for benefits may be filed with a Judge of Compensation pursuant to Florida Statutes, Chapter 440, in the case of workplace injury; (2) if no injury has occurred, a challenge may be undertaken in a court of competent jurisdiction. It will then be the employee's responsibility to notify the laboratory to retain the sample until the case is settled.

The City will provide a form to the employee to provide any information he or she considers relevant to the drug test for review by the MRO.

Employees and job applicants have the right to consult the testing laboratory for technical information regarding prescription and non-prescription medication.

Any questions about our drug-free workplace program, its requirements, or how it affects you, will be welcome and should be asked through your Department Head.

**1.07 POLICY REGARDING MISUSE OF ALCOHOL AND USE OF CONTROLLED SUBSTANCES BY DRIVERS OF COMMERCIAL MOTOR VEHICLES**

A. Introduction

The City is required by Federal Law (49 C.F.R. Part 382) to test drivers of commercial motor vehicles for misuse of alcohol and/or use of “controlled substances” (i.e., marijuana, cocaine, amphetamines, opiates – including heroin – and phencyclidine). Pursuant to this Federal directive, the City has established the following policy. This policy applies to all persons required by the City to hold a commercial driver’s license and/or who drive City motor vehicles used to transport passengers or property which either: (I) have a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; (ii) have a gross vehicle weight rating of 26,001 or more pounds; (iii) are designed to transport 16 or more passengers, including the driver; or (iv) are of any size and are used in the transportation of hazardous materials, as defined under applicable law. Such persons are referred to in this policy as “drivers.” This policy does not apply to Police Officers or anyone else who drives emergency vehicles.

Any questions regarding this policy should be addressed to the Assistant City Manager.

B. Safety Sensitive Functions

As used in this policy, the term “safety sensitive functions” means:

1. Waiting to be dispatched while on duty;
2. Inspecting, servicing or conditioning a motor vehicle;
3. Driving a motor vehicle;
4. Occupying a motor vehicle at times other than when actually driving (e.g., riding with another driver while on duty, sitting in a parked motor vehicle);
5. Loading or unloading a motor vehicle, supervising or assisting in loading or unloading, attending to a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle being loaded or unloaded, or giving or receiving receipts for shipments loaded or unloaded;
6. Repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle; and/or
7. Providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the testing requirements under this policy.

C. Prohibited Conduct

1. No driver shall report for duty or remain on duty requiring the

performance of safety sensitive functions listed above having a breath alcohol concentration of 0.04 or greater.

2. No driver shall be on duty or operate a motor vehicle while the driver possesses alcohol.
3. No driver shall use or be under the influence of alcohol while performing safety sensitive functions.
4. No driver shall perform safety sensitive functions within four (4) hours after using alcohol.
5. No driver who is required to take a post-accident alcohol test under this policy shall use alcohol for eight (8) hours following the accident, or until he or she undergoes a post-accident alcohol test, whichever occurs first.
6. No driver shall report for duty or remain on duty requiring the performance of safety sensitive functions while the driver uses 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, and the driver has informed management of the use of the drug. The City reserves the right to restrict a driver from performing safety sensitive functions when, in the opinion of the City Management, lawful use of a controlled substance renders the driver unable to perform his or her safety sensitive functions safely or in accordance with the standards prescribed by the City.
7. No driver shall report for duty, remain on duty or perform a safety sensitive function if the driver tests positive for controlled substances.
8. No driver may refuse to submit to any alcohol or controlled substance test required under this policy.

D. Testing for Alcohol and Controlled Substances

1. Pre-Employment Testing

Prior to the first time a driver performs safety sensitive functions for the City, the driver shall undergo testing for controlled substances only.

2. Post-Accident Testing

As soon as practicable following an accident involving a commercial motor vehicle, each surviving driver who either (a) was performing safety sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or (b) who receives a citation under state or local law for a moving traffic violation arising from the accident, will be tested for alcohol and controlled substances. Tests for alcohol will typically be done within two (2) hours following the accident, and in no circumstances later than eight (8) hours after the accident. Tests for controlled substances will be administered within thirty-two (32) hours following the accident. Drivers who are subject to post-accident testing are required to remain

available for such testing or will be deemed by the City to have refused to submit to testing. Any driver who is involved in an accident is to contact the Assistant City Manager's office for instructions as to which hospital or testing laboratory the driver should go to take the test. The driver shall not continue driving his or her motor vehicle; rather, the driver shall be transported by City personnel dispatched to the scene, who will take the employee to the hospital or testing laboratory where the drug test is to be taken.

3. Random Testing

All drivers are subject to unannounced random testing for alcohol and/or controlled substances. Random alcohol testing will be administered while a driver is performing safety sensitive functions, just before the driver is to perform safety sensitive functions, or just after the driver has ceased performing such functions. Drivers who are selected for random testing shall proceed to the directed test site immediately upon being notified.

4. Reasonable Suspicion Testing

The City will require a driver to submit to an alcohol or controlled substance test when the City has reasonable suspicion to believe that the driver is using or has used alcohol and/or controlled substances in violation of this policy. As used and applied in this policy, the term "reasonable suspicion testing" means testing based on a belief that an employee is using or has used, or is abusing or has abused, alcohol or controlled substances in violation of this policy drawn from specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. Reasonable suspicion testing shall not be required except upon recommendation of a Department Head or City official trained in determining such reasonable suspicion. The person who makes the determination that reasonable suspicion exists to conduct a test, will not conduct the test on the driver. A driver will be directed to undergo reasonable suspicion alcohol testing while the driver is performing safety sensitive functions, just before the driver is to perform safety sensitive functions, or just after the driver has ceased performing such functions. As with post-accident alcohol tests, reasonable suspicion tests will typically be administered within two (2) hours following the determination that reasonable suspicion exists, and in no circumstances will the test be done any later than eight (8) hours following such determination. The City shall maintain written records of the observations leading to reasonable suspicion tests, signed by the Department Head or City official who made the observation within twenty-four (24) hours of the observed behavior or before the results of the controlled substance tests are released, whichever is earlier.

5. Return-to-Duty Testing

Should a driver not be terminated in connection with violations of this policy, the driver shall be required to undergo a return-to-duty alcohol or controlled substance test, whichever is applicable. No driver will be permitted to return to duty unless, in the case of alcohol tests, the alcohol concentration is less than 0.02, or, in the case of controlled substances, there is a verified negative result to the test.

6. Follow-Up Testing

A driver who, in accordance with this policy, has been determined by a substance abuse professional to require assistance in resolving an alcohol or drug problem must be tested periodically upon his or her return to duty for a minimum of six (6) tests in the first twelve (12) months following the driver's return to duty. Testing will continue for the two (2) years following the return to duty. Follow-up testing will be unannounced; however, a driver will be directed to undergo follow-up alcohol testing while the driver is performing safety sensitive functions, just before the driver is to perform safety sensitive functions, or just after the driver has ceased performing such functions.

A driver may have to undergo return-to-duty or follow-up testing for both alcohol and controlled substances if the substance abuse professional evaluating the driver's situation determines that return-to-duty and follow-up testing for both alcohol and controlled substances is necessary for that particular driver.

The use of the EAP or drug and alcohol program shall be at the driver's sole expense.

E. Testing Procedures

All testing for alcohol and controlled substances shall be administered in accordance with the regulations issued by the U.S. Department of Transportation, found at 49 C.F.R. Part 40. Copies of these regulations are available upon request.

1. Alcohol Testing

Testing for alcohol will be done using evidential breath testing devices ("EBT") approved by the National Highway Traffic Safety Administration ("NHTSA"). The testing will be administered by a qualified breath alcohol technician ("BAT") (which may include a law enforcement officer of the City certified to conduct breath alcohol testing). To the extent possible, testing will be done in such a manner so that no one other than

the BAT and the driver being tested will be able to see or hear the test results.

Testing for alcohol concentration shall involve two (2) separate breath tests. First, the driver will be given a screening test. Any result less than 0.02 alcohol concentration is considered a “negative” test. If the alcohol concentration is 0.02 or greater, the driver will be given a confirmation test. Confirmation tests are conducted on an EBT that prints out the results, date and time, a sequential test number, and the name and serial number of the EBT. The confirmation test result determines any actions taken (e.g., removal from safety sensitive functions, discipline, et cetera).

The BAT(s) conducting the alcohol test(s) shall, contemporaneously with administering the test(s), complete the U.S. Department of Transportation Breath Alcohol Testing Form and ensure that the driver tested signs the certifications contained on the form. Refusal to sign the certification in Section 2 of the form (only), or other refusal to cooperate with a BAT in the administration of a test, shall be deemed a refusal to submit to testing, and shall subject the driver to the consequences set forth in this policy for such refusal.

The BAT shall transmit all test results to the City in a confidential manner. The City shall designate one or more representatives to receive and handle the information in a confidential manner.

## 2. Controlled Substances Testing

The City tests for controlled substances through driver urine specimens. Analysis of specimens is done by a laboratory approved by the U.S. Department of Health and Human Services (“DHHS”). The testing is a two-stage process. First, a screening test is performed. If there is a positive result for one or more drugs, then a confirmation test is performed using gas chromatography/mass spectrometry (“GC/MS”) analysis.

If a confirmation test comes out positive, the MRO will contact the employee and conduct an interview to determine if there is an alternative medical explanation for the drugs found in the driver’s urine specimen. The employee must provide documentation satisfactory to the MRO of such alternative explanation. If it is determined that the use of the prohibited drug was for medically legitimate reasons, the MRO will report the test results as “negative.”

Urine specimens will be collected in a location affording privacy and security from tampering. To ensure the integrity of the specimen and the chain of custody, the Federal Drug Testing Custody and Control Form shall be utilized. Each urine specimen is subdivided into two bottles

labeled as “primary” and “split,” respectively. If the analysis of the primary specimen is a confirmed positive, the driver has seventy-two (72) hours from receiving notice of the positive result to request that the split specimen be sent to another DHHS certified laboratory for analysis at the employee’s expense. Such request should be directed to the MRO. In the meantime, based upon the positive test, the City will take appropriate action under this policy. If the split specimen does not reconfirm the presence of controlled substances in the urine specimen, the City shall cancel any action and notify the driver of the cancellation.

F. Refusal to Submit to Testing

All drivers are required to submit to the alcohol and controlled substances tests administered in accordance with this policy. A refusal to submit to such tests will be deemed grounds for refusing to employ and/or terminating the employment of a driver. For purposes of this policy, the term “refusal to submit” to an alcohol test shall include failure to give an adequate breath sample, without medical explanation, after receiving notice of the requirement for breath testing in accordance with this policy. Similarly, refusal to submit to a controlled substance test shall include failure to provide an adequate urine sample, without a genuine inability to provide a specimen (as determined by a medical evaluation), after receiving notice of the requirement for urine testing in accordance with this policy. With respect to both alcohol and controlled substance testing, a refusal to submit to testing includes any conduct that obstructs the testing process.

G. Violations of Policy

Drivers who are found to have violated this policy – including, without limitation, having an alcohol concentration of 0.04 or higher and/or testing positive for a controlled substance – will be removed immediately from safety sensitive functions and will be subject to discipline, up to and including immediate termination. The City shall also provide the driver with the names, addresses and telephone numbers of substance abuse professionals and counseling and treatment programs which may assist the driver (at the driver’s expense) in evaluating and resolving problems with alcohol and controlled substances.

If the City decides not to immediately terminate the driver, the City will require the driver to be evaluated by a substance abuse professional of the City’s choosing and at the City’s expense. That substance abuse professional will determine what, if any, assistance the driver may need to resolve his or her alcohol/drug problem. The substance abuse professional shall then refer the driver to a counseling or treatment program from which the professional receives no remuneration or in which the professional has no financial interest (this sentence does not apply to referrals to the City’s employees’ assistance plan). The substance abuse professional shall continue to evaluate whether the driver has

followed the course of action that the professional prescribed in his or her initial evaluation. Any program that the driver undertakes on the recommendation of the substance abuse professional shall be at the driver's expense.

Applicants who fail a pre-employment controlled substance test shall be refused employment, and the City shall have no further obligation to them.

H. Alcohol Concentration Between 0.02 and 0.04

A driver who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall be immediately removed from safety sensitive functions and shall not be permitted to resume such functions until the start of the driver's next regularly scheduled duty period, but not less than twenty-four (24) hours following the administration of the test.

I. Information Concerning Other Employees

If a driver suspects that one of his or her co-workers has an alcohol or substance abuse problem, the driver should report it immediately to his or her Department Head or to the City Manager. The effects of alcohol and controlled substances on an individual can impact the health, work and personal life of employees and affect the entire work force.

J. Construction

This policy shall be used by the City in conjunction with its Drug-Free Workplace Policy. All testing pursuant to this policy shall be administered in conjunction with testing generally required of all City employees (e.g., drivers will be subject to pre-employment, post accident, reasonable suspicion, return-to-duty and follow-up testing for drugs that, although not covered under this policy, are covered under the City's general drug testing policies).

In the event of a conflict between this policy and any other City policy, this policy shall control.