

RESOLUTION NO. 796

A RESOLUTION OF THE CITY OF GIG HARBOR, WASHINGTON, ADOPTING A DRUG & ALCOHOL TESTING POLICY FOR CITY EMPLOYEES HOLDING COMMERCIAL DRIVERS LICENSES.

WHEREAS, The City of Gig Harbor is dedicated to providing quality, dependable and economical municipal services to the residents of the City of Gig Harbor; and

WHEREAS, Part of the City's mission is to ensure that the services are delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public; and

WHEREAS, In keeping with this mission, the City of Gig Harbor declares that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances or misuse of alcohol in the workplace is prohibited for all employees; and

WHEREAS, the City wishes to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991; and

WHEREAS, said policy should comply with all applicable federal regulations governing workplace anti-drug and alcohol programs in the motor carrier industry. Specifically, the Federal Motor Carrier Safety Administration (FMCSA) of the U.S. Department of Transportation has published 49 CFR Part 382, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result. The U.S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, which sets standards for the collection and testing of urine and breath specimens; and

WHEREAS, the City wishes to establish a policy that sets forth the City of Gig Harbor alcohol and drug testing program and the testing and reporting requirements as required by those regulations; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY
RESOLVE AS FOLLOWS:

Section 1. The attached Drug and Alcohol Testing Policy for Employees who Operate Commercial Vehicles, shown as Exhibit A hereto, is hereby adopted.

Section 2. This resolution and accompanying Exhibit A shall go into effect on August 17, 2009.

RESOLVED this 22nd day of June, 2009.

CITY OF GIG HARBOR

Charles L. Hunter
MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

Molly Towslee
CITY CLERK, MOLLY M. TOWSLEE

FILED WITH THE CITY CLERK: 06/18/09
PASSED BY THE CITY COUNCIL: 06/22/09
RESOLUTION NO. 796

EXHIBIT A

City of Gig Harbor

**Drug and Alcohol Testing Policy
for Employees who Operate Commercial Vehicles**

I. PURPOSE

The City of Gig Harbor is dedicated to providing quality, dependable and economical municipal services to the residents of the City of Gig Harbor. Part of our mission is to ensure that the services are delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. In keeping with this mission, the City of Gig Harbor declares that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances or misuse of alcohol in the workplace is prohibited for all employees.

Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable federal regulations governing workplace anti-drug and alcohol programs in the motor carrier industry. Specifically, the Federal Motor Carrier Safety Administration (FMCSA) of the U.S. Department of Transportation has published 49 CFR Part 382, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result. The U.S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, which sets standards for the collection and testing of urine and breath specimens.

This policy sets forth the City of Gig Harbor alcohol and drug testing program and the testing and reporting requirements as required by those regulations.

II. APPLICABILITY

This drug and alcohol testing policy applies to all safety-sensitive employees (full- or part-time) of the City who are required to have and maintain a Commercial Driver's License in order to perform the duties of the job. Contractors performing functions for the City involving the use of a vehicle requiring a Commercial Driver's License, will be subject to specific alcohol and drug testing as required by federal regulations.

III. DEFINITIONS

ACCIDENT - Accident means an occurrence involving a commercial vehicle on a public road which results in (1) a fatality; (2) bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or (3) one or more motor vehicles incurring disabling damage requiring the vehicle to be transported away from the scene by a tow truck or other vehicle.

DRIVER - This term includes all employees whose positions may involve driving a commercial vehicle and that require the possession of a Commercial Driver's License.

COMMERCIAL VEHICLE - A commercial vehicle is one that either: 1) has a gross vehicle weight of over 26,000 pounds (including combined weight if towed unit weighs over 10,000 pounds); 2) is designed to transport 16 or more persons, including the driver; or 3) is used to transport hazardous materials, as provided under the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations.

DRUGS - For the purposes of this policy, in accordance with the applicable federal regulations, "drugs" refers to the following five substances: marijuana (THC), cocaine, opiates, phencyclidine (PCP), and amphetamines.

MEDICAL REVIEW OFFICER (MRO) - The Medical Review Officer is the licensed physician responsible for receiving and interpreting laboratory results from the urine drug tests.

SAFETY SENSITIVE POSITION - For purposes of this policy, these are positions associated with the driving of commercial vehicles.

SUBSTANCE ABUSE PROFESSIONAL (SAP) - A Substance Abuse Professional is a licensed physician, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders.

IV. EDUCATION AND TRAINING

Every covered employee will receive a copy of this policy and will have the ready access to the corresponding federal regulations including 49 CFR Parts 382 and 40, as amended. In addition, all covered employees will receive educational materials and/or on-site training on the signs and symptoms of drug use and alcohol misuse, including the effects and consequences of drug use and alcohol misuse on personal health.

