

ADMINISTRATIVE ORDER NUMBER 2-25

SUBJECT: Policy on Drug and Substance Abuse

Responsible Department: Personnel Services

Date Issued: September 1, 2000

Date Revised: December 15, 2015; September 13, 2019

Approved: *(Signature on File)*

Purpose

To establish a City-wide policy regarding the misuse or distribution and use of drugs and alcohol for job applicants and on-duty employees in the City of Fresno. This policy is intended to address both illicit and prescription medications that may be used by job applicants and City employees during the course and scope of their employment which may impair judgment and the safe operation of vehicles and machinery.

In addition to the provisions of this policy, employees who are identified as “safety sensitive” by the Federal Department of Transportation are subject to additional rules and regulations. Employees in these categories are subject to the City’s respective policy statements which cover these issues in greater detail. Employees requesting additional information on these policies are directed to 49 CFR Part 655 (FTA) and 49 CFR Part 382 (FMCSA) in association with 49 CFR Part 40. Employees may also contact the Risk Management Division in the Personnel Services Department for assistance.

Policy

The City of Fresno is committed to protecting the health and safety of individual City employees, their co-workers, and the public from the hazards caused by the misuse of drugs and alcohol by its employees.

Application

1. This policy applies to all employees noted above and to all applicants for positions with the City of Fresno. This policy applies to alcohol and to all substances, drugs or medications, legal or illegal, which could impair an employee’s ability to perform the functions of the job effectively and safely.
2. This policy is not intended to apply to emergency services employees who may be exposed to alcohol or other controlled substances during the course of their assigned duties.

Policy Rules

1. An employee shall not work or report to work on City property under the influence of any drug, alcohol, or medication that impairs their ability to safely and efficiently perform the required duties of the position.

2. Employees shall be subject to disciplinary action up to and including termination upon the City's notice of a verified positive drug test result, an alcohol concentration which exceeds .02, or if they refuse to submit to a drug and/or alcohol test.
3. An employee shall not purchase, possess, use, sell, furnish, or be under the influence of any illegal drug, alcohol, or controlled substance (as defined in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 801-12) as further defined by 21 CFR 1300.11 through 1300.15) during the course or performance of his/her assigned duties. (Exception: Employees may participate in City sponsored functions, department employee fundraisers, or promotional activities where alcohol may be served or purchased.) Employees who are designated as "safety-sensitive" may be precluded from participating in these activities and are referred to the respective policies mentioned previously in this document.

An employee shall not purchase, possess, use, be under the influence of, sell, or furnish any prescription drug during assigned work hours, while on duty, while on City property, or while using City equipment unless:

- a. The prescription was issued by authorized medical personnel and the employee follows the prescription instructions.
 - b. The employee has consulted with the prescribing physician as to the possible effects of the drug and shall have informed their supervisor if such use of the drug may affect the employee's ability to perform their duties safely.
4. An employee who reports to work and advises their supervisor of limitations or restrictions resulting from a prescription or over-the-counter drug may be assigned less than the full range of duties at the sole discretion of the supervisor for that work day. Employees will not be subject to disciplinary action through compliance with this procedure.
 5. An off-duty employee shall not utilize City employment to facilitate the sale, purchase, or distribution of any illegal drug or controlled substance.
 6. Upon a showing of just cause, a representative(s) of the City may, in the presence of the employee or the employee's representative, or after the employee has been given the opportunity to designate a representative, search all areas and property over which the City maintains joint or full control with the employee. For this reason, employees are discouraged from bringing personal items to work unless such items are necessary to their employment with the City.

7. An employee, within five (5) calendar days, must report to the appointing authority any criminal conviction for drug-related activity in the workplace.
8. Department Directors may promulgate additional rules in accordance with this policy and appropriate to the work requirements and responsibilities of their employees.

Such additional rules shall be subject to Government Code Section 3500 et. Seq. and other applicable laws, rules, and regulations.

