

CITY OF PEÑITAS
Drug and Alcohol Use Policy

STATEMENT OF PURPOSE:

It is the desire of the City of Peñitas to provide a drug-free and safe workplace. To promote this goal, employees are required to report to work in a mental and physical condition which allows them to perform their duties in a satisfactory and safe manner. The City of Peñitas also intends, through these procedures, to prevent accidents, fatalities, injuries, and property damage that may result from employee use of controlled substance or alcohol.

Hence, any employee testing positive in a drug administered test shall be subject to disciplinary action up to and including termination of employment.

These procedures outline the program by which goals and objectives will be met. It specifies and defines the procedures to be used in recognizing drug and alcohol use by applicants for employment and drug and alcohol use and influence among employees, especially for safety-sensitive positions.

DEFINITIONS: As used in this policy:

- *Alcohol* - means the intoxicating agent in beverage alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
- *Alcohol Use*- means a presence in the system of alcohol through the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
- *Alcohol Testing*- means testing for blood alcohol content by using evidential breath testing devices or drawing or collecting a blood serum sample or any other approved laboratory analysis.
- *Applicant*-means a person who has applied for job with the City of Peñitas and has been made an offer of employment.
- *Drugs/Controlled Substances*- means any drug the use of which could affect performance. The term "drug" and "controlled substances" are interchangeable and have the same meaning. Drugs and controlled substances include but are not limited to, marijuana, hashish, cocaine, heroin, morphine, codeine, opiates, opium derivatives, narcotics, hallucinogens and any other substance having either a stimulant or depressant effect on the central nervous system such as amphetamines or barbiturates as well as any medication prescribed by a physician.
- *Drug Paraphernalia*- means material and/or equipment designed for use in testing, packaging, storing, injecting, ingesting, inhaling, or otherwise introducing illegal or unauthorized drugs into the body.
- *Drug Testing*- means the scientific analysis of urine, blood, breath, saliva, hair, tissue or other specimens of the human body for the purpose of detecting a drug or alcohol. Types of testing may include, but not limited to, one or more of the following: urinalysis, hair follicle, saliva, breathalyzer, intoxilyzer, or other generally accepted testing procedures.
- *Employee*- means any employee, agent, officer, or representative of the City.
- *Reasonable Suspicion*- means a belief based on articulable observations (e.g., observation of alcohol or drug use, apparent start of impairment, incoherent mental state, changes in personal behavior that are otherwise unexplainable, deteriorating work performance that is not attributable to other factors, a work-related accident or injury, evidence of possession of substances or other which appear to be illegal or unauthorized drugs or drug paraphernalia) sufficient to lead a supervisor to suspect that the employee is under the influence of illegal or unauthorized drugs or alcohol. Supervisors who refer an employee for reasonable suspicion

testing must document the specific factors that support reasonable suspicion testing (e.g., the who, what, when, where of the employee's behavior and other symptoms, statements from

other employees or third parties, and other evidence supporting the reasonable suspicion testing).

Such inability to perform may include, but is not limited to, a drop in the employee's performance or by impaired judgment, reasoning, level of attention or behavioral change or decreased ability of the senses. Physical characteristics indicating reasonable suspicion may be a pattern of abnormal or erratic behavior, physical symptoms (i.e. glassy or bloodshot eyes, odor of alcohol or marijuana, slurred speech, unsteady gait, poor coordination or reflexes) or direct observation of drug or alcohol use. Possession of drugs or alcohol as well as any drug paraphernalia, will constitute a basis for reasonable suspicion with the consent of the Risk Management Director.

- *Safety-Sensitive Function* – means a job that an employee is performing, ready to perform, or immediately available to perform, which if under the influence of drugs or alcohol, could create a safety hazard that may cause harm or injury to the employees, citizens, or damage to property, such as firefighters, police officers, certain employees of Public Works and Utilities departments (excluding clerical) and all equipment operators or CDL license holders. Refer to "DOT and Safety Sensitive Employees for Random Testing" list (Appendix D).
- *Under the influence*- means the condition existing after the voluntary introduction of an amount of alcohol or controlled substance into the employee's body, which affects the employee's ability to perform his/her duties.

