

# **FRESNO AREA EXPRESS**

## **CONTROLLED SUBSTANCES AND ALCOHOL TESTING POLICY**

**FOR  
“SAFETY-SENSITIVE”  
EMPLOYEES/INDIVIDUALS  
SUBJECT TO  
FEDERAL TRANSIT  
ADMINISTRATION (FTA)  
REGULATIONS**

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## **POLICY STATEMENT**

This policy applies to all applicants, employees, service agents, and grant contract recipients who perform a “safety-sensitive” function for the City as defined by the Federal Transit Administration (“FTA”)(49 Code of Federal Regulations (“CFR”) Part 655)<sup>1</sup> as required by the Federal Omnibus Transportation Employee Testing Act of 1991 (“Act”)(Public Law 102-143, Oct. 28, 1991), as amended. This policy also applies to off-site lunch periods or breaks when the covered safety-sensitive individual is scheduled to return to work, or is on assigned stand-by duty.

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 and those of its service providers. The safety of the public, as well as the safety of fellow City employees, dictates that individuals not use or be under the influence of drugs and/or alcohol while subject to the performance of safety-sensitive duties.

In order to achieve this goal and to comply with the requirements of the Act and the FTA regulations, the City has developed and implemented a drug and alcohol testing program designed to prevent accidents and injuries resulting from the misuse of alcohol or prohibited use of drugs by individuals who perform safety-sensitive functions governed by DOT regulations.

Questions or concerns regarding the administration of the program and the implementation of DOT drug and alcohol testing guidelines may be directed to the City of Fresno Risk Manager at (559) 621-6900, who is the City’s Designated Employer Representative (“DER”) for the City’s program.

## **PROHIBITED SUBSTANCES**

The FTA regulations require all covered individuals/employees be tested for the presence of marijuana, cocaine, amphetamines (including methamphetamine, methylenedioxymethamphetamine (i.e., MDMA)), opiates (including codeine, morphine, heroin), and phencyclidine (i.e., PCP). Use of these drugs by safety-sensitive individuals is prohibited at all times under the FTA regulations, and covered individuals/employees may be tested for the presence of these substances in accordance with the FTA regulations.

The use of any drug or substance identified in Schedules I through V of the Controlled Substances Act (21 U.S.C. §§801 et seq.), as further defined by 21 CFR 1308.11 through 1308.15 is prohibited at all times unless a legal prescription has been written for the drug or substance and the minimum standards under the DOT regulations are met

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<sup>1</sup> 49 CFR Part 40 is the U.S. Department of Transportation’s (“DOT”) drug and alcohol testing regulation that applies to all DOT-required testing, regardless of the DOT agency-specific rules. The FTA regulations are the specific DOT Agency regulation that more specifically dictates who, when, and in what situations, a transit employee is subject to drug and/or alcohol testing.

as determined by the DOT-certified Medical Review Officer (“MRO”). This includes, but is not limited to, marijuana, amphetamines, methamphetamine, opiates, phencyclidine (PCP) and cocaine, as well as any substance which causes the presence of these drugs or drug metabolites not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Prohibited use includes use of any illegal drug or substance, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Marijuana is a drug listed in Schedule I of the Controlled Substances Act and an MRO is prohibited under 49 CFR 40.151 from verifying a test negative even if a safety-sensitive employee has a physician’s recommendation authorizing the use of medical marijuana under California’s “medical marijuana” laws.

## **PERFORMING A “SAFETY-SENSITIVE” FUNCTION**

A “safety-sensitive” function means performing any of the following duties:

1. Operating a revenue service vehicle, including when not in revenue service.
2. Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver’s License.
3. Controlling dispatch or movement of a revenue service vehicle as determined by FAX.
4. Maintaining a revenue service vehicle or equipment used in revenue service.
5. Carrying a firearm for security purposes.

Essentially, this policy will cover all bus operators, mechanics, dispatchers, and supervisory personnel of those individuals, who can be expected to fall under these regulations. In addition, this policy will cover employees of outside service providers who perform work for Fresno Area Express and are considered safety-sensitive. Employees who have questions or concerns regarding a safety-sensitive designation of their position may discuss the issue with their supervisor or contact the DER for further information.

Testing for *alcohol* may occur any period in which the covered individual is: (1) performing safety-sensitive duties; (2) just before the employee is to perform safety-sensitive duties; or (3) just after the employee has stopped performing such functions. Performing a safety-sensitive duty includes any period where the employee is actually performing, ready to perform, or immediately available to perform such duties. Testing for *drugs* may occur at any time the safety-sensitive employee is at work, irrespective of actually performing a safety-sensitive duty. Employees will be paid the applicable rate of pay during the entire period of time that they are participating in the testing process.

Individuals who are identified as falling under the provisions of this policy are required to participate as a condition of employment. Employees who are unsure if they are covered by this policy or have questions regarding the application of this policy are

encouraged to contact the DER designated in this document.

## **CIRCUMSTANCES FOR TESTING**

The FTA guidelines require the following types of tests to be performed:

### **1. Pre-Employment, Promotional or Transfer Testing**

Pre-employment testing will occur after an applicant has been provided a conditional offer of employment. A pre-employment candidate must produce a verified negative drug test result prior to first performing a safety-sensitive duty. If the test is cancelled, the individual must re-take and successfully pass the test prior to being hired.

Employees who are being transferred or promoted to a safety-sensitive position will be required to undergo drug testing. Employees who are currently employed in a safety-sensitive position seeking transfer or promotion to another safety-sensitive position will not be required to undergo further testing. Employees who have not performed a safety-sensitive function for 90 consecutive calendar days, and who have not been subject to random testing, shall undergo testing prior to returning to a safety-sensitive position. Employees who have returned to work, but are performing duty in a non-safety-sensitive function (i.e. light duty) shall remain in the pool and subject to testing. Employees who have not performed in a safety-sensitive capacity for 90 consecutive days and are awaiting clearance after undergoing a return to work drug test, shall be assigned to a non-safety-sensitive function at their regular rate of compensation.

Non-safety-sensitive employees seeking transfer or promotion to a safety-sensitive position must provide a verified negative drug test prior to performing in a safety sensitive position.

When a covered City employee or applicant has previously failed or refused a pre-employment drug test under the FTA regulations, the individual must provide the City with proof of having successfully completed a referral, evaluation and treatment plan as described in Section 655.62. A copy of this information may be obtained by contacting the DER.

### **2. Post-Accident Testing**

Post-accident testing, pursuant to this policy, will occur under the following circumstances:

a) **FATALITY.** Drug and alcohol testing will occur in all cases involving a fatality.

b) **NON-FATAL.** Drug and alcohol testing will occur if the accident involves:

i. Bodily injury to any person, who as a result of the injury, receives

medical treatment away from the scene (unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident); or

- ii. One or more vehicle(s) incurs disabling damage as a result of the occurrence and such vehicle(s) are towed away from the scene (unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance could be completely discounted as a factor to the accident). The employer shall also order drug and alcohol testing for any other covered employee whose performance could have contributed to the accident as defined above, as determined by the City using the best information available at the time of decision.

As soon as practicable following an accident not involving the loss of human life in which a public transportation vehicle (i.e., a transit bus or vehicle used for public transportation or ancillary services) is involved, the employer shall require drug and alcohol testing for each covered employee operating the public transportation vehicle involved in the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident. The employer shall also order drug and alcohol testing for any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

Drug testing in post-accident situations shall occur as soon as possible, but no later than 32 hours after the accident.

Alcohol testing shall occur within two (2) hours of the accident. If the alcohol test cannot be performed within this time period, the reason shall be documented. In no case shall an alcohol test be administered later than eight (8) hours past the time of the accident and the reason for delay shall be documented. An individual who has been involved in an accident which requires a post-accident test, shall not consume any alcohol for a period of eight (8) hours after the occurrence or until such time as the post-accident alcohol test has been performed.