Terms / Definitions

1. Drug: An illegal drug, an over-the-counter drug, or a prescription drug.
2. Furnish or Furnished: Does not include furnishing which occurs in the course of legitimate law enforcement activities.
3. Industrial or Vehicle Accident:
 - a. "Industrial Injury" is an injury that arises out of and during the course of an individual's employment.
 - b. "Vehicle Accident" is an occurrence associated with the operation of equipment or a motor vehicle that is owned by, or leased to, the City, including an employee's personal vehicle used for City business.
4. Illegal Drug: A controlled substance, as defined by state or federal law, that has not been obtained in accordance with the regulations promulgated to administer its distribution, or a drug that has not been assigned an FDA number.
5. Over-the-Counter Drug: A drug lawfully available for retail purchase without a prescription.
6. Possess or Possessed: Does not include possession that occurs in the course of legitimate law enforcement activities.
7. Prescription Drug: A drug lawfully available for retail purchase only with a valid prescription which is specifically written for the employee's personal use.
8. Purchase or Purchased: Does not include a purchase that occurs in the course of legitimate law enforcement activities.
9. Reasonable Suspicion: Reasonable suspicion shall exist when two supervisors and/or managers who are trained in the detection of drug and/or alcohol use, and can articulate and substantiate in writing specific behavioral, performance, or contemporaneous physical indicators of being under the influence of drugs and/or

alcohol on the job. The objective indicators shall be recognized and accepted symptoms of intoxication or impairment caused by drugs or alcohol (See Appendix I). Suspicion is not reasonable and thus not a basis for testing, if it is based solely on the observations and reports of third parties. The grounds for reasonable suspicion must be documented by the use of the Reasonable Suspicion Testing Checklist Form (See Appendix II).

10. Using City Equipment: Operating, or assisting in operating, equipment or a motor vehicle that is owned by or leased to the City, including an employee's personal vehicle used for City business.

Prior Notice of Testing Policy

The City shall make available a copy of its Drug Policy to all employees, along with a notice that will contain the following information:

- a. The need for drug and alcohol testing;
- b. The circumstances under which testing may be required;
- c. The procedure for confirming an initial positive test result;
- d. The consequences of a confirmed positive test result;
- e. The consequences of refusing to undergo a drug and alcohol test;
- f. The right to explain a positive test result and the appeal procedures available; and
- g. The availability of drug abuse counseling and referral services.

Identification and Consent Procedures

1. An employee may be required to submit promptly to drug/alcohol testing by a City selected physician or laboratory if:
 - a. The employee sustains an industrial injury and there exists reasonable suspicion the employee is impaired or under the influence of drugs and/or alcohol.
 - b. The employee, while using City equipment, is involved in an accident wherein the employee's individual action, or lack thereof, provides reasonable suspicion that the employee is impaired or under the influence of drugs and/or alcohol.

- c. The management or supervisory employee has reasonable suspicion that the employee is impaired or under the influence of drugs or alcohol in violation of this policy (See Appendix I for guidelines.)
2. If two trained supervisors and/or managers believe that there is reasonable suspicion for a drug/alcohol test, the following procedures shall be used:
 - a. The employee shall be immediately informed of the suspicions and advised that the employee may have a representative present. This notification procedure shall be documented on the Reasonable Suspicion Testing Checklist Form (Appendix II). The delay in securing such representation shall not exceed one hour from the time the employee was ordered to submit to the drug/alcohol test. The employee shall be permitted a period of time not to exceed 15 minutes in which to confer with the representative upon arrival.
 - b. A supervisor or manager shall document the specific objective factors constituting reasonable cause for the drug and/or alcohol test on the Reasonable Suspicion Testing Checklist Form.
 - c. The employee will be offered an opportunity to give an explanation of their condition, such as reaction to a prescribed drug, fatigue, etc.
 - d. Both supervisors and/or managers shall sign and date the Reasonable Suspicion Testing Checklist Form.
 - e. The employee shall be provided with a copy of the Reasonable Suspicion Testing Checklist Form upon its proper completion.
3. Before a drug and/or alcohol test is administered, employees will be asked to sign a consent form authorizing the clinic or laboratory to release the results of the testing to the Risk Management Division. The consent form shall provide space for employees and applicants to indicate current or recent use of prescription or over-the-counter medication.
4. Unless there is an objective reason to believe the employee has altered a sample, or unless modified by agreement of the parties, individuals shall be allowed to provide the required specimen in the privacy of a stall or otherwise partitioned area.
5. A job applicant who refuses to consent to a drug and alcohol test will be denied employment with the City and will be removed from the appropriate eligible list.
6. An employee, who refuses to consent to a drug and/or alcohol test when reasonable suspicion of drug and/or alcohol use in violation of this policy has been identified, is subject to disciplinary action up to and including termination. The

reason for the refusal shall be considered in determining the appropriate disciplinary action.

Drug Testing Procedures

1. All testing will be performed by a laboratory licensed by the California Department of Health Services, Laboratory Field Services.
2. Upon being ordered to undergo drug testing, the employee shall provide a urine specimen for analysis.
3. The collection site shall obtain two samples of urine from the employee. One sample shall be forwarded to the designated laboratory for analysis and one sample shall remain at the collection site. Should the laboratory sample test positive, the employee shall have the opportunity to request that the second, or split sample, be sent to another certified laboratory for analysis. Should the second sample test negative, the test shall be reported as a negative finding. Failure to verify a positive finding on both samples shall result in an unconfirmed test and the results shall be reported as negative. (Note: Applicants and Employees who are tested under the authority of the U.S. Department of Transportation are subject to those regulations.)
4. The initial test of a urine specimen shall utilize an immunoassay technique.

The following chart shall be used when screening specimens to determine whether they are negative for the substances listed:

<u>Initial test analyte</u>	<u>Initial test cutoff concentration</u>	<u>Confirmatory test analyte</u>	<u>Confirmatory test cutoff concentration</u>
Marijuana metabolites	50 ng/mL	THCA ¹	15 ng/mL
Cocaine metabolites	150 ng/mL	Benzoylecgonine	100 ng/mL
Opiate metabolites			
Codeine/Morphine ²	2000 ng/mL	Codeine	2000 ng/mL
		Morphine	2000 ng/mL
Hydrocodone	300 ng/mL	Hydrocodone	100 ng/mL
Hydromorphone	300 ng/mL	Hydromorphone	100 ng/mL
Oxycodone	100 ng/mL	Oxycodone	100 ng/mL
Oxymorphone	100 ng/mL	Oxymorphone	100 ng/mL
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL
Amphetamines ³			
AMP/MAMP ⁴	500 ng/mL	Amphetamine	250 ng/mL
		Methamphetamine ⁵	250 ng/mL
MDMA ⁴ /MDA ⁵	500 ng/mL	MDMA	250 ng/mL
		MDA	250 ng/mL

Table 1 - Substances and Their Detection Levels in Urine Specimens

¹For grouped analytes (i.e., two or more analytes that are in the same drug class and have the same initial test cutoff):

Immunoassay: The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

Alternate technology: Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (i.e., equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.

² An immunoassay must be calibrated with the target analyte, D-9-tetrahydrocannabinol-9-carboxylic acid (THCA).

³ *Alternate technology (THCA and Benzoylecgonine):* When using an alternate technology initial test for the specific target analytes of THCA and Benzoylecgonine, the laboratory must use the same cutoff for the initial and confirmatory tests (i.e., 15 ng/mL for THCA and 100ng/mL for Benzoylecgonine).

⁴ Methylenedioxymethamphetamine (MDMA).

⁵ Methylenedioxyamphetamine (MDA).

5. All specimens identified as positive on the initial test shall be confirmed utilizing the gas chromatography/mass spectrometry (GC/MS) technique. All information shall be by quantitative analysis.
6. If the testing procedures confirm a positive result, the employee or applicant shall be notified of the results in writing by the Personnel Services Director or designee.
7. An employee or job applicant whose confirmation test results are positive shall be allowed to have a portion of the sample assayed by a confirmation test performed independently by a laboratory of the employee's or applicant's choice at the employee's or applicant's expense, provided that the laboratory chosen by the employee or applicant is licensed by the California Department of Health Services, Laboratory Field Services.
8. All specimens confirmed positive shall be retained and placed in properly secured long-term frozen storage for a minimum of one year by the laboratory contracted by the City, and made available for retest as part of any administrative proceedings.
9. All information from an employee's or applicant's drug and alcohol test is confidential for purposes other than determining whether the City policy has been violated. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee or applicant. The results of a positive drug test shall not be released until the results are confirmed. The record of unconfirmed positive test results shall be destroyed by the testing laboratory.

Testing for Alcohol

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol. Employees are cautioned against the use of various medications or remedies that may contain alcohol.

Alcohol testing is performed through the use of an evidential breath test which measures the amount of alcohol concentration in the individual's system. In order to perform the test, the employee will be asked to provide a breath sample into the device which then calculates the extent of alcohol concentration. The machines used to perform these tests are required to be calibrated and the operators are required to undergo training and testing. Refusal to submit to a required alcohol test is a violation of this policy and the employee shall be removed from performing work duties and subject to disciplinary action as discussed below.

Breath Alcohol Test (BAT) results of .02 or greater will be treated as a positive test result.

Consequences for Violating the Rules and Provisions of This Policy

1. Applicants: Job applicants will be denied employment with the City if their initial positive test results have been confirmed. Applicants shall be informed in writing if they are rejected on the basis of a confirmed positive drug test result.
2. If an employee is ordered to provide a urine specimen for drug testing and/or perform an evidential breath test for alcohol testing purposes, the employee may refuse. Such refusal shall constitute insubordination and subject the employee to disciplinary action up to and including termination from City employment.
3. If an employee takes an evidential breath test and the Breath Alcohol Test results are .02 or greater, the employee is subject to disciplinary action up to and including termination.
4. Employees reasonably believed to be under the influence of alcohol or drugs shall be prohibited from engaging in work and shall not be allowed to operate or utilize any City equipment. Employees found in violation of a direct order issued by a supervisor or manager in implementing this policy are subject to disciplinary action up to and including termination.
5. If an employee's positive test result has been confirmed, the employee is subject to disciplinary action up to and including termination. Among factors to be considered in determining the appropriate disciplinary response include the nature and requirements of the work, length of employment, current job performance, and the history of past disciplinary actions.
6. If the results of the testing are negative, then the employee shall be made whole for all lost time, not including unscheduled overtime.

Employee Training

The City of Fresno will establish a Drug Free Awareness program which will inform employees about (1) the dangers of alcohol and drug abuse in the workplace; (2) the City's policy on drug and alcohol abuse; (3) the availability of treatment and counseling for employees who voluntarily seek such assistance; and (4) the sanctions the City will impose for violations of its Drug and Substance Use Policy.

Supervisory Training

The City shall develop a program of training to assist supervisory and managerial personnel in identifying drug and alcohol use among employees and applicants. Such training shall assist supervisors and managers in identifying factors that constitute reasonable suspicion for drug and/or alcohol testing and shall include a detailed explanation of the City's Drug and Substance Use Policy.

Employee Assistance Program

An employee who engages in drug and/or alcohol abuse is encouraged to participate in the Employee Assistance Program; however, such participation shall not relieve an employee of the obligation to follow the policy rules regarding drug and/or alcohol use. An Employee Assistance Program counselor shall not disclose information on drug and/or alcohol abuse received from an employee, except for the compilation of anonymous statistical reports.

MANAGEMENT GUIDELINE FOR DRUG AND ALCOHOL ABUSE TESTING

A consensus of two managers and/or supervisors who have observed the employee or applicant may request that an employee or applicant submit to a drug and/or alcohol test when there are factors constituting reasonable suspicion leading the managers and/or supervisors trained in the detection of drug and/or alcohol use to reasonably believe the employee is intoxicated or under the influence of drugs or alcohol.

Any of the following objective factors may constitute reasonable cause:

1. Incoherent or slurred speech, disorientation, or inattention.
2. Odor of alcohol on breath.
3. Staggering gait, disorientation, or balance problem.
4. Red, watery eyes with dilated or constricted pupils
5. Dry mouth with frequent swallowing or lip wetting
6. Hand tremors.
7. High energy, agitate, talkative, paranoid, or bizarre behavior.
8. Drowsiness or detachment from physical and/or emotional pain.
9. Admission by the employee or applicant of drug and/or alcohol use in violation of this policy.

This is not an exhaustive list. There may be other objective factors which may constitute reasonable suspicion.

Any manager or supervisor requiring an employee to submit to a drug and/or alcohol analysis should document, in writing, the facts constituting reasonable suspicion that the employee or applicant in question is intoxicated or under the influence of drugs and/or alcohol.

Reasonable Suspicion Testing Checklist

This checklist is used to determine and document reasonable suspicion of a potential violation of the City's Policy on Drug and Substance Abuse, Administrative Order 2-25. In such instances, the supervisor or manager observing the behavior with another supervisor or manager as witness must each complete a checklist. It must be completed by both prior to testing and must be used to notify the individual that they are being asked to submit to drug and/or alcohol testing.

Date: _____

Time: _____

Name of Observed Individual (Print): _____

Employee ID#: _____

OBSERVED INDICATORS CHECKLIST:

Physical Indicators:

<p>WALKING</p> <input type="checkbox"/> Holding On <input type="checkbox"/> Stumbling <input type="checkbox"/> Unable to Walk <input type="checkbox"/> Unsteady <input type="checkbox"/> Staggering <input type="checkbox"/> Swaying <input type="checkbox"/> Falling <input type="checkbox"/> Appears Normal <input type="checkbox"/> Other _____	<p>FACE</p> <input type="checkbox"/> Red/Flushed <input type="checkbox"/> Pale <input type="checkbox"/> Sweaty <input type="checkbox"/> Slobbering <input type="checkbox"/> Grinding Teeth <input type="checkbox"/> Dry Mouth <input type="checkbox"/> Runny Nose <input type="checkbox"/> Appears Normal <input type="checkbox"/> Other _____	<p>SPEECH</p> <input type="checkbox"/> Whispering <input type="checkbox"/> Slurred <input type="checkbox"/> Shouting <input type="checkbox"/> Incoherent <input type="checkbox"/> Silent <input type="checkbox"/> Rambling <input type="checkbox"/> Slow <input type="checkbox"/> Appears Normal <input type="checkbox"/> Other _____	<p>BREATH/ODOR</p> <input type="checkbox"/> No Alcohol Odor <input type="checkbox"/> Faint Alcohol Odor <input type="checkbox"/> Strong Alcohol Odor <input type="checkbox"/> Chemical Odor <input type="checkbox"/> Marijuana Odor <input type="checkbox"/> Breath Spray/Mouthwash <input type="checkbox"/> None <input type="checkbox"/> Mints <input type="checkbox"/> Gum <input type="checkbox"/> Candy <input type="checkbox"/> Appears Normal <input type="checkbox"/> Other _____
<p>STANDING</p> <input type="checkbox"/> Swaying <input type="checkbox"/> Feet Wide Apart <input type="checkbox"/> Rigid <input type="checkbox"/> Staggering <input type="checkbox"/> Sagging at Knees <input type="checkbox"/> Appears Normal <input type="checkbox"/> Other _____	<p>EYES</p> <input type="checkbox"/> Watery <input type="checkbox"/> Bloodshot <input type="checkbox"/> Glassy <input type="checkbox"/> Dilated <input type="checkbox"/> Closed <input type="checkbox"/> Droopy Eye Lids <input type="checkbox"/> Appears Normal	<p>MOVEMENTS</p> <input type="checkbox"/> Fumbling <input type="checkbox"/> Jerky <input type="checkbox"/> Nervous <input type="checkbox"/> Slow <input type="checkbox"/> Hyperactive <input type="checkbox"/> Appears Normal <input type="checkbox"/> Other _____	<p>APPEARANCE</p> <input type="checkbox"/> Messy <input type="checkbox"/> Dirty/Stained Clothing <input type="checkbox"/> Burns on Person/Clothing <input type="checkbox"/> Ripped/Torn Clothing <input type="checkbox"/> Partially Dressed <input type="checkbox"/> Puncture Marks/Needle Tracks <input type="checkbox"/> Appears Normal
<p>OTHER</p> <input type="checkbox"/> Admission Language (See below comment) <input type="checkbox"/> Other (See below comment)			

Behavioral Indicators:

<p>DEMEANOR</p> <input type="checkbox"/> Cooperative <input type="checkbox"/> Talkative <input type="checkbox"/> Sarcastic <input type="checkbox"/> Anxious <input type="checkbox"/> Disoriented <input type="checkbox"/> Sleepy	<input type="checkbox"/> Polite <input type="checkbox"/> Silent <input type="checkbox"/> Belligerent <input type="checkbox"/> Excited <input type="checkbox"/> Inattentive <input type="checkbox"/> Drowsy	<input type="checkbox"/> Calm <input type="checkbox"/> Resisting Communication <input type="checkbox"/> Tearful/Crying <input type="checkbox"/> Mood Changes <input type="checkbox"/> Appears Normal <input type="checkbox"/> Other _____	<p>ACTIONS</p> <input type="checkbox"/> Fighting <input type="checkbox"/> Erratic <input type="checkbox"/> Threatening <input type="checkbox"/> Non-Communicative <input type="checkbox"/> Argumentative <input type="checkbox"/> Profanity <input type="checkbox"/> Hostile <input type="checkbox"/> Hyperactive <input type="checkbox"/> Sleeping on Job <input type="checkbox"/> Other _____
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Comments and Other Observations:

Additional Facts:

Presence of alcohol and/or drugs in individual's vicinity.

On the job or City work premises misconduct by individual (specify): _____

Individual admission concerning alcohol use and/or drug use or possession.

List other witnesses to individual's conduct and summarize what they say they witnessed:

Individual declined to comment, or individual's explanation for behavior: _____

Is individual at least 18 years of age? YES NO If "no," name of parent/guardian contacted: _____

Individual was offered representation: YES NO Individual's initials acknowledging offer of representation: _____

Completed by (signature): _____ **Date:** _____ **Time:** _____

Printed Name: _____ **Title:** _____