All supervisory personnel or city officials who are in a position to determine employees' fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

V. PROHIBITED SUBSTANCES

Prohibited substances addressed by this policy include the following:

- a. Illegally Used Controlled Substances or Drugs under the Drug-Free Workplace Act of 1988, any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp-related products, as which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy.

Federal Motor Carrier Safety Administration drug testing regulations (49 CFR Part 382) require that all covered employees be tested for marijuana, cocaine, amphetamines, opiates, and phencyclidine as described in Section VII of this policy. Illegal use of these five drugs is prohibited at all times, and thus covered employees may be tested for these drugs anytime that they are on duty.

- b. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates mental functioning, motor skills, or judgment may be adversely affected must be reported to the designated supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.
- c. Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food or candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited. An alcohol test can be performed on a covered employee under 49 CFR Part 382 just before, during, or just after the performance of safety-sensitive job functions.

VI. PROHIBITED CONDUCT

The following conduct regarding alcohol and drug use or abuse is prohibited:

- a. All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.
- b. Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The covered employee will subsequently be relieved of his/her on-call responsibilities and subject to discipline.
- c. The City of Gig Harbor shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol.
- d. Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater regardless of when the alcohol was consumed.
- e. No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.
- f. No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.
- g. Consistent with the Drug-Free Workplace Act of 1988, all City of Gig Harbor employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the workplace including City premises, vehicles, while in uniform, or while on city business.

VII. TESTING REQUIREMENTS

Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49 CFR Part 40, as amended. All covered employees shall be subject to the following testing, as defined below, and as described in the Drug & Alcohol Testing Procedures:

A. Pre-employment Drug Testing

All individuals who are covered by this policy must pass a drug test as a post-offer condition of employment. Additionally, a non-covered employee shall not be placed, transferred or promoted into a covered position until the employee takes a drug test with verified negative results. Applicants are required to report previous DOT-covered employer drug and alcohol test results—Failure to do so will result in the employment offer being rescinded.

B. Reasonable Suspicion Testing

Employees subject to this policy shall submit to a drug and/or alcohol test when the City reasonably suspects that this policy (except the prohibitions against possession, transfer or sale of alcohol) may have been or is presently being violated. A referral for testing will be based on contemporaneous, articulable observations. Such

referrals will be made by supervisory personnel who have received training concerning the signs and symptoms of drug and alcohol use.

Alcohol testing for reasonable suspicion may only be conducted just before, during or after an employee operates a commercial vehicle. If removed from duty based on reasonable suspicion of alcohol use and an alcohol test is not administered within eight hours, the employee will not be allowed to perform or continue to perform covered functions until:

- 1) an alcohol test is administered and the driver's breath alcohol concentration measures less than 0.02; or
- 2) 24 hours have elapsed following the determination that there is reasonable suspicion to believe that the employee has violated this policy concerning the use of alcohol.

C. Post-Accident Testing

Following an accident (as defined above) involving a commercial vehicle, the driver is required to submit to alcohol and drug tests if they are involved in an accident with a commercial vehicle on a public road which results in:

1. A fatality OR
2. The driver receives a citation under state or local law for a moving violation AND
 - a. there is bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene OR
 - b. one or more motor vehicles incurs disabling damage requiring the vehicle to be transported away from the scene by a tow truck or other vehicle.

Testing should occur as soon as possible, but may not exceed eight hours after the accident for alcohol testing and 32 hours after the accident for drug testing.

A driver who is subject to post-accident testing must remain readily available for such testing and may not take any action to interfere with testing or the results of testing. Drivers who do not comply with post-accident testing requirements will be considered to have refused to submit to testing and will be subject to sanctions for refusal to test as provided in this policy.

D. Random Testing

Employees covered by this policy will be subject to random, unannounced alcohol and drug testing.

E. Return to Duty Testing

Employees who have violated this policy, including those who have tested positive on a drug or alcohol test, and who under the discipline policy are allowed to return to work, must test negative prior to being released for duty. A return to duty test following alcohol misuse may not exceed an alcohol concentration of 0.02.

F. Follow-up Testing

An employee who is referred for assistance related to alcohol misuse and/or use of drugs is subject to unannounced follow-up testing for a period not to exceed 60 months as directed by a Substance Abuse Professional and the City. The number and frequency of follow-up testing will be determined by the Substance Abuse Professional and the City, but will not be less than six tests in the first 12 months following the employee's return to duty.

G. Split Sample Testing

Employees who test positive for drugs may request a second test of the remaining portion of the split sample within 72 hours of notification of a positive test result by the Medical Review Officer.

H. Retest for Dilute Test Results

Employees who render a dilute test that is positive for drugs will be treated as a verified test positive. Employees who render a dilute test that is negative may be subject to a retest, as specified in the Drug & Alcohol Testing Procedures.

