

**ADMINISTRATIVE POLICY:** 2013-05 (Replaces 11-01, 03-01, 02-02, 95-04 & 05-05)

**SUBJECT:** DRUG & ALCOHOL SUBSTANCE ABUSE & TESTING POLICY

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**APPROVED:** 

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**Distribution:**

City Manager  
City Council  
Department/Division Managers  
All Employees

# **CITY OF LEWISTON DRUG & ALCOHOL SUBSTANCE ABUSE & TESTING POLICY**

## **SECTION I.**

### **A. POLICY STATEMENT**

As an employer, the City is required to adhere to various federal, state and local laws and regulations regarding alcohol and substance abuse. Additionally, the public has the right to expect that City employees are mentally and physically fit at all times.

The City also has a vital interest in maintaining safe, healthful and efficient working conditions for its employees. If an employee is under the influence of an illegal substance or alcohol on the job, it presents serious safety and health risks to the employee and to all working with that employee. Therefore, possession, use, or sale of a controlled substance that may alter mental and physical abilities, or the use of alcohol in the workplace presents an unacceptable risk to safe, healthful and efficient City operations.

The City of Lewiston is implementing this Drug & Alcohol Substance Abuse & Testing Policy that includes provisions relating to the testing of employees who operate commercial vehicles (hereafter referred to as commercial drivers). All employees are subject to the reasonable cause and post-accident testing provisions of this policy. In addition, as a part of the application process, all prospective employees will take a drug and/or alcohol test and must pass any such test in order to be hired by the City of Lewiston. The requirements for employees covered by Federal Transit Administration (FTA) are found in Section VII. All city employees, including drivers of commercial vehicles not regulated by a federal agency, are required to comply with the general provisions in Sections I. through VI.

### **B. IMPLEMENTATION SCHEDULE**

This policy will become effective January 1, 2014, and will apply to all prospective and current employees of the City (hereafter referred to as employees).

### **C. POLICY COMMUNICATION**

All employees shall be informed of the City's Alcohol and Substance Abuse and Testing Policy. A copy of the policy shall be given to each employee with the employee acknowledging in writing receipt and understanding of the policy.

The Purchasing Agent shall inform all contractors performing work for the City about the applicable policy provisions and provide a copy of this policy to such contractors. Certain

other enforcement actions may be necessary.

**D. POLICY EXCEPTION**

The City recognizes that Police Officers are held to a higher standard of behavior than other employees in regard to the use of legal or illegal drugs. Such use will not be tolerated in the line of duty except in the case of undercover officers whose life may be threatened by not using drugs. Any employee of the Police Department exposed to drugs under a life-threatening situation shall immediately report the incident to the Chief of Police. The use of legal drugs, such as alcohol, in the line of duty will only be tolerated in situations where it is necessary to perform undercover work. In such circumstances, an officer shall not consume sufficient alcohol to exceed the breath/blood standard established by this policy.

**E. QUESTIONS REGARDING THIS POLICY**

The Human Resources Director is designated by this policy as the person responsible for answering employee questions relating to the provisions of this policy.

**SECTION II.**

**A. EMPLOYEE USE OF ALCOHOL**

The City is committed to ensuring that no employee is at work while under the influence of alcohol. Therefore, employees are not to consume alcohol within four (4) hours of reporting to work. Employees are not to report to work or remain at work while having an alcohol concentration of .02 BAC or greater. Employees are prohibited from using or possessing alcohol while they are on duty, except for certain police officers working undercover activities with consent of the Police Chief. Consumption of alcohol in a City facility or on City premises is prohibited unless consumed at an event with an authorized liquor-catering permit issued by the City of Lewiston. Consumption of alcohol in a City vehicle is prohibited and is also a violation of the law.

**B. EMPLOYEE POSSESSION, USE OR DISTRIBUTION OF DRUGS**

**1. Illegal Controlled Substances**

Possession, manufacture, distribution and/or being under the influence of illegal controlled substances in the workplace or on City property is prohibited and is a violation of criminal law. Any employee who pleads guilty to or is convicted of any criminal drug statute shall notify his/her supervisor in writing within five (5) days of either event. Conviction of a violation of a local, state or federal offense involving the use, sale, purchase, transfer, manufacture or possession of an illegal controlled substance in the workplace by any employee shall result in disciplinary action. All employees must abide by the terms of this policy as a condition of employment.

