

ORIGINAL

Council Policy 3-6-2

DISTRIBUTION: City Manager, All Employees

SUBJECT: Drug Testing Policy

PURPOSE: To establish the policies and procedures to regulate Drug and Alcohol testing for all employees of the City of Muskogee, (except as may be provided differently under the terms of a collective bargaining agreement applicable to a particular group of employees).

BACKGROUND: see purpose

POLICY/

PROCEDURES: Drug and Alcohol Testing

A. PURPOSE

1. It is the policy of the City of Muskogee that the use of illegal drugs and the abuse of legal drugs constitutes a violation of the law and may also represent a threat to personal and public safety and property. Abuse of such substances can grossly diminish the productivity and reliability of employees, thereby violating the public trust. Such behavior shall not be tolerated, and the City of Muskogee shall administer a program to educate employees regarding the hazards of substance abuse and to eliminate such abuse. The City's program shall include provisions for employees suffering from substance abuse problems to seek or achieve rehabilitation.
2. The elected officials, management, collective bargaining units and employees of the City of Muskogee have a joint interest in workplace safety, the elimination of substance abuse and the improvement of related job performance safety and efficiency.

B. AUTHORITY

1. This policy shall be in accordance and compliance with the Oklahoma Standards for Workplace Drug and Alcohol Testing Act, Okla. Stat. Title 40, Section 551-565, 49 U.S.C. Sections 31306 and 45101 of the Federal Statutes and the Department of Transportation (D.O.T.) rules and regulations found at 49 CFR, part 40 and any subsequent amendments to the preceding statutes, rules and regulations. Copies of these statutes, rules and regulations are available in the Human Resources Department for review by any employee during normal workday hours. In cases of differences between those authorities and this policy, the policy shall prevail.

4-27-17
distr.

2. This policy repeals and replaces any previous drug or alcohol policy heretofore adopted by the City of Muskogee. Each employee shall be provided a copy of this policy, and each department shall post a copy in a prominent employee access and/or applicant access area.

C. EMPLOYEES COVERED AND PROVIDERS

This policy shall apply to all regular full-time, part-time and temporary employees of the City of Muskogee. It shall not apply to independent contractors or employees provided by temporary agencies, unless the contractor or temporary agency employee is operating D.O.T. covered/CDL type equipment. In that situation, the City must ensure that appropriate testing and CDL procedures are utilized in relationship to the employee, either through the City or the Temp Agency.

D. PROHIBITIONS

1. No employee shall report for duty within four hours after using alcohol or remain on duty while having an alcohol concentration of 0.02 or greater and no supervisor shall permit any employee to perform any work duties if the supervisor is aware the employee has an alcohol concentration of 0.02 or greater. No employee shall be on duty or operate a City vehicle or perform job duties while in possession of alcohol nor use alcohol during such duty time.
2. An alcohol test with a concentration of 0.02 or greater shall be considered a positive test for all employees covered by this policy on all tests, other than follow-up testing, except for fire personnel whose positive test shall be considered positive with an alcohol concentration of .04 or greater.
3. No employee shall report for duty, drive a City owned vehicle or remain on duty when the employee uses any controlled substance, except when the use is pursuant to the instructions of a physician and/or when the physician has advised an employee the substance will not adversely affect an employee's ability to drive a vehicle if such duties are required. No supervisor having knowledge that an employee has used a controlled substance shall permit an employee to be on duty or drive/operate any City equipment or vehicle, unless it has been approved by the employee's physician as described above.
4. No employee required to take a post accident alcohol test shall use alcohol for eight hours following the accident, or until he/she undergoes a post accident alcohol test, whichever occurs first. (Per Section L below, employees may not refuse alcohol and/or drug testing).

E. PRE-PLACEMENT TESTING

1. All job applicants, upon a conditional offer of employment, will undergo drug testing. Those applicants covered by D.O.T. rules will be required to undergo

drug and alcohol testing. Refusal to undergo drug and/or alcohol testing or a confirmed positive test result will be a basis for refusal to hire and rehire consideration will not be given until at least one (1) year has passed from the initial positive drug and/or alcohol test.