PROHIBITIONS:

- A. The City strictly prohibits the use, sale, possession, conveyance, distribution, or manufacturing of illegal drugs, intoxicants, alcohol, inhalants, or controlled substances, including drugs which are legally obtainable but which were not legally obtained, and prescribed or over-the-counter drugs which are not being used as prescribed or as intended by the manufacturer in any amount or in any manner while:
 1. on City premises,
 2. on duty,
 3. conducting City-related business or other activities off premises,
 4. driving a City-owned or leased vehicle,
 5. operating or using other City-owned or leased property or equipment,
 6. wearing City of Peñitas uniforms.
- B. Employees shall not use, possess, distribute, or sell any drug-related paraphernalia while:
 1. on City premises,
 2. on duty,
 3. conducting City-related business or other activities off premises,
 4. driving a City-owned or leased vehicle,
 5. operating or using other City-owned or leased property or equipment,
 6. wearing City of Peñitas uniforms.Drug-related paraphernalia includes material and/or equipment designed for use in testing, packaging, storing, injecting, ingesting, inhaling or otherwise introducing illegal or unauthorized drugs into the body.
- C. The City strictly prohibits the abuse of prescription and over-the-counter medications which are not being used as prescribed or as intended by the manufacturer.

- D. Employees shall not report to work or remain at work if the employee has used a prescription drug without a valid prescription issued in the name of the employee by a licensed medical practitioner.
- E. Employees shall not report to work or remain at work if the employee has used a prescribed or non-prescribed drug that would place the employee, their co-workers, or the public in danger due to potential impact from the drug. Examples of impact include, but are not limited to, drowsiness, dizziness, confusion, feeling shaky, and/or negatively affecting judgment, balance, vision, and reflexes or reaction time.

POLICE DEPARTMENT EMPLOYEES: Certain City Police Department employees may be required to be in possession of alcohol and/or drugs in carrying out their job duties. Such employees will be exempted from certain portions of this policy under certain limited conditions. Additional guidelines may be established by Police Department operating procedures.

CONDITIONS REQUIRING TESTING:

- A. *Pre-employment:*
 - 1. All applicants, as a condition of employment, will be subject to drug/alcohol testing after an offer of employment is made. An applicant who refuses to sign any documents required by the City of Peñitas, any documents required by the licensed testing facility, or refuses to take the drug/alcohol screening will not be considered for employment.
 - 2. An applicant whose test result is verified positive for controlled substances will not be hired and will be ineligible for employment for twelve (12) months. After the twelve (12) month period, the individual may reapply but will be required to submit to the normal selection process including controlled substance testing. If evidence of the use of illegal drugs by an applicant is discovered either through testing or other means, the employment process will be terminated.
- B. *Promotions/Transfers:* An employee who is applying for a promotion or transfer to a safety-sensitive or CDL position within the City will be required to submit to a drug/alcohol test. The employee's refusal to consent to the drug/alcohol test will disqualify the employee from consideration for promotion or transfer and may result in disciplinary action up to and including termination of employment.
- C. *Post-Accident:* Post accident drug and alcohol testing will be conducted immediately on all drivers regardless of at fault determination.
- D. *Post Injury:* Employees shall be tested for drug and/or alcohol after a workplace injury or accident or "near miss", when reasonable suspicion exists, or in connection with any required medical treatment or in conjunction with the rehabilitation program.
- E. *Police and Fire Employees:* Police and Fire Department employees are also subject to any applicable Departmental rules and regulations regarding illegal and unauthorized drug and alcohol testing.
- F. *Reasonable Suspicion:*
 - 1. The City will require an employee to submit to a drug and/or alcohol test when there is reasonable suspicion that an employee is using or has used drugs and/or alcohol in violation of City policy. Such reasonable suspicion shall be based on objective facts and /or

observations sufficient to suspect that an employee is under the influence of drugs and/or alcohol and has violated the drug and alcohol prohibitions.

2. The decision to test will be based on the conduct observed and documented by City staff trained in detecting the signs and symptoms of drug and alcohol use. City staff will describe their observations in writing by completing a "Reasonable Suspicion" form documenting the circumstance that lead to the conclusion that a drug and/or alcohol test is warranted.
3. After documenting the incident, the supervisor or Department Director will request confirmation from the Risk Management Director for testing. In the absence of the Risk Management Director, another supervisor trained in the detection of drugs/alcohol must confirm the reasonable suspicion. After testing for reasonable suspicion, arrangements will be made to transport an affected employee home until the results are received by the City.

- G. *Random Testing:* Employees performing safety-sensitive functions shall be required to submit to random drug and alcohol testing just before, during, or just after performance of the safety-sensitive function. Safety sensitive employees and employees returning from approved rehabilitation programs shall be subject to random testing for controlled substances at any time regardless of what task or job function is being performed by the employee. Refer to "DOT and Safety Sensitive Employees for Random Testing" list (Appendix D).

Employees are selected for random, unannounced drug and alcohol testing using a scientifically valid method, such as a computer-based random number generator. Each employee subject to this policy will have an equal chance of being tested each time random selections are made. As a result, employees may be selected for random testing several times during one year while other employees may not be selected for testing for several years. Each employee randomly selected for testing will be tested during the selection period. The Risk Management department will maintain an up-to-date roster of all safety sensitive employees for the random drug and alcohol tests.

The procedure for safety sensitive employees in random drug/alcohol testing is as follows:

1. An employee that is not on duty or is on approved leave, when testing is being conducted, shall be excused and shall not be called in to the test site.
2. If the results are 0.02 or greater for alcohol, the Medical Review Officer (MRO) will notify the City's Risk Management Director, who will then notify the employee's Department Director. The Department Director will make suitable arrangements to have employee transported home.

TESTING OF EMPLOYEES:

1. Tests will be paid for by the City. To the extent possible, testing will normally be done during the employee's normal work time.
2. Any employee who refuses to be tested, or who attempts to alter or tamper with a sample or any other part of the testing process, will be subject to disciplinary action up to and including termination of employment.
3. A positive test result is a violation of the City's Drug and Alcohol Use policy and may result in disciplinary action up to and including termination of employment. Any employee who is terminated for violation of the City's Drug and Alcohol Use Policy is ineligible for future employment with the City.
4. The City has additional obligations when testing for controlled substances and alcohol for those employees regulated by the U.S Department of Transportation. Refer to Drug and Alcohol Use for DOT Employees policy for additional information.

Testing Procedures:

1. All testing must normally be authorized in advance by both the employee's Department Director and the Risk Management Director. If the Department Director is unavailable within a reasonable period of time, Risk Management Director may, with sole discretion, authorize the testing of an employee. If the Risk Management Director is unavailable within a reasonable period of time, the Department Director may, with sole discretion, authorize the testing of an employee. For reasonable suspicion testing, testing may not be authorized without the supervisor's documentation of the articulable factors which led the supervisor to suspect that the employee is under the influence of illegal or unauthorized drugs or alcohol. Testing should be arranged as soon as possible after the supervisor's articulable observations.
2. If an employee's conduct resulted in a work place accident, injury or "near miss," and reasonable suspicion exists to believe that the employee has violated the City's Drug and Alcohol Use policy, the employee will be provide with transportation to the testing facility. A supervisor or other designated City representative may be required to stay with the employee during the testing process. The City may, in its discretion, reassign the employee or put the employee on administrative leave until the test results are received.
3. The City will make arrangements to have the employee transported home after the testing.
4. All substance abuse testing will be performed by an approved laboratory or healthcare provider chosen by the City. All positive test results will be subject to confirmation testing.
5. Test results will be maintained in a separate confidential file in the Risk Management Department and apart from the employee's personnel file. Any medical-related information will be confidential and accessible only by the Human Resources Director; the Department Director on a need to know basis, including those who have a need to know about necessary restrictions on the work or duties of an employee and any necessary accommodation; first aid and safety personnel when appropriate; government officials; insurance companies as may be necessary to provide health or life insurance to employees; by court order, or as otherwise legally mandated; and as necessary to protect the interests of the City.