## **2. Legal Drugs and Medication**

Employees who may be required to operate vehicles, equipment, or machinery as part of their employment responsibility should exercise extreme caution in the use of medication that may induce drowsiness, dizziness, or other side effects that could impair the employee's ability to function. Employees shall notify their immediate supervisor when required to use prescription or over the counter medicine that could impair their ability to perform job duties and are encouraged to discuss such situations with their supervisor prior to engaging in such work activities. The employee may be temporarily reassigned to other duties if necessary.

### **SECTION III.**

#### **A. SELF-REFERRAL**

The objective of this policy is to ensure a safe, productive work environment for everyone. The City recognizes that alcoholism and drug abuse are diseases that should be treated as any other health problem. Further, it is the City's desire to help any employee who has a substance abuse problem to resolve that problem before they are found in violation of this policy. All employees of the City who consider themselves drug or alcohol dependent and who voluntarily identify themselves as such will be encouraged to obtain an evaluation by a substance abuse counselor and to seek treatment as recommended by the counselor. The City will provide informational assistance in locating professional substance abuse counseling to any employee who requests it. Requests for this assistance will be treated confidentially and the employee will be directed to professional organizations that can provide in-patient, outpatient and post-treatment care.

Employees who demonstrate successful progress or completion of a recommended course of treatment may return to work after taking and passing a drug and/or alcohol test. Any employee returning to work after treatment will be expected to comply with all aspects of this drug/alcohol testing policy. A request for rehabilitation may not be made in order to avoid the consequence of a positive drug result or to avoid taking a drug test when requested to do so under the terms of this policy.

### **SECTION IV.**

#### **A. DRUG AND ALCOHOL TESTING**

##### **1. Pre-Employment Testing**

As a part of the application process, all prospective employees will take a drug and/or alcohol test and must pass that test to be employed by the City of Lewiston. All

prospective commercial drivers (meaning those employees who are required to carry a commercial driver's license in order to perform the functions of their job) must disclose to the City all employers for whom they have worked as a driver within the past two (2) years and sign a release of information to the City of Lewiston. The City will then request from those employers, information regarding any incidents where the prospective commercial driver has tested positive for illegal drugs or alcohol, or refused to test within the previous two (2) years. In the event that the City receives information from a former employer that the prospective commercial driver had tested positive for drugs or alcohol within the previous two years, that person may not be offered employment, or his/her conditional employment with the City may be terminated. Any driver found to have previously tested positive for illegal drugs or alcohol and who is hired by the City must show that he/she has been evaluated by a Substance Abuse Professional and he/she was also found not to be currently drug or alcohol dependent.

## **2. Random Testing**

All employees who driver City vehicles or their private vehicles for City business will be subject to both drug and alcohol testing. Random selections will be made by a scientifically valid method that will result in each such driver having an equal chance of being tested each time selections are made. Random testing for alcohol will take place prior to, during, or after a driver's duty time.

## **3. Reasonable Cause**

The City will require an employee to be tested for the use of alcohol, illegal drugs, or the use of prescription medication if an employee's physical appearance or pattern of behavior gives City officials reason to believe the employee is impaired because of substance abuse. If that impairment would compromise the employee's ability to perform his/her assigned job tasks and would endanger his/her well being or the safety of fellow employees or the general public, that employee will temporarily be relieved of his/her duties. The basis of suspicion of drug or alcohol abuse may be a specific contemporaneous event, or conduct-evidencing impairment observed over a period of time.

## **4. Specimen collection procedures and test result notification**

### **a. Drug/Alcohol Specimen Collection Procedures**

All testing for illegal or prescription drugs will be done by the testing of an employee's urine specimen. All such testing for drivers will utilize the split specimen collection procedure. Under that procedure, each driver will have his/her urine specimen sealed in two separate containers with both being sent to a SAMHSA certified laboratory for testing. If a driver's first specimen tests positive, then, within three (3) days of the positive notification, that driver may have the other specimen be tested at a second SAMHSA laboratory. If the second test is performed at the employee's request, it will be done at the

driver's expense, unless the second test is negative for the presence of drugs. During the time the second specimen is being tested, the driver will be suspended with pay. A contracted professional who have been instructed and trained in collection procedures will conduct all specimen collections. If a specimen is positive for the presence of illegal drugs, it will be confirmed by the Gas Chromatography/Mass Spectrometry (GC/MS) confirmation method.

A non-driver employee who tests positive for illegal or prescription drugs may request the same specimen be retested at their expense unless the result of the second test results are negative. This request must be conveyed to the City within forty-eight (48) hours of the employee being notified of a positive test result. During the time the second test is being conducted, the employee will be suspended with pay.