VIII. REFUSAL TO TAKE AN ALCOHOL OR DRUG TEST

No employee shall refuse to submit to an alcohol or drug test as directed under this policy. A refusal to submit shall include, but is not limited to:

- a. Failure to provide adequate breath for testing without a valid medical explanation after the employee has received notice of the requirement for breath testing in accordance with the procedures manual;
- b. Failure to provide adequate urine for drug testing without a valid medical explanation after the employee has received notice of the requirement for urine testing in accordance with the procedures manual;
- c. Engaging in conduct that obstructs the testing process.

Refusal to submit to a test shall be considered the same as a positive test result.

IX. SECURING INFORMATION FROM PREVIOUS EMPLOYERS

If a person is to be hired into a position subject to this policy and during the previous two years has worked as a driver of a commercial vehicle, that person must authorize a request of all employers of the driver within the past two years to release information on the following:

- a. Positive alcohol or drug tests
- b. Refusal to be tested

The City will make a good faith effort to obtain and review the information from prior employers within 30 days of the person performing safety sensitive duties for the first time.

If the information obtained from previous employer indicates either a positive test or that a refusal to be tested occurred within the past two years, that person would not be permitted to drive commercial vehicles unless subsequent information indicates that an evaluation by a Substance Abuse Professional was made and return to duty testing was administered.

X. CONFIDENTIALITY AND RECORD RETENTION

All records related to drug and alcohol testing will be maintained in a secure location with controlled access. These records will be kept separate from records pertaining to all other employees.

XI. CONSEQUENCES OF ENGAGING IN PROHIBITED CONDUCT OR POSITIVE DRUG OR ALCOHOL TESTS

A. Discipline

An employee will be subject to appropriate disciplinary action as specified in the City's personnel policies up to and including termination from employment if:

- a. the employee tests positive for a drug or drugs;
- b. results from an alcohol test indicate a breath alcohol level of 0.02 or greater; and/or,
- c. the employee has engaged in prohibited conduct as outlined in Section V.

All employees regardless of disciplinary action taken will be advised of resources available to the employee in evaluating or resolving problems associated with drug use or alcohol misuse.

The following provisions apply to those employees who are not terminated for their policy violations:

B. Positive Test Result and/or Engaging in Prohibited Conduct.

If an employee tests positive for drugs or has an alcohol test that indicates a breath alcohol level of .04 or greater from a random, reasonable suspicion or post-accident test, or engages in prohibited conduct as outlined in Section V, the employee will be immediately removed from duties requiring the driving of a commercial vehicle.

The employee will not be permitted to return to duties involving a CDL unless he/she:

1. has been evaluated by a qualified Substance Abuse Professional; and,
2. if recommended by a Substance Abuse Professional, has properly followed any rehabilitation prescribed; and,
3. has his/her Commercial Driver's License re-activated by the Washington State Department of Licensing; and,
4. has a verified negative result on a return-to-duty alcohol (<0.02) and/or drug test.

Upon completion of a recommended rehabilitation program and successful return to work, an employee will be subject to follow-up random testing for up to sixty (60) months as recommended by the Substance Abuse Professional and the City, with a minimum of six such unscheduled tests within the first twelve months of returning to duty.

C. Alcohol Concentration of 0.02 but less than 0.04

Employees having a breath alcohol concentration of at least 0.02 but less than 0.04, shall be removed from duty requiring the driving of a commercial vehicle for at least 24 hours.

XII. EMPLOYEE ASSISTANCE PROGRAM/VOLUNTARY REFERRAL

The City supports employees who volunteer for treatment of alcohol or drug abuse. Employees are encouraged to seek treatment voluntarily and to utilize the Employee Assistance Program. Any employee who comes forth and notifies the City of alcohol or drug abuse problems will be given the assistance extended to employees with any other illness. Any such program, however, may not interfere with the tests required by these

rules. For example, a driver may not identify himself/herself as unfit to drive after having been notified of a random or reasonable suspicion test and expect to avoid the consequences for a positive test or a refusal to test. In addition, voluntarily seeking assistance does not excuse any failure to comply with all of the provisions of this policy or other policies of the city.

No adverse action will be taken against an employee who voluntarily admits to alcohol misuse or controlled substance misuse within the parameters of these policies, provided, however, that an employee does not use self reporting in order to avoid testing under the provisions of the City's CDL program.

Sick leave, vacation leave or leave of absence without pay may be granted for treatment and rehabilitation as in other illnesses. Insurance coverage for treatment will be provided to the extent of individual coverage. Confidentiality of information will be maintained as much as possible at all times.

Employees will be returned to safety sensitive functions such as driving only upon successful completion of an educational or treatment program, as determined by the City in consultation with a drug and alcohol abuse evaluation specialist (i.e., employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor).