

Organizational Policy

NON-DOT DRUG, ALCOHOL, AND CANNABIS TESTING AND DRUG FREE WORKPLACE ACT

Purpose

The City of Rochester has a vital interest in maintaining safe, healthful, and efficient working conditions for its employees. Drug, alcohol, and cannabis use poses recognized threats to an individual's personal safety and health as well as to the safety and health of others. The City does not intend to intrude into the private lives of its employees, but strongly believes that a drug, alcohol and cannabis-free workplace is in the best interest of employees and the public alike. In addition, drug, alcohol, and cannabis use can impair work performance, increase accidents, workers' compensation and insurance claims, and may result in workplace misconduct.

Policy Scope

This policy applies to all City employees and job applicants. A "job applicant" includes a person who has received a job offer made contingent on the person passing a pre-employment test.

City employees and job applicants required to hold a commercial driver's license by the United States Department of Transportation ("DOT") for their job will be tested under the City's Drug and Alcohol Policy – DOT, when applicable.

For the purpose of this policy, all references to "cannabis" includes marijuana, cannabis flower, cannabis products, cannabinoids, lower-potency hemp edibles, or hemp-derived consumer products.

In compliance with state and federal law, cannabis and its metabolites are considered a "drug" and its use is prohibited for positions* in the following categories, regardless of the kind of testing involved:

- Safety sensitive positions;
- Peace officer positions;
- Firefighter positions;
- Positions requiring face-to-face care, training, education, supervision, counseling or medical assistance to children, vulnerable adults or patients receiving treatment, examination or emergency care for a medical, psychiatric or mental condition;
- Positions requiring a commercial driver's license or requiring the employee to operate a motor vehicle for which state or federal law requires drug or alcohol testing;
- Positions funded by a federal grant; or
- Other positions for which state or federal law requires testing of a job applicant or employee.

**The City reserves the right to conduct pre-employment testing for drugs, alcohol and/or cannabis, for these positions.*

Job applicants subject to pre-employment testing must review this policy and sign the City's policy acknowledgement and consent form.

This policy is meant to comply with the Minnesota Drug and Alcohol Testing in the Workplace Act, [Minn. Stat. §§ 181.950 et seq.](#) (“**DATWA**”). Any revisions to the DATWA and/or any other laws/regulations will take precedence over this policy to the extent the policy has not incorporated those revisions. Nothing in this policy is intended to be an employment contract, and/or a promise/guarantee the City will follow any particular course of action (disciplinary, rehabilitative or otherwise), except as required by law.

Drug, Alcohol, and Cannabis Free Workplace

Use and Possession of Drug(s), Alcohol, or Cannabis

Employees are prohibited from the use, possession, transfer, transportation, manufacture, distribution, sale, purchase, solicitation to sell or purchase, or dispensation of drugs, alcohol, cannabis, or drug paraphernalia:

- When reporting for work;
- While on duty;
- While in the workplace;
- While operating any city vehicle, machinery, or equipment; or
- When performing any City business.

Exceptions may exist:

- Pursuant to a valid medical prescription used as properly instructed;
- The use of over-the-counter drugs used as intended by the manufacturer; or
- When necessary for approved law enforcement activity.

In accordance with federal law, there is no acceptable concentration of marijuana metabolites in the blood or urine of an employee who performs work on behalf of the City.

Applicants and employees are subject to testing under this drug, alcohol and cannabis testing policy. Employees are subject to being disciplined, suspended, or terminated for violating this policy.

While Under the Influence of, or Impaired by Drug(s), Alcohol, or Cannabis

Employees are prohibited from being under the influence of, or impaired by, drugs, alcohol or cannabis, or having a detectable amount of an illegal drug in the blood or urine:

- When reporting for work;
- While on duty;
- While in the workplace;
- While operating any city vehicle, machinery, or equipment; or

- When performing any City business.

Exceptions may exist:

- Pursuant to a valid medical prescription used as properly instructed;
- The use of over-the-counter drugs used as intended by the manufacturer.

The fact that cannabis may be lawfully purchased and consumed, or having a medical marijuana card, patient registry number, and/or cannabis prescription from a physician does not allow an employee to use, possess, or be impaired by, or under the influence from its use contrary to this policy.