Alcohol testing will be done by the use of a City approved alcohol testing device. There will be two reviewable levels for alcohol concentration. Any employee who tests above a level of 0.02 BAC but below 0.039 BAC will not be allowed to work for at least twenty-four (24) hours. Any employee who tests above 0.04 BAC is considered to have tested positive to the degree that disciplinary action will be taken.

#### **b. Adulteration or Submission of a Concealed Specimen**

All urine tests will be directly observed by a monitor. If, during the collection procedure, the collection monitor detects an effort by an employee to adulterate or substitute a specimen, a second specimen will be requested. The second specimen will be tested. If the request for a second specimen is refused, the collection monitor will inform the City contact of the employee's refusal to submit a second specimen. Such conduct by the employee will be considered a positive test. In the event that a prospective or current employee submits a specimen that the laboratory later identifies as a diluted specimen, the City will advise the employee of that finding and request that the employee submit a second specimen. The employee will be advised by the City not to drink any

#### **c. Notification of Drug Test Results**

All drug test results will be forwarded to the City by the Medical Review Officer (MRO). Before the City is informed that a prospective or current driver has tested positive for illegal or prescription drugs, the employee will be offered an opportunity to personally discuss the positive drug test with the MRO. The MRO will follow-up on such information as is deemed appropriate.

Any employee who is taking a prescription drug that may have been the cause of a positive test result will be asked to provide the name of the medication and the identity of the prescribing physician for verification. If the proper use of the prescription drug is verified, the employee's test result will be reported as negative.

If, after consideration of the matter, the MRO finds no reason to doubt the validity of a positive test, that result will be conveyed to the City.

## **5. Refusal**

An employee may refuse to take a drug and/or alcohol test when requested to do so consistent with the terms of this policy. Such a refusal will be considered equivalent to testing positive for illegal drugs or alcohol. An employee will be considered as refusing to test if he/she expressly refuses to take a test, or otherwise fails to provide an adequate breath or urine sample without a valid medical explanation. Deliberately obstructing the testing process will be considered a refusal to take a test.

## **6. Effect of Testing Positive for Drugs or Alcohol**

A prospective employee who tests positive for illegal drugs will not be offered employment. Any current employee who tests positive for illegal drugs or alcohol may be allowed to continue working for the City subject to the terms and conditions of the City's disciplinary proceedings and this policy.

An employee who tests positive for illegal drugs or alcohol and is allowed to continue to work for the City must first consult with a Substance Abuse Professional (SAP) to determine if he/she is drug/alcohol dependent. If it is determined that he/she is not drug/alcohol dependent he/she may return to work after he/she takes and passes a drug/alcohol test at his/her expense and completes any counseling or educational programs recommended by the SAP. Thereafter, that employee will be subject to at least six (6) random drug or alcohol tests during the ensuing twelve (12) month period. For purposes of this policy, an employee tests positive for alcohol when that employee's blood alcohol concentration (BAC) is .04 or above or when an employee has between .02 BAC and .039 BAC twice within a twelve (12) month period.

## **SECTION V.**

### **A. Procedures for Management, Supervisors and Employees**

When a supervisor has reasonable suspicion to believe that an employee is in violation of this policy, the supervisor shall immediately notify the Department Manager, or designee, and consult with the Human Resources Director to determine further action. If an employee believes another employee is under the influence of an illegal or prescription drug or alcohol while on duty, he/she shall discuss the matter with his/her immediate supervisor. It shall be the supervisor's responsibility to take appropriate action.

If specific evidence exists that would lead another employee or supervisor to believe that an employee is under the influence of an illegal or prescription drug or alcohol while on duty, or such are in the employee's possession while on duty, immediate action is required. When such evidence exists, the City will require the employee to undergo a drug or alcohol test consistent with the conditions set forth in this policy. In this situation, the supervisor should follow the procedures set out below.

## **1. Employee Under the Influence of Alcohol**

The supervisor should approach the employee with the suspicion in a private setting if possible. The supervisor shall notify the Department Manager and attempt to notify the union steward if the employee is a represented employee. The Union steward may attend if invited by the employee. It is appropriate in this non-criminal context to confirm alcohol presence with a breath test. This can be arranged by contacting the Lewiston Police Department supervisor on duty. The employee's supervisor shall make arrangements for transportation to the test site.

If the employee refuses to be tested, the supervisor shall advise the employee that a refusal to take a will be considered a positive test and will subject the employee to discipline up to, and including, termination. The supervisor will arrange for the employee to be relieved of duty, placed on leave with pay status and transported home. The employee shall not be allowed to drive a City vehicle unless and until the employee is reinstated pursuant to procedures in this policy.