2. If the City is proposing to hire a D.O.T. covered CDL driver and the driver tests positive for drugs or alcohol prior to beginning work during the post-offer drug screening process, the City shall be responsible to notify that applicant of two Substance Abuse Professionals that they may want to see concerning their drug and/or alcohol issues per Federal D.O.T. requirements. However, since in these cases the City would not be retaining such applicants, the City has no responsibility to pay for and should not intervene in any SAP contact by these individuals.

F. FOR-CAUSE TESTING

1. Drug or alcohol testing may be conducted on any City of Muskogee employee at any time the City reasonably believes that an employee may be under the influence of drugs or alcohol, including, but not limited to the following circumstances:
 - a. Observable and articulable phenomena, such as physical symptoms or manifestations of being under the influence of drugs or alcohol while at work or on duty (appearance, behavior, speech, body odors, etc.), or the direct observation of such use while at work or on duty;
 - b. Improper possession of drugs or alcohol on or about employee's person;
 - c. Reports of drug or alcohol use on duty or at work from reliable and credible sources which are independently corroborated;
 - d. Evidence that an individual has tampered with a drug or alcohol test at any time;
 - e. Evidence that an employee is involved in the use, possession, sale, solicitation or transfer of drugs while on duty or while on City premises or operating a City vehicle, machinery, or equipment.
2. No testing under "for-cause" shall be initiated unless the circumstances are properly reviewed and agreed upon by at least two representatives of City management (which shall be considered to include supervisory level personnel), or, in the case of an employee or citizen calling in based on their observation, the source is credible.
3. A written record of the observations that lead to the "for-cause" drug or alcohol test shall be made and signed by the supervisor(s) who made such observations within 24 hours of the observed behavior. A copy shall be immediately forwarded to the Human Resources Department and shall be available for review upon request by the employee who was tested. If a call is received from a

credible citizen or employee, the Human Resources Director will make a written statement regarding the report.

G. POST ACCIDENT TESTING

1. An employees will be required to undergo drug and alcohol testing if the employee (or another person) has sustained a significant injury while at work and refuses medical treatment, suffered an injury that required medical care or the City's property has been damaged significantly, including damage to equipment. The Human Resources Director, or designee, may use discretion on requiring an employee to go for a post accident drug and/or alcohol screen if the injury or accident was caused by an act of nature or if the injury or accident is not reasonably related to potential impairment of an employee. An injury due to an act of nature may include, but is not limited to, bee stings and poison ivy and an accident due to an act of nature may include, but is not limited to, a vehicle hitting an animal or a tree branch falling on a vehicle due to a storm. An injury or accident which is not reasonably related to potential impairment of an employee may include, but is not limited to, carpal tunnel syndrome, migraines, or when an unmanned vehicle is hit by a third party.
2. In addition to Subsection 1 of Section G, Post Accident Testing, employees subject to D.O.T. commercial motor vehicle driver regulations who suffer a vehicle accident during operation of a motor vehicle shall be tested for alcohol and controlled substances as soon as possible after an accident if:
 - a. the accident involved the loss of human life; and/or
 - b. if the driver received a citation under state or local law arising from the accident.
3. If such D.O.T. testing cannot be administered within two hours of an accident, the supervisor shall prepare and maintain a written record of the reasons. After eight hours, such efforts to administer testing shall cease for purposes of reporting under DOT regulations and the written record shall be forwarded to Human Resources and shall be made available by Personnel to the Federal Highway Administration (FHWA) upon request. Per Section L below, employees may not refuse alcohol and/or drug testing. Testing pursuant to Section 1 above will be administered as soon as reasonably possible.

H. RANDOM TESTING

1. Certain groups of employees may be required to undergo drug or alcohol tests on a random selection basis. "Random selection basis" is defined as a mechanism for selecting employees that result in an equal probability that any employee from a group will be selected. The City may not waive the selection of any employee who has been selected under this mechanism. However, if an employee is unavailable for testing within a one (1) workweek timeframe due to sickness,

vacation, injury leave, training, etc. (or any combination of same), the City will not attempt to hold and/or track the testing selection for that particular employee beyond the one (1) workweek period.

2. Random testing is limited to those employees who are engaged in activities which directly affect the safety of others or who are required to be random tested according to Federal statutes or regulations. These employees include, but are not limited to, the following classifications or groups of employees:
 - a. Those employees whose position requires a CDL
 - b. Sworn Police personnel,
 - c. Sworn Fire personnel,
 - d. Persons authorized to carry a firearm,
 - e. Other employees who are determined to be engaged in activities which directly affect the safety of others, including those employees who(se):
 - i. Duties may risk injury to themselves or others; or
 - ii. Employees whose job responsibilities involve public safety or the safety of others; or
 - iii. Must use dangerous tools/equipment in the performance of their job duties; or
 - iv. Must perform job duties at heights; or
 - v. Must perform job duties and use dangerous chemicals; or
 - vi. Routinely operate a vehicle in the course of their job duties; or
 - vii. Must carry a firearm in the performance of job duties.
3. All City employees subject to random testing under the above criteria shall be placed in an appropriate pool as determined by the City and/or based on law. The City manager, or Human Resources Director as the designee, shall have the authority to set a testing rate as determined appropriate in view of program administrative considerations, State Law or other legal requirements. Any changes in rates shall not become effective until ten (10) days after employees are advised by posting of a notice in all applicable work areas.
4. Lists of employees eligible for testing shall be available for inspection in the Human Resources Department during normal business hours.
5. Every employee who is selected for random drug or alcohol testing shall proceed to a test site designated by the City immediately upon notification, unless the employee is performing a safety sensitive function at the time of notification which will not reasonably allow his/her replacement. In such cases, the supervisor shall ensure the employee proceeds to the testing site as soon as reasonably possible.

I. POST-REHABILITATION TESTING

1. All employees who test positive, and who are given the opportunity for continued employment by the City Manager, shall be required to complete a written "last chance agreement" (attached as an appendix) to undergo drug or alcohol tests for a period of two (2) years commencing with the employee's return to work following: 1) a positive drug or alcohol test, or 2) participation in a drug or alcohol dependency program when such drug or alcohol dependency program has been attended at the request of the City of Muskogee. Under D.O.T. regulations, the City will require an employee who needs a CDL and needs post-rehabilitation based on a positive drug test, to undergo drug or alcohol tests for a period of up to five (5) years commencing with the employee's return to work following: 1) a positive drug or alcohol test, 2) participation in a drug or alcohol dependency program, or 3) when such drug or alcohol dependency program has been attended at the request of the City of Muskogee. Again, the attached "last chance agreement" will be applicable to CDL licensed employees as well.
2. Post-rehabilitation testing will be in addition to any other testing the employee is subject to under this policy.

J. SUBSTANCES TO BE TESTED FOR INCLUDING RELATED METABOLITES

1. Substance testing for DOT covered employees:
 - a. Ethyl Alcohol or Ethanol (beer, liquor, etc.)
 - b. Cannabinoids or Marijuana
 - c. Cocaine (including crack)
 - d. Amphetamines
 - e. Opiates (including morphine, codeine, dilaudid, percodan)
 - f. Phencyclidine (including angel dust, PCP)
2. In addition to subsection 1 above, all other employee groups are subject to the following and additional types of substance testing at the discretion of the City and subject to the other provisions of this policy:
 - a. Hallucinogens
 - b. Methaqualone
 - c. Barbiturates
 - d. Benzodiazepines
 - e. Synthetic Narcotics
 - f. Controlled Designer Drugs
 - g. Metabolite of any of the substances listed herein
3. Threshold reporting levels are those established and maintained by the Federal Department of Transportation as utilized by the National Institute for Drug Abuse (NIDA) in Title 49 CFR, Subpart F, Section 40.87 and Title 40 of the Oklahoma Statutes and the Oklahoma Administrative Rules Sections 310:638-1-6 and

310:638-1-7. Any positive levels below those established reporting levels shall not be reported to the City's Medical Review Officer by the testing laboratory.

4. In addition, observation by a qualified Medical Review Officer will be conducted for any substance of which smelling, inhalation, etc. causes unnatural conditions as defined under Oklahoma Title 63, Section 465.20.

K. TESTING METHODS, DOCUMENTATION AND COSTS

1. Collection, storage, transportation and testing procedures shall be conducted in accordance with rules established by the Oklahoma State Board of Health and applicable Federal Statutes and regulations. Copies of these regulations shall be available in the Human Resources Department for review and inspection by any employee. Urine samples for drug and alcohol testing shall be collected with full regard to the privacy of the individual being tested. In no case shall any City representative directly observe collection of a urine sample. At the time of testing, an applicant or employee shall be given the opportunity to provide notification of any information which he/she considers relevant to the test, including currently or recently used drugs or other relevant information.

As required by Federal law for all drug test samples, all City drug test samples shall be split so that the employee shall have the opportunity to have one-half of the samples sent to another NIDA approved facility for testing, if requested. Employees wishing to obtain a separate and distinct test result using a different sample from the split half which could be used to challenge the results of the City's test must:

- a. do so at their own expense, unless the confirmation test reverses the initial positive test;
 - b. do so in accordance with the Oklahoma Standards for Workplace Drug and Alcohol Act or in accordance with the Department of Transportation (D.O.T.) rules and regulations found at 49 CFR, part 40;
 - c. have the sample collected within one hour of the City's sample collection.
2. When a drug or alcohol test is appropriate under this policy based on for cause criteria, the employer's supervisor shall transport or arrange for an employee to be transported to the City designated testing facility for testing.
 3. Employees must present a picture ID (Oklahoma Driver's License or City ID, etc.) or be accompanied by a supervisor who can certify the employee's identification as the employer representative to the medical testing personnel representative prior to testing and as required by NIDA procedures.
 4. After a for cause test, the supervisor shall make a reasonable effort to ensure that the employee is safely transported to their place of residence after any drug or alcohol testing is completed under criteria of for cause.

5. The City is responsible for all costs associated with drug or alcohol testing that it required under this policy. However, if an employee or applicant requests a confirmation test using the second half of the split sample within twenty-four (24) hours of receiving notice of a positive test in order to challenge the results of a positive test, the employee or applicant is responsible for the cost of the confirmation test unless the confirmation test reverses the findings of the challenged positive test in which case the City is responsible for the cost and will reimburse the individual for the costs of the confirmation test.
6. Any test of a current employee must be performed during or immediately after the employee's scheduled work period and is deemed as compensable work time as applicable under the Fair Labor Standards Act.

L. REFUSAL TO TEST AND SAMPLE TAMPERING

Employees refusing to undergo testing according to the terms of this policy shall be subject to disciplinary action up to and including termination. Employees found supplying or attempting to supply an altered sample or a substitute sample (not their own) by whatever means shall be subject to disciplinary action up to and including termination.

M. MEDICAL REVIEW OFFICER

The City shall contract with a Medical Review Officer qualified by the State Board of Health. The Medical Review Officer shall receive test results from the testing facility and evaluate those results in conjunction with the subject employee and/or applicant. Upon receiving a confirmed positive test result, the Medical Review Officer shall contact the applicant or employee prior to notification of City officials. The applicant or employee shall be given the opportunity to explain the test results. If the results are explained to the MRO's satisfaction, the result shall not be reported to the employer. In addition, the Medical Review Officer may observe the employee for unnatural behavior resulted from the smelling or inhalation, etc. of any substances set forth in Okla. Stat. Title 63, Section 465.20.

N. CONFIDENTIALITY

1. The City shall comply with all provisions of the Oklahoma Workplace Drug and Alcohol Testing Act including confidentiality and shall treat all tests and all information related to such tests including interviews, memoranda, reports and statements as confidential.
2. All records relating to drug testing shall be kept by the Human Resources Department but kept separated from personnel records. Records shall be the property of the City and shall be made available to the affected applicant or employee for inspection and copying upon request. Such records may not be used in any criminal proceeding or civil or administrative action except in actions taken

by the City or involving the subject employee and the City unless there is a valid court order authorizing the release of such records. Records may not be released to any person other than the applicant or employee without the applicant or employee's expressed written permission, or if otherwise required by law.

3. Employees with supervisory or management positions shall be responsible for compliance with this policy. They shall also ensure that employees seeking treatment or within rehabilitation processes are treated fairly and appropriately as concerns their job rights and job security. Additionally, supervisors and managers shall ensure confidential handling of diagnosis and treatment of employees with substance abuse problems.
4. A testing facility, or any agent, representative or designee of the facility, or any review officer, shall not disclose to the employer, based on the analysis of a sample collected from an employee for the purpose of testing for the presence of drugs or alcohol, any information relating to:
 - a. The general health, pregnancy or other physical or mental condition of the employee, or
 - b. The presence of any drug other than the drug or its metabolites that the employer requested be identified and for which a medically acceptable explanation of the positive result, other than the use of drugs, has not been forthcoming from the employee. Provided, however, a testing facility shall release the results of the drug or alcohol test, and any analysis and information related thereto, to the individual tested upon his or her request.

O. DISCIPLINE

1. The City of Muskogee recognizes that substance abuse is treatable and that appropriate responses to these problems include education, treatment and rehabilitation. The City shall not take disciplinary action against an employee who tests positive for drugs or alcohol unless the test is confirmed by a second test performed on the same sample using one of the methods prescribed by the Oklahoma Standards for Workplace Drug and alcohol Testing Act. However, this shall not preclude the use of paid administrative leave in cases involving for cause and/or at the discretion of the supervisor until such time as the results of that confirmation test become available. Continued employment is conditioned on the provisions below.
2. Current employees who (1) voluntarily come forward at least twenty-four (24) hours prior to any notification of required drug or alcohol testing, (2) admit to alcohol or drug problems, and (3) initiate E.A.P. rehabilitation through the City program shall not be considered to have violated this policy or be subject to

discipline. At the discretion of the City, the employee may be required to enter into a signed agreement for continued and required drug or alcohol testing and E.A.P. compliance if a problem is determined to exist.

3. In general, and when approved by the City Manager, a non-probationary employee with a previously satisfactory work record as determined by the City shall be given one (and only one) opportunity to continue employment after an initial positive, non-voluntary drug or alcohol test, i.e., where such testing was required by the City. An attempt to allow for rehabilitation of an employee is believed to be an appropriate course of action to meet the City's obligation to both our employees and to the citizens. In certain cases, employees who test positive for illegal drugs and/or alcohol may be subject to discipline not for the positive test but where such use has caused damage, endangered employees or citizens or otherwise has brought reproach or discredit to the City of Muskogee. Termination must be recommended by the appropriate Department Head and approved by the City Manager. Any such termination is subject to appeal through grievance procedures.
4. If an employee subsequently tests positive for drugs or alcohol a second time, that employee would be terminated by the City. For purposes of this policy, a subsequent positive test means any drug test as reported as a positive to the City of Muskogee and any alcohol test over .001.
5. Continued employment, shall be contingent upon an employee agreeing in writing via the attached "last chance agreement" to undergo follow-up drug and/or alcohol post-rehabilitation testing for two (2) years and a D.O.T. covered CDL driver agreeing in writing to undergo such testing for up to five (5) years. In both circumstances, the employee must also satisfactorily participate in the Employee Assistance Program. That agreement is attached as an appendix to and is part of this policy.
6. Employees who have had a positive drug or alcohol test will not be allowed to return to work until they have been reviewed by a Substance Abuse Professional (SAP) who has directed the City to initiate return to work procedures. Employees shall provide a verified negative "return to work" drug or alcohol test (as applicable), with testing costs covered by the City and obtained through a City approved testing facility prior to being considered for return to work.
 - a. During this period employees will be allowed to use available vacation, compensatory or sick leave accruals.
 - b. An employee who enters into a period of Leave Without Pay status must be placed on inactive status at the end of the pay period following the first day of unpaid absence to stop leave accruals and effect benefit tracking. The department payroll clerk/secretary shall submit a Personnel Action Form indicating "Inactive Pay Status" to the Human Resources Department once the employee enters LWOP status. When the employee

returns to work and "active pay" status, the department shall submit a Personnel Action Form indicating the change.

- c. Regardless of accrual availability, holidays observed by the City, and normally paid to the employee, will be paid.

P. AVAILABLE APPEAL PROCEDURES

Grievances arising from implementation and operation of this drug testing policy shall be handled in accordance with the collective bargaining agreement, Merit System or Civil Service grievance procedures as appropriate.

Q. EMPLOYEE ASSISTANCE PROGRAM (E.A.P.)

The City of Muskogee shall maintain access to an "Employee Assistance Program" (with an available Substance Abuse Professional) through the City's benefit plans. Specific terms, conditions and benefits will be those contained in the most current version of that plan. But the program shall at a minimum provide drug and alcohol dependency evaluation and referral services for substance abuse counseling, treatment or rehabilitation. All incurred costs not covered by the plan (except for follow-up testing as indicated above) will be the responsibility of the employee.

REFERENCES: Title 40 O. S. Section 551-565. The Oklahoma Standards for Workplace Drug and Alcohol Testing Act,
49 U.S.C. Sections 31306 and 45101
49 CFR, Part 40
Oklahoma Administrative Rules 310:638-7-4, 310:638-7-5, 310:638-1-6, 310:638-1-7

EFFECTIVE DATE: May 1, 2017

RESCISSION: This policy rescinds and supersedes Council Policy 3-6-2 dated July, 2005 and February, 2010, December 31, 2012 and June 21, 2014.

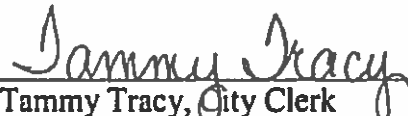
RESPONSIBILITY DEPARTMENT: Human Resources

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MUSKOGEE, OKLAHOMA, THIS 10th DAY OF April, 2017.



John K. Zoburn, Mayor

ATTEST:



Tammy Tracy, City Clerk



(SEAL)

APPROVED as to form and legality this 18th day of April, 2017.



Roy D. Tucker
City Attorney

Policy Receipt Acknowledgement

I have read and been informed about the content, requirements, and expectations of the City of Muskogee's Drug and Alcohol Testing Policy, effective May 1, 2017. I have received a copy of the policy and agree to abide by the policy guidelines as a condition of my employment and my continuing employment with the City of Muskogee.

I understand that if I have questions, at any time, regarding this policy, I will consult with my immediate supervisor, union representative, or the Human Resources Department.

Please read this policy carefully to ensure that you understand the policy before signing this document.

Employee Name

Employee Signature

Date

City of Muskogee Drug & Alcohol Testing Agreement

Employee Name: _____ Social Security #: _____

Witnessing Supervisor's Name: _____

Department: _____ Section/Division: _____

I acknowledge that the City of Muskogee's "Drug Testing Policy" permits the City Manager to choose to allow employees to continue their employment with the City after one-initial positive drug or alcohol test, subject to certain conditions provided in the City's Drug Testing Policy. As shown by my signature below, I hereby agree to abide by the terms of that Policy and this Last Chance Agreement:

1. I agree that the City may require me to undergo a special program of drug and alcohol testing to be determined by the City and without prior notice after (a) the date I return to work following a confirmed positive drug or alcohol test, or (b) following or in concurrence with my participation in a drug or alcohol dependency program, or attended at the request or direction of the City. This testing shall be conducted in addition to any other testing which I am required to subject myself to under City of Muskogee's policy.
2. I agree that the type, timing, and/or extent of any mandatory drug and alcohol testing shall be determined by the City contractual Substance Abuse Professional and/or Employee Assistance Professional according to 49 CFR part 40 Subpart F. section 382.605 of the Federal Register. The Substance Abuse Professional or Employee Assistance Professional shall send a written treatment recommendation to the City's Human Resources Director or designee.
3. I agree that upon signing this agreement, only the Human Resources Department designated employees, may be provided with (a) a copy of this agreement, (b) periodic reports on my cooperation, compliance and attendance with the Employee Assistance Program's contract provider and (c) the results of any and all related drug and alcohol tests I have taken.
4. I acknowledge and agree that my continued employment with the City is dependent upon my voluntary submission to the terms of this Agreement and requirements of the City of Muskogee' Drug Testing Policy. I further agree that, (a) any unsatisfactory cooperation, compliance or attendance (which shall include more than one missed appointment per year or two or more rescheduled appointments per year on behalf of the employee) with the Employee Assistance Program or Substance Abuse Professional Contract provider, or (b) any future positive drug test and/or an alcohol test with an alcohol concentration of greater than 0.001 (including a return to work screening test) which may be conducted as a part of this agreement, and which is confirmed by a second test performed on the same sample will result in the initiation of a pre-termination disciplinary process and a management determination on my dismissal.
5. I acknowledge that all costs (except for return to work and follow-up testing) associated with drug and alcohol dependency evaluation and referral services for substance abuse