

**CHAPTER 13 SUBSTANCE ABUSE AND DRUG-FREE WORKPLACE**

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**13-1 Policy Statement**

The City believes that a healthy and productive work force, safe working conditions free from the effects of drugs and alcohol, and maintenance of the quality of services rendered by the City are important. The abuse of drugs and alcohol creates a variety of work place problems, including increased injuries on the job, increased absenteeism, increased financial burden on health and benefit programs, increased work place theft, decreased employee morale, decreased productivity, and a decline in the quality of products and services.

The purpose of this section is to implement the Federal Drug Free Workplace Act of 1988 and to provide a safe and productive environment that is free from the effect of unlawful drug use, distribution, dispensing, manufacture, and possession of controlled substances. The purpose of this section is also to identify, correct and remove the effects of drug abuse on job performance, to assure the protection and safety of employees, and the public, and to maintain public confidence in Brigham City and its employees.

1. Employees of Brigham City are prohibited from unlawfully manufacturing, dispensing, possessing, using or distributing any controlled substance during working hours or on Brigham City property at any time.
2. Brigham City employees are prohibited from engaging in any of the unlawful activities described in paragraph 1, which occur outside of work hours if such use, possession or other unlawful action adversely affects work performance or directly affects the public safety or credibility of Brigham City.
3. For purposes of this section, alcohol, prescription, and other drugs are prohibited to the same extent as controlled substances as specified in paragraphs 1 and 2 above if their use can reasonably be considered to impair an employee's effective discharge of duties.
4. An employee shall not report to work or duty while under the influence of any drug if such drug influence is of a degree which can reasonably be considered to impair the employee's effective discharge of that employee's duties or which directly effects the public safety or credibility of Brigham City.

5. Any employee or supervisor who has reasonable grounds to believe that an employee is under the influence of any drug to a degree which can reasonably be considered to impair the employee's effective discharge of duties or which directly affects the public safety or credibility of Brigham City or that an employee is distributing, dispensing, manufacturing or possessing controlled substances or other drugs in violation of this rule shall take appropriate immediate action as follows:
  - a. An employee who has reasonable grounds to believe that a co-worker is under the influence of drugs or is dispensing, manufacturing, possessing or distributing controlled substances in the workplace shall notify his or her supervisor and shall provide to the supervisor the information which justifies the employee's belief.
  - b. Supervisors who have reason to believe that an employee is in violation of this section shall immediately notify the head of the department for which the employee works. A department head shall take immediate corrective action which is specified in the Brigham City Employees Policy and Procedures Manual.
  - c. When a City Employee is involved in an accident while driving a City Vehicle or operating City equipment, a test shall be made as soon as possible, but not later than two (2) hours after the accident to determine whether the employee was under the influence of drugs at the time of the accident.
  
6. Upon receipt of information or complaint regarding drug use by an employee of Brigham City in violation of this section, the head of the department with advice from human resources for which that employee works shall make a determination of the nature and extent of the violation of this section and shall initiate appropriate disciplinary or corrective action as follows:
  - a. If the department head with advice from human resources determines that an employee is abusing drugs or admits to abusing drugs, that employee shall be required to successfully complete a state approved rehabilitation treatment program. The cost of the treatment program shall be eligible for coverage by the City's Standard Group Medical Plan.
  - b. An employee in a rehabilitation program must use earned personal leave, annual leave, or both, for in-patient treatment, and shall complete that treatment within 45 days after being directed by the department head to enter the treatment program.
  - c. Each employee entering a treatment program shall sign a release which will allow communication between Brigham City and the treatment provider. All such communication shall be maintained by the City as a confidential matter.
  - d. Upon successful completion of an in-patient treatment program, the employee shall be reinstated to the same position, if it is available, or to an equivalent position for which the employee is qualified. An employee will be required to continue any prescribed out-patient treatment on his or her own time.
  - e. Any employee who refuses to enroll or fails to complete a program of drug treatment and rehabilitation required by this section for any reason shall be terminated.
  - f. An employee who returns to work following a treatment program but who cannot

perform at an acceptable level will be subject to termination.

7. Any employee undergoing prescribed medical treatment which can reasonably be considered to impair the employee's effective discharge of duties or which directly affects the public safety or credibility of Brigham City shall report that fact to his or her supervisor. The employee shall also furnish to his or her supervisor a written statement from the employee's physician as to the nature and extent of the treatment and the names and dosages of the medication(s) being used by the employee under the physician's direction. In order to maintain the health and safety of the employee and of the employee's co-workers and of the public, the supervisor may, during the term of such treatment, change an employee's job assignment.
8. Appropriate disciplinary action as specified in the Brigham City Employees Policy and Procedures Manual will be taken against any employee who manufactures, dispenses, possesses, or distributes drugs in the workplace, or outside of working hours if such violation adversely affects work performance or directly affects the public safety or credibility of Brigham City. Nothing in this section which requires an employee to submit to a drug treatment or rehabilitation program shall prohibit the City or any employee's supervisor from taking appropriate disciplinary action against an employee. Upon review of the facts surrounding any violation of this section, suspension or termination of employment may result from such violation. An employee or supervisor who does not follow the rules set forth in this section in correcting drug use or abuse shall also be subject to disciplinary action.
9. Any employee shall have the right to file a grievance and appeal any disciplinary action resulting from enforcement of this policy.

## 13-2 Definitions

For the purposes of this policy:

**“Alcohol”** means alcoholic beverages and any other intoxicating substances.

**“Drugs”** used in this policy refer to and include all drugs, paraphernalia, controlled substances, or mood or mind altering inhalants, any of which were not prescribed by a licensed physician/dentist in the United States for the person taking or in possession of the drug or substance, or which have not been used as prescribed or directed.

**“Drug Paraphernalia”** means objects used to manufacture, compound, covert, produce, process, prepare, test, analyze, pack, store, contain, conceal, and/or to inject, ingest, inhale, or otherwise introduce a drug into the human body.

**“Employee”** means any person in the service of the City whether for compensation or as a volunteer.

**“Prospective employee”** means any person who has made application for employment with the

City and to whom the City has offered employment, conditioned upon the results of a drug and alcohol test.

“**Conviction**” means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal statutes.

“**Criminal Drug Statute**” means a Federal or State criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

“**MRO**” means Medical Review Officer, charged with reviewing and interpreting test results and determining any alternate medical explanations.

“**Drug Policy Coordinator**” is the City employee specifically designated to administer the Drug and Alcohol Testing Policy and through whom any procedures, or disciplinary or rehabilitative action regarding this policy, must be reviewed and approved. The Drug Policy Coordinator is the Human Resource Coordinator.

“**CDL-Commercial Driver’s License**” is the license required to operate a commercial vehicle.

“**Sample**” means urine, blood, breath, saliva, or hair.

### 13-3 Testing Policy

It is the policy of the City to test employees and prospective employees for the presence of drugs or alcohol, according to the provisions set forth below, as a condition of hire or continued employment. Any employee or prospective employee failing or refusing to take the test will not be eligible for employment, or if employed, may be subject to termination. The City shall consider as negative all confirmed positive drug and alcohol test results with a medically sufficient explanation.

The preferred method of drug testing shall be urine collection. However, an alternate sample may be used if deemed necessary by the department head and human resources or Medical Review Officer.

The City shall require the testing of employees and prospective employees, including management, on a periodic basis, under the following circumstances and purposes:

**Pre-Employment Testing.** All prospective employees shall be tested for drug or alcohol usage prior to being placed for employment. All job applicants shall be informed of the policy at the pre-employment interviews. A copy of this policy shall be available for review by all prospective employees. All prospective employees shall be required, prior to being hired by the City, to sign the acknowledgment form, agreeing to abide by the terms of this policy. The City will exclude from employment any job applicant or prospective employee who refuses to abide by the terms of this policy. Any prospective employee whose pre-employment drug and alcohol test results in a confirmed positive and who does not have a medically sufficient explanation (as determined in the

sole, but reasonable, discretion of the MRO), may reapply for employment with the City after six months from the date of such test. If the City hires a prospective employee, he or she must have first successfully passed the above-referenced pre-employment drug and alcohol test, and thereafter he or she will be subject to all the procedures and requirements for drug and alcohol testing as set forth in this policy.

In addition, any employee who has taken an extended leave of absence of six months or longer must be retested under this section before returning to work.

**Reasonable Suspicion (For Cause) Testing.** Certain supervisors shall be trained to look for behaviors which may indicate drug or alcohol usage. These behaviors include, but are not limited to: direct observation of drug or alcohol use, drug paraphernalia, abnormal or erratic behavior such as accidents, stealing, or repeated errors on the job, or unsatisfactory time and attendance patterns, any of which are coupled with a specific contemporaneous event that indicates probable drug or alcohol use. An employee will be required to provide a sample, as defined below, when such reasonable suspicion arises and at least one supervisor or manager, and the designated Drug Policy Coordinator, concur that a reasonable suspicion of drug or alcohol use exists. The decision to test for drug or alcohol use by an employee is based on specific contemporaneous, physical, behavioral, and/or performance indicators. Once the authorized supervisors have determined that a reasonable suspicion exists, testing is done immediately.

**Return to Duty Testing.** If the City returns to duty an employee after he or she has voluntarily sought rehabilitation for drug or alcohol abuse and has successfully completed rehabilitation, such employee shall be entered into a program of unannounced drug and alcohol testing for a predetermined period of time at the sole discretion of the City.

**Post-Accident Testing.** Post-accident testing will be conducted on employees whose performance either contributed to an accident, or cannot be completely discounted as contributing to the accident. Such testing will occur as soon as possible, but not later than two (2) hours after an accident has occurred. The immediate supervisor and the department manager of such employee, in association with the Drug Policy Coordinator, shall determine if the performance of that employee either contributed to the accident or cannot be completely discounted as a contributing factor.

**Random Testing.** The City reserves the right to implement a random drug and alcohol testing program consistent with applicable federal, state and local law, for purposes of maintaining safety and as a deterrent to drug and alcohol abuse.

Employee's required to hold a Commercial Driver's License (CDL) and drive commercial vehicles as a condition of employment may be tested as required by federal and/or state law.

Any drug or alcohol testing shall occur during or immediately after the regular work period of current employees, and shall be deemed work time for purposes of compensation and benefits for current employees.

Individuals will be tested on City premises or sent to an outside clinic or testing facility licensed to

perform such tests. If an employee is sent to an outside clinic for a “Reasonable Suspicion” test, the employee must be driven to the facility by the supervisor or his/her designee. The employee must then be put on administrative leave until the results of the test are available. The supervisor must make arrangements or help the employee make arrangements to get home without driving him/herself.

The City shall pay all costs of testing and transportation associated with a test required by the City.

All sample collection and testing shall be performed under the following conditions:

1. The collection of samples shall be performed under reasonable and sanitary conditions.
2. Samples shall be collected and tested with due regard to the privacy of the individual being tested, and in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples.
3. The collection of samples shall be documented, and the documentation procedures shall include labeling of samples, to reasonably preclude the probability of erroneous identification of test results. An opportunity shall be provided for the employee or prospective employee to provide notification of any information that he or she considers to be relevant to the test, including identification of currently or recently used prescriptions or non-prescription drugs, or other relevant medical information.
4. Sample collection, storage, and transportation to the place of testing shall be performed in a manner that reasonably precludes the probability of sample misidentification, contamination or adulteration.
5. Sample testing shall conform to scientifically accepted analytical methods and procedures.
6. Testing shall include verification or confirmation of any positive initial screening test by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable method.

In the case of urine testing, an employee or prospective employee will submit a split urine sample. A split urine sample shall consist of at least 45 ml of urine. The urine shall be divided into two specimen bottles, with at least 30 ml of urine in one bottle and at least 15 ml of urine in the other. If the test results of the 30 ml urine sample indicate the presence of drugs, the donor of the test shall have 72 hours from the time he is so notified to request, at his option that the 15 ml urine sample be tested for the indicated drugs, the expense of which shall be divided equally between the donor and the City. The test results of both samples may be considered at any subsequent disciplinary hearing.

Drug and alcohol testing will be conducted in compliance with federal, state and local laws, including but not limited to Utah Code Ann. § 34-41-101 *et seq.*

**13-4 City Action**

Upon receipt of a verified or confirmed positive drug or alcohol test result, which indicates a violation of this policy (and in the case of urine testing after providing the employee or prospective employee notice of the result of the initial test and the option to have the 15ml urine sample tested), or upon the refusal of any employee or prospective employee to provide a sample, the City may use that test result or refusal as the basis for disciplinary or rehabilitative actions, which may include, but not be limited to, the following:

1. Termination of employment.
2. Refusal to hire a prospective employee.
3. Any other disciplinary measures in conformance with the City's practices, policies, or procedures.

**13-5 Confidentiality**

The information received from the drug testing results shall be the property of the City.

Test results information maybe released to the person who has been tested upon written request.

**13-6 Work Place Rules**

Employees who possess, dispense, manufacture, or distribute alcohol, drugs or drug paraphernalia on City premises, or on City time may be subject to disciplinary action, including termination.

Employees undergoing prescribed medical treatment with a drug that may alter physical or mental abilities must report that to their supervisor.

Any employee convicted of violating a criminal drug statute must notify the Human Resource Coordinator within five (5) days of conviction. The City may take appropriate disciplinary or rehabilitative actions as a consequence.

No employee may use or be under the influence of drugs or alcohol on the City's premises, in the City's vehicles, or any time the employee is representing the City on City business, except in cases involving a current, prescription prescribed in the United States, or over-the-counter drug, taken as prescribed or directed.

**13-7 Miscellaneous**

A copy of the City's Drug and Alcohol Testing Policy shall be distributed to and posted for all employees, and all employees shall be required to acknowledge receiving, reading, and acknowledging the policy. Copies shall be made available to prospective employees.

This policy applies to management as well as other employees.

Employees wishing assistance with overcoming drug or alcohol abuse may contact their supervisor

or the Drug Policy Coordinator for information about counseling and rehabilitation programs.

### **13-8 Acknowledgment of Policy**

The City shall require each employee to read this policy and sign a form, acknowledging that they have received and read a copy of this policy and agree to abide by its terms as a condition of continued employment. The signed acknowledgment shall be kept in each employee's personnel file.

### **13-9 Drug and Alcohol Policy Not a Contract**

This Drug and Alcohol Testing Policy is the unilateral action of the City and does not constitute an express or implied contract with any person affected by or subject to the policy. Neither this policy nor any action taken pursuant to this policy assures or guarantees employment or any terms of employment to any person for any period of time. The City may alter, terminate or make exceptions to this policy at any time, at the City's sole discretion. This policy does not limit or alter the City's right to terminate any employee at any time for any reason.