## **2. Use, Possession or Sale of Illegal Substances**

When a supervisor has reasonable suspicion to believe that an employee is under the influence of an illegal or prescription drug while on duty, the supervisor shall notify the Department Manager, or designee, and attempt to notify the Union steward of a represented employee. The supervisor should approach the employee in a private setting if possible. The Union steward may attend if invited by the employee. If, in the judgment of the supervisor, the employee's condition is potentially hazardous to the safety of any individual, the supervisor shall arrange for the employee to be relieved of duty, placed on leave with pay status and transported home. The employee shall not be allowed to drive a City vehicle until the employee is reinstated pursuant to procedures in this policy. An employee suspected of being under the influence of drugs shall be requested to submit to a urinalysis test. That test will be conducted using the split sample method.

If the employee refuses to be tested, the supervisor shall advise them that failure to take a test shall be considered a positive test and will subject the employee to discipline up to, and including, termination.

When a supervisor has reasonable suspicion to believe that an employee is in possession of, selling or transferring an illegal controlled substance(s), the supervisor shall immediately notify the police.

Management, shop stewards and supervisors are to restrict conversations concerning possible violations of this policy to persons participating in the testing, investigation or disciplinary action. Supervisors shall notify the Police Department of any possible violation of the law. Further investigation shall be at the discretion of the Police Department.

## **SECTION VI.**

### **A. Alcohol or Drug Related Traffic Violations On or Off the Job**

It is the duty of any employee who is required to drive as part of his/her assigned duties or job specifications to report to his/her supervisor any restrictions imposed by law on his/her driving privileges due to drug or alcohol use. Department Managers will evaluate retention of employees who are unable to perform their assigned duties due to loss of driving privileges on a case-by-case basis.

### **B. Duties in the Event of an Accident**

An employee who is involved in a work-related accident requiring medical attention shall inform his/her supervisor of the accident as soon as possible, so that any needed drug or alcohol testing may be promptly conducted in conjunction with their medical treatment.

Any employee operating a City vehicle which is involved in a work-related accident will be tested for the use of drugs and alcohol as soon as possible after the accident but no later than two (2) hours in the case of alcohol and no later than thirty-two (32) hours in the case of illegal drugs. Examples of conditions that will require a City employee operating a City vehicle to take a drug and/or alcohol test include, but are not limited to, accidents that are caused by a vehicle operator that result in:

1. a fatality;
2. injury to another person;
3. injury to the operator of the City vehicle, unless the Police Department determines that there is no reasonable cause to test the driver;
4. damage to property owned by the City or by a third party that may reasonably be estimated to exceed \$1,000.

An employee who is seriously injured and cannot provide a specimen for testing will be required to authorize the release of all medical records or other documentation that would indicate whether drugs or alcohol were present in his/her system at the time of the accident. Any employee required to be tested under this Section must remain readily available for such testing and that employee may not consume alcohol within eight (8) hours of the accident.

If management determines that an employee's accident was caused by the actions of another and that there were no unsafe actions on the part of the injured employee, the City reserves the right to waive post-accident testing of the injured employee.

## **SECTION VII.**

### **A. FTA Safety Sensitive Employees**

It is the policy of the City of Lewiston to comply with the regulations issued pursuant to 49 CFR, Part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations"; and 49 CFR, Part 382, "Controlled Substances and Alcohol Use and Testing". In addition, the City of Lewiston will comply with the U.S. Department of Transportation (DOT) issued 49 CFR, Part 40, as amended, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" that describe the testing procedures to be followed. This policy applies to all City of Lewiston employees who perform safety-sensitive functions for the City, as well as contract employees and contractors performing safety-sensitive functions for the City's transit system.

**B. Safety Sensitive Employee.** Safety-sensitive employees (also referred to as "covered" employees) are:

- Operators of revenue service vehicles (transit buses or equipment used in revenue service such as a supervisor's vehicle if used as ADA backup),
- Operators of FTA funded non-revenue vehicles when required to be operated by a holder of a CDL,
- Vehicle controllers (i.e. dispatchers)
- Mechanics who maintain, repair, overhaul and rebuild revenue service vehicles or equipment used in revenue service
- Employees of contractors who perform services for the City of Lewiston, in positions that are safety-sensitive as defined above, will also be subject to the testing and educational provisions of this policy .