REHABILITATION:

- A. It is the City's desire to assist employees who voluntarily request assistance with alcohol or drug dependency through the City provided Employee Assistance Program. For City support and assistance, however, an employee must acknowledge the problem and seek and accept counseling and/or rehabilitation before it impairs job performance and/or jeopardizes the employee's employment. Each employee needing assistance in resolving problems associated with drug use or alcohol misuse cannot return to their position until they have been evaluated by a Substance Abuse or Alcohol Abuse Professional to determine if the employee has properly followed the rehabilitation (treatment) program: and shall be subject to unannounced random follow-up drug and/or alcohol tests administered by the City following the employee's return to work. The City is not required under these rules to provide rehabilitation, pay for treatment, or reinstate the employee to the former position. This policy applies to employees coming forth "seeking help" before being notified of a scheduled, random, or post-accident drug and alcohol test.
- B. Employees with drug and alcohol problems that have not resulted in, and are not the immediate subject of, disciplinary action, may request approval to take an administrative leave without pay to participate in a rehabilitation or treatment program. (An employee may not enroll in a rehabilitation or treatment program after the City receives a positive test result or in lieu of disciplinary action.) The administrative leave of absence without pay may be granted at the City's sole discretion. Factors considered by the City in deciding whether to grant leave include the length of the employee's employment with the City; the employee's prior work and disciplinary history; the employee's agreement to abstain from

the use of the problem substance and follow all other requirements of the rehabilitation/treatment program; the reputation of the program; the likelihood of a successful outcome; the employee's compliance with City policies, rules, and prohibitions relating to conduct in the workplace; and the resulting hardship on the City due to the employee's absence. Unless otherwise required by law, it is the City's policy to grant such an administrative leave of absence only once during the course of an employee's employment with the City. **Note:** Under certain conditions, treatment for substance abuse may be covered under the City's Family and Medical Leave policy. Refer to FMLA Policy.

- C. During time off for a City-approved rehabilitation or treatment program, the employee must use any available sick leave or vacation leave. If the employee has no accrued leave time, the employee may request Administrative Leave without Pay. Refer to Administrative Leave Without Pay policy. Where applicable, any time off for rehabilitation or treatment under this policy will also be designated as leave under the City's Family and Medical Leave policy. Refer to FMLA policy.
- D. The cost of any rehabilitation or treatment may be covered under the City's group health insurance policy. In any case, the employee is responsible for all costs associated with any rehabilitation or treatment program.
- E. If the reasonable effort to return the prescribed rehabilitation or treatment, the City will make reasonable efforts to return the employee to the prior or one of similar pay and status. However, employment with the City following a City-approved leave for rehabilitation or treatment is conditioned on the following:
 - 1. Initial negative test for drugs and/or alcohol before returning to work;
 - 2. A written release to return to work from the City-approved rehabilitation or treatment facility/program;
 - 3. Periodic and timely confirmation of the employee's on going cooperation and successful participation in any follow-up or ongoing counseling, random testing, or other treatment required in connection with the City-approved rehabilitation or treatment program, if applicable;
 - 4. In addition to any testing required in connection with the employee's ongoing treatment or follow –up to treatment, all employee who participate in rehabilitation or treatment under this section will also be required to submit to periodic and/or random testing by the City during the two years following the employee's return to work;
 - 5. The employee must sign a formal written agreement to abide by the above conditions, as well as any other conditions deemed appropriate by the Risk Management Director. The employee must meet with the Human Resources Director to discuss the terms of continued employment and sign a formal agreement before returning to work.
- F. This section dose not required that an employee be returned to duty after a violation of these policies and procedures. An employee is subject to disciplinary action, up to and including termination of employment for any such violation.

TRAINING:

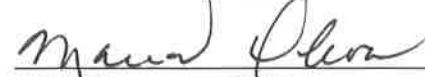
All employees will be required to attend annual training in the City's prohibition against drug/alcohol in the workplace policy. The City shall provide programs and necessary materials relating to drug and alcohol abuse and has designated the Risk Management Director to answer all questions relating to these polices. Supervisors and Department Directors will receive annual training on this policy and in detection of drug/alcohol abuse on an annual basis.

EMPLOYEE RESPONSIBILITIES:

- A. Substance abuse prevention is everyone's responsibility. The City expects all of its employees including management to recognize accept this responsibility, and to do their part in assuring that the City can achieve and maintain a drug and alcohol-free workplace for everyone. This policy applies to all personnel no matter what position.
- B. Each employee required to submit to drug/alcohol testing shall, as soon as practicable, provide the required specimens for testing. The Risk Management Director shall arrange for the collection and testing of specimens for drugs and/or alcohol as soon as practicable following an incident, which required drug or alcohol testing.
- C. *Mandatory Disclosure by Employees.* Employees taking prescription medication and/or over-the-counter medication must report such use to either their Department Director or to the Risk Management Director if there is a reasonable like hood the medication will impair the employee's ability to perform the essential functions of his or her job (or operate a vehicle, property, or other equipment, if applicable) effectively and in a safe manner that does not endanger the employee, citizens, or other individuals in the workplace. Examples of impairment include, but are not limited to, drowsiness, dizziness, confusion, or feeling shaky.
- D. *On Call Employees.* Employees scheduled to be on call are expected to be fit for duty upon reporting to work. Any employee scheduled to be on call that is called in to work is governed by this policy. Sometimes, an employee who is not scheduled to be on call may nevertheless be called in to work. If this or any other situation occurs where the employee called in to work is under the influence of drugs and/or alcohol such that reporting to work would result in a violation of this policy, the employee must so advise the appropriate supervisor on duty and/or Department Director.
- E. *Off-Duty Conduct.* The City may take disciplinary action, up to and including termination of employment, if an employee's off-duty use of or involvement with drugs and/or alcohol is damaging to the City's reputation or business, is inconsistent with the employee's job duties, or when such off-duty use or involvement adversely affects the employee's job performance.

READ, and CONSIDERED on First Reading this the 4 day of December, 2013 at a REGULAR CALLED MEETING OF THE CITY COMMISSION OF THE CITY OF PENITAS, TEXAS, at which a quorum was present and which was held in accordance with Chapter 551, of the Texas Government Code.

CITY OF PENITAS, TEXAS


MAYOR MARCOS OCHOA



ATTESTED BY:


CITY SECRETARY ANA VALDEZ

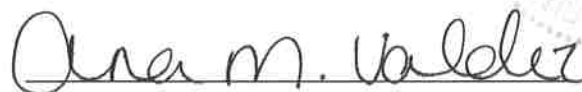
READ, and CONSIDERED on Second Reading this the 8 day of January, 2014 at a Regular CALLED MEETING OF THE CITY COMMISSION OF THE CITY OF PENITAS, TEXAS, at which a quorum was present and which was held in accordance with Chapter 551, of the Texas Government Code.

CITY OF PENITAS, TEXAS


MAYOR MARCOS OCHOA



ATTESTED BY:


CITY SECRETARY ANA VALDEZ

READ, CONSIDERED, and APPROVED on Third Reading this the 22 day of January, 2014 at a Regular CALLED MEETING OF THE CITY COMMISSION OF THE CITY OF PENITAS, TEXAS, at which a quorum was present and which was held in accordance with Chapter 551, of the Texas Government Code.

EXECUTED THIS 22 DAY OF January, 2014.

CITY OF PENITAS, TEXAS


MAYOR MARCOS OCHOA

ATTESTED BY:


CITY SECRETARY ANA VALDEZ