The federal government still classifies cannabis as an illegal drug, even though some states, including Minnesota, have decriminalized its possession and use. Applicants and employees are still subject to testing under the City's Drug, Alcohol and Cannabis Testing policy.

Driving While Impaired

A conviction of driving while under the influence of, or impaired by drugs, alcohol and/or cannabis in a City-owned vehicle or in an employee-owned vehicle while conducting City business, may result in discipline, up to and including termination of employment.

Criminal Drug Convictions

Pursuant to the requirements of the Drug-Free Workplace Act of 1988, employees convicted of violating any criminal drug statute while working must notify their supervisor and the City's Human Resources Department in writing no later than five calendar days after such conviction. Within 30 days after receiving notice from an employee of a drug-related conviction, the City will take appropriate personnel action against the employee up to and including discharge or require the employee to satisfactorily participate in a drug abuse assistance or rehabilitation program as an alternative to termination. In the event notice is not provided to the supervisor, and the employee is deemed to be incapable of working safely, the employee will not be permitted to work and will be subject to disciplinary action, including termination of employment.

Failure to Disclose Lawful Drugs

Employees taking a lawful drug, including prescription and over-the-counter drugs or cannabis, which may impair their ability to perform their job responsibilities or pose a safety risk to themselves or others, must advise their supervisor of this before beginning work. It is the employee's responsibility to seek out written information from their health care provider regarding all medication(s) they are taking and report any job performance impairment effects to their supervisor. In the event of such a disclosure, the employee will not be authorized to perform safety-sensitive functions. Failure to provide the required notification may result in disciplinary action, including termination of employment.

Testing Requirements

Under this policy, the City may test any applicant, including applicants for temporary and seasonal positions, to whom an offer of employment has been made and may test any employee for drugs, alcohol and/or cannabis, under any of the following circumstances with a properly accredited or licensed testing laboratory, in accordance with Minn. Stat. § 181.953, subd. 1.

(1) Pre-employment Testing

The City may require a job applicant to undergo drug testing and/or cannabis testing, after a job offer has been made to the job applicant where the same test is required of all job applicants conditionally offered employment for that position. The job offer is conditioned upon successful completion of a drug and/or cannabis test, among other conditions. The City will not request or require a job applicant to undergo cannabis testing related to “lawful consumable products” pursuant to Minn. Stat. § 181.938, including alcohol, cannabis, lower-potency hemp edibles, and hemp-derived consumer products, except with respect to the categories of positions listed in the “Policy Scope” section or if otherwise required by state or federal law. If the job offer is withdrawn based on drug test results, the City will inform the applicant of the reasons for the withdrawal. A failure of the drug test, a refusal to take the test, or failure to meet other conditions of the offer will result in a withdrawal of the offer of employment even if the applicant’s provisional employment has begun. A negative or positive dilute test result (following a second collection), which has been confirmed, will also result in immediate withdrawal of an offer of employment to an applicant.

(2) Reasonable Suspicion Testing

Consistent with Minn. Stat. § 181.951, subd. 3, employees will be subject to drug, alcohol and/or cannabis testing, when reasonable suspicion exists to believe that the employee is under the influence of, or impaired by drugs, alcohol and/or cannabis, as prohibited by this policy.

Reasonable suspicion that an employee is under the influence of or impaired by drugs, alcohol and/or cannabis may be based upon, but is not limited to, facts regarding appearance, behavior, speech, breath, odor, possession, proximity to or use of drugs, alcohol, or cannabis or containers or paraphernalia, poor safety record, excessive absenteeism, impairment of job performance, or any other circumstances that would cause a reasonable employer to believe that a violation of the City’s policies concerning drugs, alcohol, and/or cannabis may have occurred. Supervisors are required to document their observations in writing and contact their HR Business Partner and/or Safety Administrator to implement the testing process.

