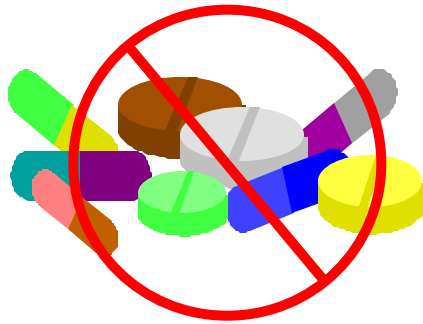


# **CITY OF GAINESVILLE**



# **DRUG-FREE WORKPLACE PROGRAM**

**THE CITY OF GAINESVILLE**  
**DRUG-FREE WORKPLACE PROGRAM**

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# **DRUG-FREE WORKPLACE PROGRAM**

## **I. PURPOSE**

As a part of its commitment to safeguard the health of its employees, to provide a safe place for its employees to work, and to promote a drug-free working environment, the City of Gainesville, Florida (City) has established this program relating to the use or abuse of alcohol and drugs by its employees. This program is intended to conform to the requirements of the Drug-Free Workplace Program under Florida's Workers' Compensation Law, Fla. Stat. § 440.101-.102, and rules promulgated pursuant thereto. A supplemental program for gas department pipeline safety employees is described in an addenda hereto. Substance abuse, while at work or otherwise, seriously endangers the safety of employees, as well as the general public, and creates a variety of workplace problems including increased injuries on the job, increased absenteeism, increased health care and benefit costs, increased theft, decreased morale, decreased productivity, and a decline in the quality of products and services provided. This program is established in part to detect users and remove abusers of drugs and alcohol from the workplace, to prevent the use and/or presence of these substances in the workplace, and to assist employees in overcoming any dependence on drugs and/or alcohol in accordance with the following guidelines.

Florida Statute § 440.101 provides in part that an employee who is injured in the course and scope of his employment and tests positive on a drug or alcohol test may be terminated and shall forfeit his eligibility for medical and indemnity benefits under Florida's Workers' Compensation Law. Refusal to take a drug (urine) or alcohol (blood) test will result in the employee forfeiting his eligibility for medical and indemnity benefits under Florida's Workers' Compensation Law and the employee being subject to dismissal. The City group medical plan excludes benefits for job related injuries. Therefore, if Worker's Compensation benefits are forfeited pursuant to the drug-free workplace program, the employee injured on the job will be without any City provided medical benefits.

Certain components of this program involve utilization of additional techniques and procedures. These additional techniques and procedures as well as the determination of the employee groups who will be covered by such, are both justified by, and based upon, federal and state statutes, case law, and regulatory findings related to various public sector and private sector employees working in safety-sensitive and "special risk" positions throughout inter- and intrastate commerce. At such time as the regulations implemented pursuant to the Omnibus Transportation Employee Testing Act of 1991 or other regulatory requirements become applicable to City employees, this program will be altered as and if necessary to conform to the specific requirements of the final regulations. Until such time, any additional techniques and procedures shall utilize mechanisms already in use and/or proposed for use by state or federal law and regulation. As determined by management, based upon additional information or experience, such additional techniques and procedures (those which are not required by §

440.101-.102 and addenda hereto) may be unilaterally, and without notice, altered, or eliminated from the remainder of this program, and shall not impact this program's continuing compliance with § 440.101-.102, Fla. Stat. (1993). Except as provided for in this Section I, modifications to the Program authorizing the use of additional testing techniques, testing for additional drugs, or creating additional situations for testing (Section VII) the City will follow any stated requirements for notice to, or discussion with, employees or their agents.

To the extent that § 440.101-.102, or the implementing rules issued by the Department of Labor and Employment Security (38F-9, F.A.C.) or those issued by the Department of Health and Rehabilitative Services (10E-18, F.A.C.) are amended, or other statutes and rules requiring drug testing are determined to be applicable to City employees, the City's program will be amended to the extent required by such, without the necessity of further general notice.

The City's Drug-Free Workplace Program has been prepared so as not to conflict with public policy and, further, not to be discriminatory or abusive. A drug-free workplace should be the goal of every employer in America. Drug and alcohol testing is only one of the several steps that must be taken to achieve this objective. When incorporated into a comprehensive anti-drug effort, testing can go a long way in combating drug and alcohol abuse in the workplace.

## **II. SCOPE**

All employees are covered by this program and, as a condition of employment, are required to abide by the terms of this program. A supplemental program for gas department pipeline safety employees is described in addenda hereto. Any employee in doubt as to the requirements or procedures applicable to their situations may contact the City Human Resources Department for information.

## **III. DRUG-FREE WORKPLACE PROGRAM DISSEMINATION**

- A. The City will give a general one-time notice to all employees that the City prohibits its employees from illegally or improperly using, possessing, selling, manufacturing, or distributing drugs on its property, or while its employees are at work; that it is against City policy to report to work or to work under the influence of drugs; and that it is a condition of employment to refrain from using nonprescription drugs or alcohol on the job, or abusing legal drugs on or off the job such that it affects their job, and that a drug testing program is being implemented. At least sixty (60) days will elapse between the notice and any employee drug testing implemented pursuant to this program.
- B. Prior to testing, all employees or applicants for employment will be given a summary of the Drug-Free Workplace Program, a summary of the drugs which may alter or affect a drug test, a list of local employee assistance programs and a list of local alcohol and drug rehabilitation programs.

- C. A notice of drug testing will be included with all job vacancy announcements for which drug testing is required. A notice of the City's drug testing program will also be posted in appropriate and conspicuous locations on the City's premises and copies of the program will be made available for inspection during regular business hours in the Human Resource Department.

#### **IV. DEFINITIONS**

The definitions of words and terms as set forth in § 440.02(1) and § 440.102(1), Fla. Stat. (1993), the Florida Workers' Compensation Drug Testing Rules (38F-9, F.A.C.), and the Florida Department of Health and Rehabilitative Services (HRS), Drug-Free Workplace Standards (10E-18, F.A.C.) shall apply to the words and phrases used in this program unless the context clearly indicates otherwise. When the phrase "drug and alcohol" testing, use, etc., is used in connection with different testing mechanisms, prohibitions or causes for testing "drug" includes all of the below listed substances except alcohol. "Drug" otherwise has the same meaning as in Section 440.102(1)(a), Fla. Stat., which defines "drug" as follows:

- (a) "Drug" means alcohol, including distilled spirits, wine, malt beverages, and intoxicating liquors; amphetamines; cannabinoids; cocaine; phencyclidine (PCP); hallucinogens; methaqualone; opiates; barbiturates; benzodiazepines; synthetic narcotics; designer drugs; or a metabolite of any of the substances listed herein.

#### **V. ALCOHOL USE PROHIBITIONS**

- A. The consumption of alcohol on City property or while on duty (during working hours, while at work, etc.) is prohibited and will result in disciplinary action, up to and including dismissal. The prohibition of consumption of alcohol upon City property or on duty does not, however, apply to those assignments, premises, or events at which consumption of alcohol is authorized by management. Such authorization does not encourage, sanction, or authorize any individual to consume alcohol in excess to a point of being intoxicated. Therefore, any employee at an event, who in the sole opinion of the Management becomes intoxicated, must refrain from further consumption of alcohol and, upon request by Management, leave the function. Failure to comply with the request constitutes a violation of the program and will subject the employee to disciplinary action.
- B. Off-duty use of alcohol may adversely affect an employee's job performance or adversely affect or threaten to adversely affect other interests of the City, including but

not limited to the employee's relationship to his/her job, fellow workers' reputations, or goodwill in the community. Disciplinary action up to and including dismissal may be imposed on this basis.

- C. Except as provided herein, the personal possession (i.e., on the person, or in a desk, or locker) of alcohol on City property or during working hours will result in disciplinary action, up to and including dismissal.
- D. It is against the City's program and a violation of City policy to report to work or to work under the influence of alcohol.
- E. For purposes of implementing § 44.101-.102, an employee is presumed to be under the influence of alcohol if a blood test shows a forensically acceptable positive quantum of proof of alcohol usage as set forth in the Florida Workers' Compensation Testing Rules, Chapter 38F-9, F.A.C.
- F. An employee who Management has reason to suspect is under the influence of alcohol will be removed immediately from the workplace and will be tested and evaluated by authorized personnel selected by Management, if reasonably available. The City will take further action (i.e., further testing, referral to counseling, and/or disciplinary action) based on medical information, work history, and other relevant factors. The determination of appropriate action in each case rests solely with the City.
- G. Failure to pass an alcohol test will result in further testing or disciplinary action, up to and including dismissal.
- H. Efforts to tamper with, or refusal to submit to an alcohol test will subject the employee to dismissal.
- I. Employees arrested for an alcohol-related incident, as indicated on the arrest report, shall notify, as soon as feasible, but in any event no later than 24 hours after the arrest, the City management representative having direct administrative responsibility for the arrested employee of the arrest if the incident occurs:
  - 1. During working hours, or
  - 2. While operating a City vehicle, or
  - 3. While operating a personal vehicle on City business.Failure to comply with this subsection will result in disciplinary action up to and including dismissal.



- J. Violations of alcohol use prohibitions can subject an employee to disciplinary action up to and including dismissal. Dismissal for a first offense will be considered an appropriate penalty absent mitigating circumstances.