Nothing in this section shall delay medical attention for an injured individual following an accident or prohibit an individual from leaving the immediate scene of the accident for the period of time necessary to obtain assistance in responding to the accident or to obtain necessary medical treatment.

### 3. Reasonable Suspicion Testing

Employees may be subject to reasonable suspicion testing when there is reasonable cause to believe that the individual has used a prohibited drug and/or

engaged in alcohol misuse. For a reasonable suspicion test to occur under the FTA guidelines, the individual must be observed by a supervisor who has been trained in the detection of drug use and/or alcohol misuse. The supervisor shall require the individual to undergo such testing based only on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered individual. The employee shall be immediately informed of the supervisor's observations and suspicions and advised that he/she may have a representative present. The notification to the employee shall be documented on the Incident Report Form. The employee shall proceed immediately to the testing facility or location for reasonable suspicion testing for drugs and/or alcohol.

Reasonable suspicion alcohol testing is only permissible under the FTA regulations just before an employee performs safety-sensitive duties, during that performance, and just after an employee has performed covered duties; and that the observations leading to that testing must be made during, just preceding, or just after the employee has performed safety sensitive duties.

#### 4. Random Testing

Random testing for alcohol will be conducted on an unannounced basis just before, during, or after the performance of a safety-sensitive function. Testing for drugs may be performed at any time while the individual is present at work, irrespective of the performance of a safety-sensitive function.

Random tests will be spread reasonably throughout the calendar year. Random testing will be unannounced and conducted at all times of the day, any day of the week, when safety-sensitive functions are performed. This ensures that employees will have a reasonable expectation that they might be called for a test on any day and at any time they are at work. Every employee randomly selected for drug and/or alcohol testing shall be directed to proceed to the test site immediately.

The name of each individual who is subject to random testing will be placed into a pool from which the names will be randomly drawn. Each employee shall have an equal chance at selection and shall remain in the pool even after being tested. The basis for random selection shall be by a scientifically valid random number generation method initiated by computer. A designated representative from the affected labor organizations shall be permitted to authenticate and confirm the scientific validity of the random selection process, but shall not be permitted to view the names of employees who are selected for testing. Such labor representatives shall be designated in January or each calendar year on a rotational basis along the following order: CFMEA (January 1, 2016), CFPEA, (January 1), FPOA (January 1), IBEW (January 1), ATU (January 1), Local 39 (January 1), and FCEA (January 1). The "FAX Driver Verification Handbook" will no longer be issued and affected employees shall be advised that information is no longer applicable to the operation of the drug and alcohol testing program.

Random drug and alcohol testing shall conform to the testing limits established by Federal Law.

Procedure for Random Testing:

- a) Risk Management will select a date and time for random list generation and request the designated labor organization observer to attend. The date is usually selected 24 hours prior to the creation of the list of names for actual testing. In order to facilitate testing, Risk Management will notify the designated testing facility of the date and time of expected testing so that adequate staffing needs are met.
- b) At the appointed time of list creation, Risk Management will request the designated labor organization observer to select a random number between 1-10.
- c) Based upon the number selected, the computer will generate lists until that numbered list is reached. That list will be used for testing and all others will be discarded. Both Risk Management and the observer will sign the selected list to verify its authenticity as being the list selected.
- d) Risk Management will review the list and identify the physical location of all employees selected.
- e) Risk Management will contact the designated FAX Management representative(s) and provide the names of employees who require drug and/or alcohol testing.
- f) FAX Management shall notify selected employees that they have been chosen for random testing and shall direct each selected employee to proceed to the test site immediately. Selected employees for testing shall be subject to testing while actually working or expected to report for work during the testing period which is defined as the time period between which random lists are drawn. Employees that are selected, but who are not reasonably expected to return to work before the next list is drawn, shall not be tested and the next name on the generated list will be considered for testing.
- g) FAX Management shall notify Risk Management of the availability of selected employees. Risk Management will note this information and provide a notation in the file if a selected employee is not tested.
- h) Risk Management shall maintain a separate file for each date that random test lists are generated. The file shall contain the original list from which the names were used to identify employees to be tested.
- i) The Risk Management shall place a copy of the completed drug testing report into each corresponding file for that specific date of testing.

- j) Upon receipt of information from the MRO that an employee has tested positive for drugs and/or alcohol, Risk Management shall advise the FAX General Manager, the Operations Manager, or their designee that the employee must be precluded from performing safety-sensitive duties. Except as provided in 49 CFR Part 40, Subpart P, no medical information or drug and/or alcohol testing results shall be released to third parties without the employee's specific written consent.
- k) Risk Management shall contact a Substance Abuse Professional (SAP) and shall advise the employee of a date and time for referral when there has been a verified positive DOT drug test and/or DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater. No SAP referral shall be made for a refusal to submit to a drug and/or alcohol test as defined in 49 CFR 40.191 and 40.261, or for alcohol concentration results of less than 0.04. However, Risk Management will provide the employee a listing of available SAP names, addresses, and telephone numbers for the employee's voluntary consultation at their own expense.
- l) Upon receipt of the recommendation of the SAP when there has been a verified positive DOT drug test and/or DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, Risk Management shall confer with the employee and FAX Management for the purpose of discussing the recommendation of the SAP.
- m) A positive drug and/or alcohol test result, or a refusal to submit to a drug and/or alcohol test as defined in 49 CFR 40.191 and 40.261, may subject the employee to disciplinary action up to and including termination. In collaboration with the Personnel Services Department, FAX management may determine the level of discipline, including whether a Last Chance Agreement shall be offered, with final approval by the City Manager. The purpose of the Last Chance Agreement, should one be offered, is to allow the employee to return to work (upon testing negative for drugs and alcohol) with the understanding that the recommendation of the SAP must be completed and that any future positive test will result in termination without appeal.

## 5. Return to Duty and Follow Up Testing

These tests will be conducted when an individual returns to duty following a violation of the prohibited alcohol and/or drug testing. Follow up testing after returning to work is unannounced and shall be conducted at least six times during the following year. During this period of time, the individual will also remain subject to testing under the previously established random testing requirements as outlined above in the previous section.

All return to duty and follow up testing will be conducted under direct observation and in accordance with the DOT protocols as contained in 49 CFR Part 40, as

may be amended.

Employees seeking specific details regarding the procedures and methodology of drug and/or alcohol testing are referred to 49 CFR PART 40 of the Federal regulations. Employees who wish to review this information may contact the DER for assistance in securing a written copy of these regulations.

Employees are also directed to Administrative Order 2-25 Policy on Drug and Substance Abuse, as amended, for information relating to the City of Fresno's internal policy on reasonable cause drug and/or alcohol testing. A copy of this policy may be obtained on the City's website, or by contacting management personnel or the DER..

## TESTING FOR DRUGS

Employees who may be called upon to perform work in a safety-sensitive capacity are subject to drug and alcohol testing as outlined in the Federal regulations.

Covered employees are prohibited from reporting for duty or remaining on duty if there is a quantitative presence of a prohibited drug in their system which measures above the minimum thresholds as defined in 49 CFR PART 40, as amended. Consistent with the Drug Free Workplace Act of 1988, all covered employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the workplace including FAX premises, vehicles, or while conducting official City business. All employees are further reminded that they must notify FAX management of any criminal conviction for a drug-related activity occurring in the workplace within five (5) days after such conviction.

Urine specimens will be collected in accordance with 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, Subpart E, as may be amended from time to time.

Employees may request a copy of these procedures from the DER.

Each urine specimen will be tested at a DOT-certified laboratory for the specific substances and their respective detection levels contained in 49 CFR Part 40 which may be amended from time to time. At the present time, the substances and their detection levels are as follows:

<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 <sup>1</sup>	15 ng/mL
Cocaine metabolites	150 ng/mL	Benzoyllecgonine	100 ng/mL
Opiate metabolites			
Codeine/Morphine <sup>2</sup>	2000 ng/mL	Codeine	2000 ng/mL
		Morphine	2000 ng/mL

6–Acetylmorphine	10 ng/mL	6–Acetylmorphine	10 ng/mL
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL
Amphetamines <sup>3</sup>			
AMP/MAMP <sup>4</sup>	500 ng/mL	Amphetamine	250 ng/mL
		Methamphetamine <sup>5</sup>	250 ng/mL
MDMA <sup>6</sup>	500 ng/mL	MDMA	250 ng/mL
		MDA <sup>7</sup>	250 ng/mL
		MDEA <sup>8</sup>	250 ng/mL

Table 1 - Substances and Their Detection Levels

<sup>1</sup>Delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA)

<sup>2</sup>Morphine is the target analyte for codeine/morphine testing

<sup>3</sup>Either a single initial test kit or multiple initial test kits may be used provided the single test kit detects each target analyte independently at the specified cutoff

<sup>4</sup>Methamphetamine is the target analyte for amphetamine/methamphetamine testing

<sup>5</sup>To be reported positive for methamphetamine, a specimen must also contain amphetamine at a concentration equal to or greater than 100 ng/mL

<sup>6</sup>Methylenedioxyamphetamine (MDMA)

<sup>7</sup>Methylenedioxyamphetamine (MDA)

<sup>8</sup>Methylenedioxyethylamphetamine (MDEA)

**Important:** To repeat, consumption of any of the above controlled substances is prohibited by DOT regulations. Individuals who have been identified as being safety-sensitive are encouraged to seek immediate, confidential, professional/medical assistance to initiate treatment and recovery.

The DOT certified-laboratory is required to test all incoming primary specimens for dilution, substitution, and adulteration in a two-step process. The first is a screening test. If the screening test is positive for one or more of the above substances, a confirmation test is performed for each identified drug using gas-chromatography/mass spectrometry (GC/MS) analysis. As noted, all samples will also be examined to determine if it has been diluted or adulterated with any other substances designed to mask prohibited substance use.

Employees who are found positive for one or more of the above substances will be contacted by telephone by the MRO. The MRO will inform the individual of the finding and allow the individual to provide an explanation which may medically justify use of the identified substance. The use of other outside medical experts may be utilized in this process at the direction of the MRO. Unjustified use of the substance will result in the MRO reporting the finding as a verified positive test result to the City. Findings which are determined to be medically acceptable in the opinion of the MRO will be reported as a verified negative test result to the City representative.

Any individual who has been tested and disagrees with the MRO's finding that the specimen is "positive" or that the specimen has been adulterated or substituted, may request that the "split" specimen be sent to another DOT-certified laboratory for analysis.

The employee must make this request within 72 hours of being notified by the MRO of the finding. The City will initially pay for the split sample to be tested upon an employee's request for an appeal determination. In the event the MRO's decision is not reversed, the employee will be responsible to reimburse the City for the second analysis.

#### IMPORTANT:

Employees who are found positive for one or more of the above substances shall be immediately removed from their safety-sensitive position and referred to a SAP.

**Dilute Negative with Low Creatinine:** In accordance with 49 CFR 40.67, if the MRO finds a recollection under direct observation is required because the creatinine concentration of the specimen was equal to or greater than 2 mg/dl but less than or equal to 5 mg/dl, the City must immediately instruct the driver to undergo a recollection under direct observation. The DOT's stated purpose for this requirement is so that people who may naturally produce low creatinine levels will not be reported to employers as having substituted their specimens.

**Other Dilute Negative:** If the creatinine concentration of the dilute specimen is greater than 5 mg/dl, but less than 20 mg/dl, the City will direct the driver to take another test immediately in all DOT test types. Such recollections will be unobserved, unless there is another basis for use of direct observation (for example, 49 CFR 40.67(b) and (c)). The requirement to undergo a recollection/retest of a dilute negative will uniformly apply to all individuals subject to DOT testing regulations. A refusal to submit to the second test as directed by the City will be deemed a test refusal and a violation of DOT drug regulations. The result of the second test – not the original dilute result – will be the test of record upon which the City will rely. If the second test is also a dilute negative, the City will not make the driver take a third test because the second test was dilute, unless the MRO directs a recollection under direct observation.

#### **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 in order to meet DOT criteria. Refusal to submit to a required alcohol test will be a violation of this policy and FTA regulations and the employee shall be removed from performing safety-sensitive duties and subject to disciplinary action as discussed below.

Prohibited use of alcohol includes the following:

1. Covered employees are prohibited from consuming alcohol while performing safety-sensitive job functions or while on paid status to perform safety-sensitive functions. An on-call employee who has consumed alcohol is required to acknowledge his/her consumption at the time that they are called to duty.
2. Reporting for duty or remaining on duty in a safety-sensitive position while having an alcohol concentration of .04 or greater.
3. Using alcohol within 4 hours prior to performing a safety-sensitive function.

Employees who are on paid or “standby” status are prohibited from using alcohol. Employees who violate this provision and are recalled to duty are required to acknowledge the use of alcohol and their inability to perform safety-sensitive duties. Employees who acknowledge the use of alcohol, but claim that they are able to perform in a safety-sensitive capacity will be required to submit to an alcohol test.

4. An employee who is required to undergo alcohol testing as part of a post-accident test may not use alcohol for eight hours following the accident or until such time as the post-accident test is completed.

Usually, two breath tests will be performed in order to determine if an individual has a prohibited alcohol concentration. A screening test is conducted first. A result less than 0.02 alcohol concentration is considered a negative test. If the concentration is 0.02 or greater, a second confirmation test is conducted. If the confirmation test results in a value between 0.02 but less than 0.04, the employee will be removed from the safety sensitive function until the alcohol level measures below 0.02, or the next regular scheduled duty period but not less than 8 hours following the test. Employees with an alcohol concentration level of 0.04 or greater will be removed from the safety sensitive position and referred to a SAP. These regulations are outlined in 49 CFR 655.31 and 49 CFR 655.35, as may be amended.

## **REFUSING TO SUBMIT TO A DRUG AND/OR ALCOHOL TEST**

Employees are required to submit to a drug and/or alcohol test as a result of a post-accident, reasonable suspicion, random, or follow-up incident as prescribed under the DOT regulations. Failure to appear at the medical collection facility within a reasonable time after being notified of the need for testing or failure to remain at the facility until testing has been completed, being uncooperative with medical collection personnel, failure to provide an adequate specimen for testing, or leaving the scene of an accident without justifiable cause are examples of a refusal to test. In the event that an individual refuses to submit to a drug and/or alcohol test, the test shall be deemed a violation of the FTA regulations and the individual shall be removed from performing safety-

sensitive duties and subject to disciplinary action as discussed below.

An employee has refused to submit to a drug and/or alcohol test under any of the following situations:

1. If the employee fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by Risk Management, consistent with applicable DOT regulations, after being directed to do so by FAX management. The employee must immediately proceed to the testing site upon notification of his/her selection for random testing.
2. If the employee fails to remain at the testing site until the testing process is complete. An employment candidate who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test.
3. If the employee fails to provide a sufficient amount of urine or breath sample when directed, and it has been determined, through a required medical evaluation, the MRO has found no adequate medical explanation for the failure.
4. Failure to permit monitor or observation while providing a urine specimen.
5. Failure to follow an observer's instructions to raise and lower clothing and turn around during a directly observed test.
6. Possessing or wearing a prosthetic or other device used to tamper with the testing process.
7. Admitting the adulteration or substitution of a specimen to the collector or MRO.
8. Failure to undergo a medical evaluation as required by the MRO or DER for drug and/or alcohol testing.
9. Failure to take a second drug test when directed by the collector or the City.
10. Failure to cooperate with any part of the testing process (e.g., refusal to empty pockets when directed by the collector, behaving in a confrontational way that disrupts the collections process, failure to wash hands after being directed to do so, etc.).
11. If the MRO verifies that the test was adulterated or that a substitute urine specimen was used.
12. Failure to sign Step 2 of the Alcohol Testing Form.

Employees should note that the above circumstances regarding refusal to test for alcohol or drugs are only applicable to DOT testing. If an employee refuses to take a non-DOT test or to sign a non-DOT form, it is not considered a refusal to

submit to a DOT drug and/or alcohol test. There are no consequences under DOT agency regulations for refusing to take a non-DOT test.

### **WHAT HAPPENS WHEN AN EMPLOYEE IS FOUND TO HAVE A POSITIVE RESULT OR REFUSES TO SUBMIT TO A DRUG AND/OR ALCOHOL TEST?**

Employees are subject to disciplinary action up to and including termination upon the City's notice of a verified positive drug test result, if they have an alcohol concentration which exceeds .02, or if they refuse to submit to a drug and/or alcohol test as defined in 49 CFR Part 40.191 and 40.261.

Any disciplinary action taken by the City as a result of this policy will be subject to the applicable provisions of current MOUs, Administrative Orders, and the Fresno Municipal Code (FMC) concerning the representation and hearing appeals process. Among the factors to be considered in determining the appropriate disciplinary action include the level of offense, the nature and requirements of the work, length of employment, current job performance, and history of past disciplinary action. Pursuant to the provisions of FMC sections 3-605(a)(5) and 3-286 Causes for Suspension or Removal, the City reserves the exclusive right to determine the level of disciplinary action.

In the event an employee is afforded a Last Chance Agreement, he/she shall comply with the recommendations outlined by the Substance Abuse Professional. An employee who fails to inform the City concerning the status of treatment, refuses to undergo recommended treatment, does not complete the recommended program and follow up protocol, fails any follow up or random testing, or refuses to return to work after being released from rehabilitation treatment, will be subject to disciplinary action up to and including termination.

All employee records regarding drug and alcohol testing and any follow up testing are maintained with the utmost confidentiality. Access to these records is extremely restricted to only those individuals who have direct responsibility for the operation of the program or authorized Federal representatives conducting official business.

**Medications prescribed for someone other than the driver, will be considered unlawfully used under any circumstance. The DOT also indicates that a driver's purported use of marijuana for medical purposes (even if pursuant to state "medical marijuana" law) or use of hemp or marijuana-related products does not constitute a legitimate medical explanation for a positive test result and these are insufficient grounds for the MRO to verify the test result as negative.**

### **EMPLOYEE LEAVE STATUS AFTER A POSITIVE DRUG/ALCOHOL RESULT OR REFUSAL TO SUBMIT TO A DRUG AND/OR ALCOHOL TEST**

Employees who test positive for drugs or alcohol or who are determined to have refused to submit to a drug and/or alcohol test, will be removed from performing a safety-sensitive function and temporarily assigned alternate work or placed on paid

administrative leave pending determination of the employee's employment status with the City. Employees may elect to use other accumulated leave balances at their option in lieu of their placement on paid administrative leave.

### **THE ROLE OF THE SUBSTANCE ABUSE PROFESSIONAL (SAP)**

In the event that an employee has been reported as having a positive alcohol or drug test, the City of Fresno representative will contact the individual for the purpose of arranging a referral to a SAP. SAPs are licensed medical physicians, certified social workers, psychologists, employee assistance professionals and drug and addiction counselors who have met certification requirements outlined by the Federal government to perform this function. This referral is made at no cost to the employee. The function of the SAP is to meet with the employee and make recommendations concerning education, treatment, follow-up testing, and aftercare.

In all cases where the employee has had a positive drug/alcohol test, the employee shall be required to undergo an additional follow-up test with a negative finding prior to being allowed to return to work and perform in a safety sensitive capacity.

### **THE ROLE OF THE DESIGNATED EMPLOYER REPRESENTATIVE (DER)**

Federal law requires that employers designate an individual within the organization who will be responsible to facilitate and communicate with outside providers including the medical collection facility, Medical Review Officer, and Substance Abuse Professionals. The DER is also available to respond to employee questions or concerns regarding the administration of the program and how the DOT guidelines are implemented. The DER for the City of Fresno is the Risk Manager and may be contacted at (559) 621-6900.

In addition to the DER, an Advisory Committee shall be maintained to review the impact, modification, or repeal of the Omnibus Transportation Employee Testing Act and make recommendations to the City Manager on all matters relevant to the implementation of this policy. Half of the Committee members shall be appointed by the City and half shall be appointed by those recognized employee organizations subject to this policy and shall meet at the request of any member.

### **WHERE TO SEEK HELP**

It is the policy of the City of Fresno to encourage employees to seek assistance regarding problems with substance use prior to actual detection as part of a drug/alcohol test. Employees who seek professional assistance on a voluntary basis will be afforded the opportunity to seek professional treatment on a confidential basis to assist them in achieving full recovery and the ability to return to productive work. Employees may call the City's Employee Assistance Program provider, Avante Behavioral Health, to access professional assistance with substance abuse: (559) 261-9053 or (800) 498-9055.

Employees may also wish to consider consulting with the providers listed in the attached Appendix.

## **APPENDIX**

### **ALCOHOLICS ANONYMOUS**

(559) 221-6907 and (559) 266-6752 (Spanish)  
2812 N. Blackstone Avenue, Fresno, CA  
Hours: 24-hour hotline; M, T, Th, F, 9:00am - 4:30pm; W 9:00am – 6:00pm;  
Sat 9:00am – 1:00pm

### **ALCOHOLISM & DRUG ABUSE COUNCIL**

(559) 248-1548  
4411 N. Cedar Avenue, Suite 108, Fresno, CA  
Hours: M-F 8:00am – 5:00pm

### **B.A.A.R.T.**

(559) 266-9581  
539 N. Van Ness Avenue, Fresno, CA  
Hours: M-W & F 6:00am – 11:00am & 12:00pm – 2:00pm; Th 6:00am - 12:30pm;  
Sat & Sun 6:00am – 10:00am; Holidays 6:00am – 9:00am

### **COMPREHENSIVE ALCOHOL PROGRAM, INC.**

(559) 264-5096  
2445 W. Whitesbridge Avenue, Fresno, CA  
Hours: 24 hours, 7 days a week

### **DRUG TREATMENT CENTER**

(800) 711-6375  
24-Hour Help Line. No charge to calling party.

### **FRESNO COUNTY HISPANIC COMMISSION ON ALCOHOL AND DRUG ABUSE SERVICES, INC.**

(559) 268-6475  
1444 Fulton St., Fresno, CA  
Hours: M-F 9:00am -9:00pm

### **KING OF KINGS - MEN'S RESIDENTIAL RECOVERY HOME**

(559) 266-6449  
2267 S. Geneva Avenue, Fresno, CA  
Hours: 24 hours, 7 days a week

### **KING OF KINGS DRUG ABUSE CENTER**

(559) 442-0400

2385 S. Fairview Ave., Fresno, CA

MAROA HOME

(559) 441-1543

826 N. Palm, Fresno, CA

Hours: M-F 8:00am – 5:00pm

NARCOTICS ANONYMOUS

(559) 255-5881

NUESTRA CASA RECOVERY HOME

(559) 485-0501

1414 W. Kearney Blvd., Fresno, CA

Hours: 24 hours, 7 days a week

SALVATION ARMY A.R.C.

(559) 495-4775

804 S. Parallel Ave., Fresno, CA

VA MEDICAL CENTER

(559) 225-6100

2615 E. Clinton, Fresno, CA

Hours: M-F 8:00am – 4:00pm

WESTCARE

(559) 265-4818

2772 Martin Luther King Blvd., Fresno, CA