Reasonable suspicion testing may also be conducted when an employee:

- Has violated written work rules prohibiting the use, possession, sale or transfer of drugs, alcohol, or cannabis while working, while on City property, or while operating City vehicles, machinery or any other type of equipment, or when performing any City business;

- Has sustained a personal injury as defined in Minn. Stat. § 176.011, subd. 16 or has caused another employee to sustain an injury or;
- Has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

In all reasonable suspicion cases, employees will be driven to the employer-approved medical facility by their supervisor or a designee. The medical facility or on-site collection service will take the urine or blood sample and will forward the sample to an approved laboratory for testing.

(3) Treatment Program Testing

In accordance with Minn. Stat. § 181.951, subd. 6., the City may require an employee to undergo drug, alcohol, or cannabis testing if the employee has been referred by the City for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under an employee benefit plan. In such a case, the employee may be required to undergo drug, alcohol, or cannabis testing, without prior notice during the evaluation or treatment period and for a period of up to two years following completion of any prescribed chemical dependency treatment program.

Testing Considerations

Procedure for Testing

Before requesting an employee or job applicant to undergo drug, alcohol or, cannabis, testing, the City shall provide the individual with a form on which to:

- (a) acknowledge that the individual has reviewed a copy of the City's testing policy
- (b) indicate consent to undergo the drug, and/or alcohol, and/or cannabis testing

Right of Refusal

Employees and job applicants have the right to refuse to submit to a drug, alcohol, or cannabis test under this policy. However, such a refusal will subject an employee to immediate termination. If the job applicant refuses to submit to applicant testing, any conditional offer of employment will be withdrawn.

Any intentional act or omission by the employee or job applicant that prevents the completion of the testing process constitutes a refusal to test.

A job applicant or employee who substitutes, or attempts to substitute, or alters, or attempts to alter a testing sample is considered to have refused to take a drug, alcohol and/or cannabis test. In such a case, the employee is subject to immediate termination of employment, and in the case of a job applicant, the job offer will be immediately withdrawn.

Refusal on Religious Grounds

An employee or job applicant who, on religious grounds, refuses to undergo drug, alcohol, or cannabis testing of a blood sample will not be considered to have refused testing,

unless the employee or job applicant also refuses to undergo drug, alcohol, or cannabis testing of a urine sample.

Cost of Required Testing

The City will pay for the cost of all drug, alcohol, or cannabis testing provided for by this policy for job applicants and employees, except for confirmatory retests in which case, the job applicant or employee is responsible for all associated costs. An employee referred to a treatment or rehabilitation program will be responsible for all costs, including any required follow-up testing.

Test Results

Notification of Negative Test Results

In accordance with Minn. Stat. § 181.953, Human Resources will notify a job applicant or employee of a negative drug and/or alcohol test result within three days of receipt of result by the City. In accordance with Minn. Stat. § 181.953, subd. 3, a laboratory must report results to the City within three working days of the confirmatory test result. Notice will be sent to the job applicant or employee, and the employee or job applicant may request a copy of the test result report from Human Resources.

Notification of Positive Test Results

In the event of a confirmed positive drug, alcohol and/or cannabis test result, the City will notify the job applicant employee of a positive drug, alcohol and/or cannabis result within three days of receipt of the result. Human Resources will send a notification letter to the employee or job applicant containing further instructions. The employee or job applicant may contact Human Resources to request a copy of the test result report if desired. In accordance with Minn. Stat. § 181.953, subd. 3, a laboratory must report results to the City within three working days of the confirmatory test result.

Right to Provide Information after Receiving Test Results

Within three working days after notice of a positive drug, alcohol, or cannabis test result on a confirmatory test, the employee or job applicant may submit information to the City to explain the positive result. In accordance with Minn. Stat. § 181.953, subd. 10, if an employee or applicant submits explanatory information prior to a test, or within three working days after a positive test result, the City will consider such information prior to taking any adverse employment action.

Right to Confirmatory Retest

A job applicant or employee may request a confirmatory retest of the original sample at their own expense after notice of a positive test result on a confirmatory test. Within five working days after notice of the confirmatory test result, the job applicant or employee must notify the City in writing of their intention to obtain a confirmatory retest. Within three working days after receipt of the notice, the City will notify the original testing laboratory that the job applicant or employee has requested the laboratory to conduct the confirmatory retest or transfer the sample to another qualified laboratory licensed to conduct the confirmatory retest. The confirmatory retest will use the same drug and/or alcohol threshold detection levels as used in the original confirmatory test.

In the case of job applicants, if the confirmatory retest does not confirm the original positive test result, the City's job offer will be reinstated, and the City will reimburse the job applicant for the actual cost of the confirmatory retest. In the case of employees, if the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test will be taken against the employee, the employee will be reinstated with any lost wages or salary for time lost pending the outcome of the confirmatory retest result, and the City will reimburse the employee for the actual cost of the confirmatory retest.

Access to Reports

In accordance with Minn. Stat. § 181.953, subd. 10, an employee will have access to information contained in their personnel file relating to positive test results and to the testing process.

Dilute Specimens

The City will follow guidance from their Medical Review Officer (MRO) regarding tests identified as dilute.

Consequences for Employees and Applicants Engaging in Prohibited Conduct

Job Applicants

The City's conditional offer of employment will be withdrawn from any job applicant who refuses to be tested or tests positive for drugs, alcohol and/or cannabis as verified by a confirmatory test.

Employees

The City will not discharge, discipline, discriminate against, or request or require rehabilitation of an employee based on a positive test result from an initial screening test that has not been verified by a confirmatory test. The City may however, place an employee on administrative leave, or transfer that employee to another position at the same rate of pay pending the outcome of the requested confirmatory retest, provided the City believes that it is reasonably necessary to protect the health or safety of the employee, co-employees, or the public. The employee may be asked to return home and will be provided appropriate arrangements for return transportation to their residence.

The City will not discharge an employee for a first confirmatory positive test until the employee has been given an opportunity to participate in either a counseling or rehabilitation program, as determined by the City after consultation with a certified chemical use counselor or physician trained in the diagnosis and treatment of chemical dependency. Participation by the employee in any recommended substance abuse treatment program will be at the employee's own expense or pursuant to the coverage under an employee benefit plan. The certified chemical use counselor or physician trained in the diagnoses and treatment of chemical dependency will determine if the employee has followed the rehabilitation program as prescribed.

Should the employee refuse to participate in the counseling or rehabilitation program in a timely manner, or fail to successfully complete the program¹, the employee will be terminated immediately.

Other Misconduct

Nothing in this policy limits the right of the City to discipline or terminate an employee on grounds other than a positive confirmatory test result. This includes, but is not limited to, the conviction of any criminal drug statute for a violation occurring in the workplace or violation of other City Organizational policies.

Emergency Call Back to Work Provisions

If an employee is called back to work and is impaired by, or under the influence of drugs, alcohol and/or cannabis, they must notify their supervisor and not report to work.

Non-Discrimination

The City of Rochester policy on work-related substance abuse is non-discriminatory in intent and application; however, in accordance with Minn. Stat. § 363, disability does not include conditions resulting from chemical dependency, which prevents an employee from performing the essential functions of the job in question or constitutes a direct threat to property or the safety of individuals.

The City will not retaliate against any employee for asserting their rights under this policy.

City's Employee Assistance Program

The City has a formal employee assistance program (EAP) to assist employees in addressing serious personal or work-related problems at any time. The City's EAP provides confidential, cost-free, short-term counseling to employees and their families. Employees who may have a drug, alcohol or cannabis abuse problem are encouraged to seek assistance before a problem interferes with their employment with the City. Any required treatment cost not covered by the EAP will be the employee's responsibility.

Definitions

Alcohol: Means the intoxicating agent in beverage alcohol or any low molecular weight alcohols such as ethyl, methyl, or isopropyl alcohol. The term includes but is not limited to beer, wine, spirits, and medications such as cough syrup that contain alcohol.

Alcohol use or usage: Means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Cannabis: Means cannabis and its metabolites, including cannabis flower, cannabis products, cannabinoids, lower-potency hemp edibles, and hemp-derived consumer products.

¹ Failure to successfully complete the program includes withdrawal from the program before its completion and/or by a refusal to test or positive test result on a confirmatory test after completion of the program.