## **VI. DRUG USE PROHIBITIONS**

- A. The use, sale, purchase, possession, manufacture, distribution, or dispensation of nonprescription drugs or their metabolites on City property or while at work (while on duty, during working hours, etc.) is a violation of the City's Program and is just cause for immediate dismissal.
- B. Reporting to work, or working, under the influence of nonprescription drugs is a violation of the City's Program and is just cause for immediate dismissal unless the violation is identified solely by the failure of a random drug test as set for in VI. C. below.
- C. An employee who fails a random urine drug test, will be allowed a one-time opportunity to participate in an Alcohol/Drug Rehabilitation Program or the City of Gainesville Employee Assistance Program (EAP) or other approved program as determined by the City, in lieu of being immediately dismissed based upon such failure. However, allowing the Employee to participate in such program in lieu of being dismissed is conditioned upon the Employee's meeting the requirements set forth in paragraph X. D. of this program. Furthermore, such an opportunity will not be available to an employee who has previously participated in an Alcohol/Drug Rehabilitation Program, the City's EAP, or other approved, similar program, as an alternative to dismissal. Employees allowed the rehabilitation opportunity described herein may still receive disciplinary action short of dismissal in addition to required participation in the rehabilitation program. Participation in a treatment program, be it entirely voluntary or pursuant to this section, will not excuse additional violations of this policy, work rule violations, improper conduct, or poor performance and an employee may be disciplined or dismissed for such offenses or failure to perform. As to certain Departments or employee groups, Charter Officers may approve further limits on, or elimination of, the rehabilitation opportunity described above.
- D. For purposes of this program, an employee is presumed to be under the influence of drugs if a urine test or other authorized testing procedure shows a forensically acceptable positive quantum of proof of drug usage a set forth in the Florida Workers' Compensation Testing Rules, Chapter 38F-9, F.A.C.
- E. Legal medication (over the counter) or prescription drugs may also affect the safety of the employee, fellow employees or members of the public. Therefore, any employee who is taking any over-the-counter medications or prescription drug which might impair safety, performance, or an motor functions shall advise his direct management

representative of the possible impairment before reporting to work under the influence of such medication or drug. A failure to do so may result in disciplinary action. If Management determines that the impairment does not pose a safety risk, the employee will be permitted to work. Otherwise, management may temporarily reassign the employee or place the employee in an appropriate leave status during the period of impairment. Improper use of “prescription drugs” is prohibited and may result in disciplinary action. Improper use of prescription drugs includes, but is not limited to use of multiple prescriptions of identical or interchangeable drugs, and/or consumption of excessive quantities of and individual or therapeutically interchangeable drugs, and/or inappropriately prolonged duration of consumption of drugs, and/or consumption of prohibited drugs for other than valid medical purposes. For the purpose of this Program, consumption of any drug by the employee of more than the manufacturer’s maximum recommended daily dosage, or for a longer period of time than recommended, or of any prohibited drug prescribed for or intended for another individual, or for other than a valid medical purpose shall be construed to constitute improper use. Excessive or inappropriate prescribing by the prescriber or prescribers shall NOT constitute a defense for the employee. Prescription medication shall be kept in its original container if such medication is taken during working hours or on City property.

- F. Refusal to submit to or efforts to tamper with a drug test will subject the employee to dismissal.
- G. Except as provided herein, failure to pass a drug test will result in disciplinary action, up to and including dismissal.
- H. Violations of drug prohibitions can subject an employee to disciplinary action up to and including dismissal. Dismissal for a first offense will be considered an appropriate penalty absent mitigating circumstances.

## **VII. TESTING**

- A. Testing of Applicants
  - 1. Prior to employment, applicants, whether for temporary or permanent positions, will be tested for the presence of drugs.
  - 2. Any job applicant who refuses to submit to drug testing, refuses to sign the consent form, fails to appear for testing, tampers with the test, or fails to pass the pre-employment confirmatory drug test will not be hired and in most cases will be ineligible for hire for a period of at least two (2) years.
- B. Reasonable Suspicion Testing

1. “Reasonable suspicion testing” means drug testing based on a belief that an employee is using, or has used drugs in violation of the City’s program, on the basis of specific, contemporaneous, physical, behavioral or performance indicators of probable drug use.

Two management representatives shall substantiate and concur in the decision to test said employee, if feasible. Only one management representative need witness the conduct. The management representative(s) and witness(es) shall have received training in the identification of actions, appearance, conduct or odors which are indicative of the use of drugs or alcohol. If a management representative believes reasonable suspicion exists, the management representative shall report his or her findings and observations to the next higher management representative having administrative responsibility for the affected employee. Upon approval by the next higher management representative, the employee will be asked to immediately submit to a drug test(s) and sign a form acknowledging his or her consent. When chemical breath testing, or other reliable mechanisms, for alcohol testing are used, the test may be conducted immediately at the work site or later at the collection site. Factors which substantiate cause to test for blood or urine shall be documented by the management representative on the Substance Abuse Investigation Report Form which must be completed as soon as practicable, but no later than seven (7) days after the employee has been tested for drugs. A copy of this report will be given to the employee upon request.

2. Each supervisor shall be responsible to determine if reasonable suspicion exists to warrant drug testing and required to document in writing the specific facts, symptoms, or observations which form the basis for such reasonable suspicion. The documentation shall be forwarded to the Department Head or designee to authorize the drug test of an employee.

The Department Head or designee shall require an employee to undergo drug testing if there is reasonable suspicion that the employee is in violation of the City of Gainesville Drug-Free Workplace Program. Circumstances which constitute a basis for determining “reasonable suspicion” may include but are not limited to:

- a. A Pattern of Abnormal or Erratic Behavior - This includes but is not limited to a single, unexplainable incident of serious abnormal behavior or a pattern of behavior which is radically different from what is normally displayed by the employee or grossly differing from acceptable behavior in the workplace.

- b. Information Provided by a Reliable and Credible Source - The first line supervisor or another supervisor/manager receives information from reliable and credible source as determined by the Department Head that an employee is violating the City's Drug-Free Workplace Program.
- c. Direct Observation of Drug Use - The first line or another supervisor/manager directly observes an employee using drugs while the employee is on duty. Under these circumstances, a request for drug testing is MANDATORY.
- d. Presence of the Physical Symptoms of Drug Use - The supervisor observes physical symptoms that could include but are not limited to glassy or bloodshot eyes, slurred speech, poor motor coordination, or slow or poor reflex responses different from what is usually displayed by the employee or what is generally associated with common ailments such as colds, sinus, hay fever, diabetes, etc.

The following will be deemed reasonable suspicion and may provide a sufficient basis for requesting a drug test at the direction of the Department Head or designee:

- e. Violent or Threatening Behavior - First Incident: If an employee engages in unprovoked, unexplained, aggressive, violent and/or threatening behavior against a fellow employee or a citizen, the Department may request that the employee submit to drug testing.
- f. Violent or Threatening Behavior - Subsequent Incident: Whether or not an employee has previously received formal counseling or disciplinary action for unprovoked, unexplained, aggressive, violent and or threatening behavior against a fellow employee or a citizen, upon a second or subsequent episode of similar behavior/conduct (within twelve months), the Department shall request that the employee undergo drug testing.
- g. Absenteeism and/or Tardiness: If an employee has previously received a suspension action for absenteeism and/or tardiness, a continued poor record (within twelve months) that warrants a second or subsequent suspension action may result in a request for a drug test.
- h. Odor: Odor of cannabis or alcohol upon the person.
- i. Performance Related Accidents: Each employee whose performance either contributed to the accident or whose performance cannot be

discounted as a contributing factor to the accident shall be drug tested for both alcohol and drugs. The management representative having administrative responsibility for the employee involved in the accident shall ensure that a drug test is performed as soon as possible but no later than 32 hours after the accident. Post-accident testing may involve breath, blood, and urine.

Should evidence of alcohol be present, i.e., an odor of alcohol, open containers, or a statement from witness confirming alcohol consumption, the management representative must ensure testing is completed as soon as emergency medical care has been provided.

The following are examples of conditions that require accident related testing:

- (1) City employee operating a vehicle while on city business (either a city-owned or personal vehicle) and involved in an accident that results in a citation for a moving violation.
- (2) An accident involving property damage (city or private) estimated to be greater than \$1,000.
- (3) An accident involving death.
- (4) An accident involving injury requiring treatment at an off site (away from the scene of the accident) medical facility other than employee health services. If the injury is of such character as would have been treated at Employee Health Services, but for the unavailability of Employee Health Services, Management may waive this requirement. "Unavailability" means occurring at a time other than the hours of operation of Employee Health Services or at such distance from Employee Health Services as to render their use impractical.

## C. Random Testing

1. Random drug testing will be performed utilizing urine and may be performed in the future utilizing breath or other reliable mechanisms (see VIII, K).

2. Employees in safety sensitive or “special risk” positions, including employees whose positions with the City require them to have a commercial drivers license, will be required to submit to drug testing on a random basis. A list of those job classifications determined to be safety sensitive or “special risk” will be compiled and kept on file in the Human Resources Department. Such list will be periodically updated.
3. For purposes of selection for testing, employees shall be identified only by Social Security Numbers and the selection of employees will be conducted through the use of a random number generator or other neutral selection process.
4. Upon notification by management representatives that a drug test is required, the employee will report to the test site as designated by management, but in no event, later than 24 hours after notification, and provide a specimen of his/her urine. If chemical breath testing, or other reliable mechanisms, for alcohol testing are used, the test may be conducted immediately at the work site or later at the collection site.
5. Random testing shall be at an annual rate of between twenty-five percent (25%) to fifty percent (50%) of the average number of positions for which testing is required. During the first 12 months of this program, random drug testing: (1) will be spread reasonably throughout the year; and (2) the total number of tests will be equal to at least 25 percent (25%) of the employees subject to testing.

D. Return to Duty Testing

An Employee who does not pass a blood or urine drug test may not return to work until meeting at least the following requirements:

1. The employee must pass a drug test administered under this program.
2. The Medical Review Officer must approve the employee for return to work.
3. The employee must agree to participate in and successfully complete any alcohol or drug evaluation, counseling or rehabilitation program required by the City.
4. The employee must agree to submit to periodic, unannounced drug tests for a period of up to 60 months.

E. Position Change Testing

Employees moving from a non-safety sensitive position to one designated as safety sensitive or “special risk”, as a result of a formal personnel action, shall be required to successfully pass a urine drug test within 48 hours of receiving notification that they have been selected to fill the safety sensitive or “special risk” position.

F. Follow-up Testing

If the employee in the course of employment enters an employee assistance program for drug related problems, or an alcohol and drug rehabilitation program not related to the employee’s failure to pass a drug test, the employee shall submit to a drug test prior to return to duty and be cleared for return by the MRO, and, unless otherwise agreed to by the City, submit to drug tests as a follow-up to such program, on at least an annual basis for a period of 24 months thereafter, as determined by the City. Advance notice of the follow-up test shall not be given to the employee.

G. Routine Fitness for Duty

An employee shall submit to a drug test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is required for all members of an employment classification or group.

H. Additional Testing

Additional testing may also be conducted as required by applicable state or federal laws, rules, or regulations.

I. Refusal to Test

Employees who refuse to submit to a blood or urine test administered in accordance with this program forfeit their eligibility for all workers’ compensation medical and indemnity benefits and will be subject to dismissal. Employees who refuse to submit to a chemical breath test or other mechanism determined by management to be reliable will be subject to dismissal.

## **VIII. TESTING PROCEDURE**

A. Tested Substances

The City may test for any or all of the following drugs:

Alcohol  
Amphetamines (Binhetamine, Desoxyn, Dexedrine)  
Cannabinoids (i.e., marijuana, hashish)  
Cocaine  
Phencyclidine (PCP)  
Methaqualone (Quaalude, Parest, Sopor)  
Opiates  
Barbiturates (Phenobarbital, Tuinal, Amytal)  
Benzodiazophines (Ativan, Azene, Clonopin, Dalmane, Diazepam, Halcion, Librium, Poxipam, Restoril, Serax, Tranxene, Valium, Vertron, Xanax)  
Methadone (Dolophine, Methadose)  
Propoxyphene (Darvocet, Darvon N, Dolene)

B. Consent Required

Job applicants and employees will be asked to sign a Consent To Testing form. Refusal to execute the consent form constitutes a refusal to be tested, and will subject the employee/applicant to dismissal/failure to hire.

C. Designated Laboratory

Because of the potential adverse consequences of positive test results on employees, the City will employ a very accurate testing program. Specimen samples will be analyzed by a highly qualified, independent laboratory which has been selected by the City and certified by the appropriate regulatory agency. The name and address of the certified laboratory currently used by the City is on file with the Manager of Employee Health Services.

D. Notification of Prescription Drug Use

Applicants and employees will be given an opportunity prior to and after testing to, on a confidential basis, provide any information they consider relevant to the test including listing all drugs they have taken within the immediately preceding 30 day period, including prescribed drugs and to explain the circumstances of the use of those drugs in writing or other relevant medical information on a Drug Use Information Form, which information will be furnished to the Medical Review Officer (MRO) in the event of a positive confirmed result. Applicants and employees will also be provided with a notice of the most common medication by brand name or common name, as well as the chemical name which may alter or affect a drug test.

E. Testing of Injured Employees



An employee injured at work and required to be tested will be taken to a medical facility for immediate treatment of injury. If the injured employee is not at a designated collection site, the employee will be transported to one as soon as it is medically feasible and specimens will be obtained. If it is not medically feasible to move the injured employee, specimens will be obtained at the treating facility under the procedures set forth in this program and transported to an approved testing laboratory. No specimen will be taken prior to the administration of emergency medical care. An injured employee must authorize release to the City the result of any tests conducted for the purpose of showing the presence of alcohol or drugs.

F. Body Specimens

Urine will be used for the initial test for all drugs except alcohol and for the confirmation of all drugs except alcohol. Blood will be used for the initial and confirmation tests for alcohol for complying with the provisions of § 440.101-.102, Fla. Stat.. Sufficient volume of specimens shall be obtained so as to provide for the necessary number of samples as may be required, depending upon the number of required procedures. Chemical breath testing methods or other reliable mechanisms may be utilized in connection with justifying further alcohol/blood tests in instances involving reasonable suspicion, and random (if instituted in the future) testing under this program, but are not required to be first utilized. In the case of injured employees, the physician will have the discretion to determine to not draw a blood sample if such would threaten the health of the injured employee or if the employee has a medical condition unrelated to the accident which may preclude the drawing of the necessary quantity of blood for a testing specimen. Under these circumstances, no inference or presumption of intoxication or impairment will be made for the purposes of § 440.101-.102, but discipline for violation of the Program may be taken based upon observable conduct or conditions and/or the result of other tests, if any.

G. Cost of Testing

The City will pay the cost of initial and confirmation drug tests, which it requires of employees and job applicants. An employee or job applicant will pay the cost of any additional drug test not required by the City.

H. Collection Site, Work Site

1. The City will utilize a collection site designated by an approved laboratory which has all necessary personnel, materials, equipment, facilities, and supervision to provide for the collections, security, chain of custody procedures,

temporary storage and shipping or transportation of urine and blood specimens to an approved drug testing laboratory. The City may also utilize a medical facility as a collection site which meets the applicable requirements.

2. The City may require that an employee take a chemical breath test at the Work Site or other City facility.
3. Security of the collection site, chain of custody procedures, privacy of the individual, collection control, integrity and identity of the specimen and transportation of the specimen to the laboratory as applicable will meet state or federal rules and guidelines. Florida Department of Health and Rehabilitative Services CHAIN OF CUSTODY form (HRS form 1806, as amended from time to time-last revision 5/91) will be used for each employee or job applicant whose blood or urine is tested.

#### I. Collection Site, Work Site, Personnel

A specimen for a drug test will be taken or collected by:

1. A physician, a physician's assistant, a registered professional nurse, a licensed practical nurse, a nurse practitioner, or a certified paramedic who is present at the scene of the accident for the purpose of rendering emergency service or treatment; or
2. A qualified person employed by a licensed laboratory who has the necessary training and skills for the assigned tasks.

In the case of a chemical breath test, utilizing evidential breath test devices, a technician licensed pursuant to Rule 10D-42, F.A.C. In the case of other reliable mechanisms, a management representative who has received training in administering the test and analyzing the results.

#### J. Testing Laboratory

1. The laboratory used to analyze initial or confirmation blood or urine specimens will be licensed or certified by the appropriate regulatory agencies to perform such tests. The Florida Department of Health and Rehabilitative Services has published Drug-Free Workplace Standards (Florida Administrative Code, Chapter 10E-18) which shall be followed by laboratories and employers for testing procedures required under § 440.101-.102, Fla. Stat. (1993).
2. All laboratory security, chain of custody, transporting and receiving of specimens, specimen processing, retesting, storage of specimens, instrument

calibration and reporting of results will be in accordance with applicable state or federal laws and rules established by HRS of the U.S. Department of Transportation.

3. The laboratory or Medical Review Officer will provide assistance to the employee or job applicant for the purpose of interpreting any positive confirmed test results.

K. Initial Tests Used for Implementing § 440.101-.102, Fla. Stat. (1993)\*

Initial tests will use an immunoassay except that the test for alcohol will be an enzyme oxidation methodology. The following cutoff levels will be used when screening specimens to determine whether they are positive or negative for these drugs or metabolites. All levels equal to or exceeding the following will be reported as positive:

Alcohol	.05g/dl%
Amphetamines	1000ng/ml
Cannabinoids	100ng/ml
Cocaine	300ng/ml
Phencyclidine	25ng/ml
Methaqualone	300ng/ml
Opiates	300ng/ml
Barbiturates	300ng/ml
Benzodiazepines	300ng/ml
Synthetic Narcotics:	
Methadone	300ng/ml
Propoxyphene	300ng/ml

\*Chemical breath testing procedures as described in Chapter 10D-42, F.A.C. or U.S. Department of Transportation rules, or other reasonably reliable alcohol test devices, including tubes containing crystals that change color when exposed to alcohol, passive alcohol sensors, or saliva testing devices, etc., may be used, as determined by the City prior to requiring a blood sample in its reasonable suspicion testing program (and random if such is implemented in the future). These results are reported only to the appropriate manager who then determines if further testing under this program is warranted.

L. Confirmation Tests Used for Implementing § 440.101-.102, Fla. Stat.

All blood and urine specimens identified as positive on the initial test will be confirmed using gas chromatography/mass spectrometry (GC/MS) or an equivalent or more

accurate scientifically accepted method approved by the HRS, except that alcohol will be confirmed using gas chromatography. All confirmation will be done by quantitative analysis. Concentrations which exceed the linear region of the standard curve will be documented in the laboratory and recorded as “greater than highest standard curve value”. The following confirmation cutoff levels will be used when analyzing specimens to determine whether they are positive or negative for these drugs metabolites. All levels equal to or exceeding the following will be reported as positive:

Alcohol	.05g/dl%
Amphetamines	500ng/ml
Cannabinoids	15ng/ml
Cocaine	150ng/ml
Phencyclidine	25ng/ml
Methaqualone	150ng/ml
Opiates	300ng/ml
Barbiturates	150ng/ml
Benzodiazepines	150ng/ml
Synthetic Narcotics:	
Methadone	150ng/ml
Propoxyphene	150ng/ml

**IX. TEST RESULTS (Blood and Urine)**

A. Reporting Results.

1. The laboratory shall disclose to the MRO a written positive confirmed test result report within 7 working days after receipt of the sample. The laboratory should report all test results (both positive and negative) to the Medical Review Officer (MRO) within 7 working days after receipt of the specimen at the laboratory. The name and address of the current MRO is on file with the Manager of Employee Health Services. The MRO is employed by the City and is not an employee of the drug testing laboratory.
2. The laboratory will report as negative all specimens which are negative on the initial test or negative on the confirmation test. Only specimens confirmed positive on the confirmation test will be reported positive for a specific drug.
3. The laboratory will transmit results in a timely manner designed to ensure confidentiality of the information. The laboratory and MRO will ensure the security of the data transmission and restrict access to any data transmission, storage and retrieval system.

4. As provided in 10E-18.008 and 38F-9.014, F.A.C., the MRO will verify that positive and negative test results were properly analyzed and handled according to HRS rules. The MRO may require a re-test. The MRO will have knowledge of substance abuse disorders and shall also be knowledgeable in the medical use of prescription drugs and in the pharmacology and toxicology of illicit drugs. The MRO shall evaluate the drug test result(s) reported by the lab, verifying by checking the chain of custody form that the specimen was collected, transported and analyzed under proper procedures and, determine if any alternative medical explanations caused a positive test result. This determination by the MRO may include conducting a medical interview with the tested individual, review of the individual(s) medical history or the review of any other relevant bio-medical factors. The MRO shall also review all medical records made available by the tested individual. The MRO may request the laboratory to provide quantification of test results.
5. Within three (3) days of receipt of the test results, the MRO will (1) notify the Occupational Health Manager of negative results, or (2) contact the employee or job applicant regarding a confirmed positive test result and make such inquire as to enable the MRO to determine whether prescription or over-the-counter medication could have caused the positive test results. In this later case, the MRO will follow the procedure set forth in either the HRS or D.O.T. rules for providing the employee or job applicant the opportunity to present relevant information regarding the test results. After following the appropriate procedures, the MRO will notify the City in writing of any verified test results. If the MRO after making and documenting all reasonable efforts is unable to contact the employee or job applicant to discuss positive test results, the MRO will contact a designated management official to arrange for the employee or applicant to contact the MRO. The MRO may verify a positive test without having communicated to the employee or applicant about the results of the test, if (1) the employee or applicant declines the opportunity, or (2) within two days after contacting the designated management official the employee or applicant has not contacted the MRO. Further, employees or applicants must cooperate fully with the MRO. Failure to meet with the MRO upon his or her request or failure to promptly provide requested information will result in an applicant not being hired and an employee immediately being placed upon suspension without pay and may result in discharge.
6. Within 5 working days after the City receives a positive, confirmed verified test result from the MRO, the City will notify the employee or job applicant in writing of such test results, the consequences of such results, and the options available to the employee or job applicant, including the right to file an administrative or legal challenge. Notification shall be mailed certified or hand delivered. Hand delivery is the preferred method of providing notice to

employees. Mailed notification shall be deemed received by the employee or applicant when signed for, or seven calendar days after mailing, whichever occurs first.

7. The City will upon request provide to the employee or job applicant a copy of the test results.
8. Unless otherwise instructed by the City in writing, all written records pertaining to a given specimen will be retained by the drug testing laboratory for a minimum of 5 years. The drug testing laboratory shall retain (in properly secured refrigerated or frozen storage) for a minimum period of 1 year, all confirmed positive specimens. Within this 1 year period the City, employee, job applicant, MRO or HRS may request in writing that the laboratory retain the specimen for an additional period of time. If no such request, or notice of challenge (See B3) is received, the laboratory may discard the specimen after 1 year of storage.

#### B. Challenges to Test Results

1. Within 5 working days after receiving notice of a positive, confirmed and verified test result from the City, the employee or job applicant may submit information to the City explaining or contesting the test results and why the results do not constitute a violation of this program. The employee or job applicant will be notified in writing if the explanation or challenge is unsatisfactory to the City. This written explanation will be given to the employee or job applicant within 15 days of receipt of the explanation or challenge, and will include why the employee's or job applicant's explanation is unsatisfactory, along with the report of positive results. All such documentation will be kept confidential and will be retained for at least 1 year.
2. Employees may challenge employment decisions made pursuant to this program as may be authorized by the City personnel policy or collective bargaining agreements.
3. When an employee or job applicant undertakes an administrative or legal challenge to the test results, it shall be the employee's or job applicant's responsibility to notify the City through its Human Resources Director and the laboratory, in writing, of such challenge and such notice shall include reference to the chain of custody specimen identification number. After such notification, the sample shall be retained by the laboratory until final disposition of the case or administrative appeal.

4. The Department of Health and Rehabilitative Services, employer or MRO detecting a false positive error shall immediately notify the laboratory and the employee's management representative to who the false positive test result was reported.

C. Employee/Applicant Protection

1. During the 180 day period after the employee's or applicant's receipt of the City's written notification of a positive test result, the employee or applicant may request that the City have a portion of the specimen retested, at the employee's or applicant's expense. The retesting must be done at another HRS licensed laboratory. The second laboratory must test at equal or greater sensitivity for the drug in question as the first laboratory. The first laboratory which performed the test for the City will be responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain of custody for such transfer.
2. The drug testing laboratory will not disclose any information concerning the health or mental condition of the tested employee or job applicant.
3. The City will not request or receive from the testing facility any information concerning the personal health, habit or condition of the employee or job applicant including, but not limited to, the presence or absence of HIV antibodies in a worker's body fluids.
4. The City will not dismiss, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test.
5. The City will not dismiss, discipline or discriminate against an employee solely upon the employee's voluntarily seeking treatment, while in the employ of the City, for a drug-related problem, if the employee has not previously tested positive for drug use, entered an employee assistance program for drug-related problems, or entered an alcohol or drug rehabilitation program. This shall not prevent follow-up testing as required by this program.

## **X. EMPLOYEE ASSISTANCE PROGRAM (EAP)**

- A. The City regards its employees as its most important asset. Accordingly, the City maintains an EAP which provides help to employees who suffer from alcohol or drug

abuse and other personal or emotional problems. Employees with such problems should seek confidential assistance from the EAP or other community resources before drug or alcohol problems lead to disciplinary action. Employees may contact Employee Health Services for the name of the City's EAP.

- B. Information about a self-referred employee's contact with the EAP is confidential and will not be disseminated without the employee's permission. Further, an employee is not subject to discipline solely as a result of a self referral for treatment.
- C. However, use of the EAP or other community resources will not shield the employee from appropriate disciplinary action for violations of the City's Drug-Free Workplace Program if such violations come to the City's attention through other means, including, but not limited to, reports from employees or outsiders, direct observation, or drug testing.
- D. Employees referred to the EAP as a result of a first violation of the City's Drug-Free Workplace Program may, at the City's discretion, be allowed to continue their employment with the City provided:
  - 1. They contact the EAP and strictly adhere to all the terms of treatment and counseling;
  - 2. Immediately cease any and all abuse/use of alcohol/drugs; and
  - 3. Consent in writing to periodic unannounced testing for a period of up to 60 months after returning to work or completion of any rehabilitation program, whichever is later.
  - 4. Pass all drug test(s) administered under this program.
  - 5. The employee executes and abides by an agreement describing the required conditions.
- E. Participation in any evaluation, treatment, or counseling program will be at the employee's expense unless participation in the particular program is required by the City, or unless the employee is entitled to such benefits under the terms of the City's group health plan or by other available benefits.

## **XI. INVESTIGATION**



- A. To ensure that illegal drugs and alcohol do not enter or affect the workplace, the City reserves the right to undertake reasonable searches of all vehicles, containers, lockers, or other items on City property in furtherance of this program. Individuals may be requested to display personal property for visual inspection.
- B. Searches for the purpose described herein will be conducted only where the City has reasonable suspicion that the employee has violated the City's Drug-Free Workplace Program, and that evidence of such misconduct may be found during the search.
- C. Preventing a premises/vehicle search or refusing to display personal property for visual inspection will be grounds for dismissal and/or denial of access to City premises.
- D. Searches of an employee's personal property will take place only in the employee's presence. All searches under this program will occur with the utmost discretion and consideration for the employee involved.
- E. Individuals may be required to empty their pockets, but under no circumstances will an employee be required to remove articles of clothing or be physically searched except by law enforcement personnel having lawful authority to do so.
- F. Because the City's primary concern is for the safety of its employees, the public and their working environment, the City will not normally seek prosecution in matters involving mere possession of illegal substances discovered solely as a result of search under this section. However, the City will turn over all confiscated drugs and drug paraphernalia to the proper law enforcement authorities. Further, the City reserves the right to cooperate with or enlist the services of proper law enforcement authorities in the course of any investigation.

## **XII. ARREST FOR DRUG-RELATED CRIME**

- A. As a condition of employment, each employee obligates himself or herself to notify his or her appropriate management representative of the arrest for any alleged violation of or conviction under any criminal drug statute, including but not limited to, offenses described in Section 316.193, Chapter 859 and Chapter 893, Fla. Stat. (1991). Except for the more immediate notice required under Article V.H. of this program, the employee shall give the required notice within 48 hours of such event. Failure to notify will result in dismissal.
- B. Arrests:

If an employee is arrested on a charge of commission of a drug-related crime, the City will perform a preliminary investigation of all of the facts and circumstances surrounding the alleged offense, and City officials may utilize the drug-testing procedures in accordance with this program. In most cases, the arrest for a drug-related crime, except off-duty alcohol use, will constitute reasonable suspicion of drug use under this program. However, information on drug test results shall not be released or used in any criminal proceeding against the employee. Information released contrary to this section shall be inadmissible as evidence in any such criminal proceeding. In conducting its own investigation the City shall use the following procedures:

During the preliminary investigation, an employee may be placed on leave with pay, if applicable, or removed from safety sensitive or “special risk” assignments/positions. After the preliminary investigation is completed, but in no event later than 15 days after the employee’s department head learns of the arrest, normal personnel procedures shall be implemented.

### **XIII. CONFIDENTIALITY**

1. All information, interviews, reports, statements, memoranda and drug test results, written or otherwise, received by the City as a part of this drug testing program are confidential communications. Unless required by state or federal laws, rules or regulations, the City will not release such information without a written consent form signed voluntarily by the person tested, except when consulting with legal counsel in connection with action brought under or related to § 440.101-.102, or when the information is relevant to the City’s defense in a civil or administrative matter.

### **XIV. RECORDS AND TRAINING**

#### **A. Resource File**

The City will maintain a current resource file of providers of employee assistance including alcohol and drug abuse programs, mental health providers, and various other persons, entities or organizations designed to assist employees with personal or behavioral problems. The City will inform employees and new hires about various employee assistance programs that the employer may have available. The information shall be made available at a reasonable time convenient to the City in a manner that permits discreet review by the employee. The City will provide the names, addresses, and telephone numbers of employee assistance programs and local alcohol and drug rehabilitation programs to employees and applicants.

#### **B. Individual Test Results**

1. The MRO shall be the sole custodian of individual positive test results.
2. The MRO shall retain the reports of individual positive test results for a period of five years.
3. The City shall keep confidential and retain for at least one year an employee's challenge or explanation of a positive test result, the City's response thereto, and the report of positive result.
4. The City shall keep all negative test results for five years.

C. General Records of the City

1. Records which demonstrate that the collection process conforms to all appropriate state or federal regulations shall be kept for three years.
2. A record of the number of employees tested by type of test shall be kept for five years.
3. Records confirming that managers, supervisors and employees have been trained under this program shall be kept for three years.

D. Drug Training Program

1. The City shall establish and maintain a Drug Training Program. The Program shall, at a minimum, include the following:
  - a. A written statement on file and available for inspection at its Human Resources Department outlining the Program.
  - b. At least an annual educational and training component for employees which addresses drugs; and
  - c. An educational and training component for all supervisory and managerial personnel which addresses drugs.
2. The educational and training components described in D.1.b and D.1.c above shall include the following:
  - a. The effects and consequences of drug use on personal health, safety and work environment.

- b. The manifestations and behavioral changes that may indicate drug use or abuse.
- c. Documentation of training given to employees, supervisory and management personnel.

All Code of Federal Regulations or State Statutes addressed in this document are available for review in the City of Gainesville's Human Resources Office.