Cannabis testing: Mean analysis of a body component sample according to the standards established under one of the programs listed in Minn. Stat. § 181.953, subd.1, for the purpose of measuring their presence or absence of cannabis in the sample tested.

City: Means the City of Rochester.

City premises: Means, but is not limited to, all City job sites and work areas. For the purposes of this policy, city premises also includes any other locations or modes of transportation to and from those locations while in the course and scope of employment of the City.

City vehicle: Means any vehicle which employees are authorized to use solely for City business when used at any time; or any vehicle owned or leased by the City when used for City business.

Collection site: Means a place designated by the City where job applicants and employees present themselves for the purpose of providing a specimen of their breath, urine, and/or blood to be analyzed for the presence of drugs and alcohol.

Confirmatory test: Means a drug, cannabis, or alcohol test on a sample to substantiate the results of a prior controlled substance or alcohol test on the same sample, and that uses a method of analysis allowed under one of the programs listed in Minn. Stat. § 181.953, subd. 1.

Drug: Includes any “controlled substance” as defined in Minn. Stat. § 152.01, subd. 4, and also includes all cannabinoids, including those that are lawfully available for public consumption that do not otherwise qualify as being a “controlled substance” as defined in Minn. Stat. § 152.01, subd. 4. Cannabis and its metabolites are considered a “drug” for positions in the following categories, regardless of the kind of testing involved: safety sensitive positions; peace officer positions; firefighter positions; positions requiring face-to-face care, training, education, supervision, counseling or medical assistance to

children, vulnerable adults or patients receiving treatment, examination or emergency care for a medical, psychiatric or mental condition; positions requiring a commercial driver's license or requiring the employee to operate a motor vehicle for which state or federal law requires drug or alcohol testing; positions funded by a federal grant; or other positions for which state or federal law requires testing of a job applicant or employee.

Drug and/or alcohol testing, and drug and/or alcohol test: Mean analysis of a body component sample according to the standards established under one of the programs listed in Minn. Stat. § 181.953, subd.1, for the purpose of measuring their presence or absence of drugs, alcohol, or their metabolites in the sample tested.

Drug paraphernalia: Has the meaning set forth in Minn. Stat. § 152.01, subd. 18.

Employee: Means a person who performs services for compensation for the City and includes independent contractors except where specifically noted in this policy.

Federal Agency or Agency: Means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

Impairment: Means the employee does not possess the clearness of intellect and control of self that the employee otherwise would have, due to the use of drugs, alcohol or cannabis.

Initial screening test: Means a drug or alcohol test that uses a method of analysis under one of the programs listed in Minn. Stat. § 181.953, subd. 1.

Positive test result: Means a finding of the presence of alcohol, illegal drugs, cannabis, or their metabolites that exceeds the cutoff levels determined by a licensed, accredited, or certified laboratory in accordance with Minn. Stat. § 181.953, subd. 1.

Reasonable suspicion: Means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.

Safety-sensitive position: Means a job, including any supervisory or management position, in which an impairment caused by drug, alcohol and/or cannabis usage would threaten the health or safety of any person.

Under the influence: Means (1) the employee tests positive for drugs, alcohol or cannabis, or (2) the employee's actions, appearance, speech, and/or bodily odors reasonably cause the City to conclude that the employee is impaired because of drug, alcohol and/or cannabis use.

Contact for Additional Information

Policy questions or requests for additional information on the City's drug, alcohol and cannabis testing procedures should be directed to a City supervisor or to the Human Resources Department.

Policy revisions approved by City Administrator:



Alison Zelms

11/9/2023

Date

Policy History

Current Revision: 10/31/2023

Previous Revision(s): 5/2008; 8/2020

Associated Form(s)

- Policy Acknowledgement and Testing Consent
- Testing Refusal
- Drug Information Guide
- Reasonable Suspicion Record Form

The forms associated with this policy can be found on RW - Human Resources – Forms

Legal/Statutory Authority

- Minnesota Drug and Alcohol Testing in the Workplace Act, [Minn. Stat. §§ 181.950 et seq.](#) (“**DATWA**”)
- Drug-Free Workplace Act of 1988, [US Code, Title 41, Chapter 10](#)