Any Supervisor/Manager who knowingly disregards the requirements of this policy may be subject to disciplinary action, up to and including termination.

All employees performing safety-sensitive functions for City of Lewiston, as defined by this policy, must:

1. Comply with the City of Lewiston's Drug & Alcohol Substance Abuse and Testing Policy as mandated by the Department of Transportation, Federal Transit Administration, and Federal Motor Carriers Safety Administration;
2. Understand that strict compliance with the City of Lewiston's Drug & Alcohol Substance Abuse and Testing Policy is a condition of initial employment, as well as continuing employment, with the City of Lewiston.

**C. Contact Person.** The Transit Manager is the person designated by the City to answer questions about this policy section.

**D. Prohibited Behavior.** To assure compliance with DOT rules and regulations as they apply to FTA and FMCSA, and their amendments, each covered employee is:

1. Prohibited from purchasing, possessing, manufacturing, distributing, selling, or using alcohol or controlled substances, or using any other performance-impairing substance while on duty or on City of Lewiston property (Drug Free Workplace Act);
2. Prohibited from using illegal drugs at any time, or using controlled legal drugs without proper medical authorization;
3. Prohibited from reporting to work or performing work while under the influence of alcohol, or under the influence of any other performance-impairing substance;
4. Prohibited from alcohol use within four (4) hours of reporting for duty. Employees called back to duty must report any alcohol use within the preceding four (4) hours to their immediate supervisor before performing any safety-sensitive function; ;
5. Prohibited from alcohol use (i.e., the drinking or swallowing of any beverage, liquid mixture or preparation, including any medication, containing alcohol) within eight (8) hours following an accident unless, or until, the employee takes a post-accident alcohol and/or drug test, whichever occurs first;
6. Required to submit to an alcohol and/or drug test when directed by the City of Lewiston, and prohibited from tampering or attempting to tamper with such alcohol and/or drug test in order to affect the test result;

**E. Notification Requirements.** Under City of Lewiston authority, each covered (i.e. safety sensitive) employee is:

1. Required to notify his/her supervisor of any citation or conviction under a criminal drug statute occurring in the workplace within five (5) calendar days of the citation or conviction;
2. Required to notify his/her supervisor of any moving violation involving drugs or alcohol, occurring on or off the job, causing loss of driver's license.
3. Required to report to his/her supervisor whenever he/she observes or has knowledge of another employee who poses a risk to the safety and welfare of others;
4. Required to inform his/her physician of this policy when being prescribed medication(s), and is responsible for using medically authorized drugs, or over-the-counter medication, in a manner which will not adversely affect his/her ability to perform safety-sensitive duties safely, effectively, and responsibly. Employees are encouraged to provide a "release to work" note from the prescribing physician before performing safety-sensitive functions;

5. Required to inform his/her supervisor of any use of legal or illegal drugs, including prescription medication, which may impair on-the-job performance prior to commencing a safety-sensitive function.

**F. Substances Tested:**

**1. Alcohol.** Employees subject to alcohol testing may have a sample of their breath tested for the presence of the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol. Alcohol testing must be accomplished just before a covered employee performs safety-sensitive duties, during the performance of safety-sensitive duties, or just after completing safety-sensitive duties.

- a. "Alcohol use" means the drinking or swallowing of any beverage, or liquid mixture or preparation, including any medication, containing alcohol.
- b. A covered employee who tests at 0.04 or above will be administered a "confirmatory" test not less than 15 minutes but no more than 30 minutes from the time of the initial alcohol screening test. A "confirmatory" test result greater than 0.04, will be considered "positive".
- c. A refusal to submit to an alcohol test, as well as all positive alcohol tests will be immediately reported by the testing facility to the City of Lewiston Transit Manager or Human Resources staff member.

**2. Drugs.** Employees subject to drug testing will have a sample of their urine tested for the presence of the drugs listed in 49 CFR Part 40, as amended. These include the following five (5) drugs: Marijuana, Cocaine, Phencyclidine (PCP), Opiates, Amphetamines.

- a. The testing laboratory will report all drug tests to a Medical Review Officer (MRO), who is a licensed physician with knowledge of substance abuse disorders.
- b. The MRO will review all drug test results to ensure that the chain of custody form has been properly completed and the specimen has been handled according to DOT established protocol. In addition, the MRO will interpret and evaluate the results, examining alternative medical explanations for these results.
- c. Prior to verifying a positive test, the MRO will contact the affected employee to discuss the test results and provide him/her an opportunity to offer a legitimate medical reason for the test results.
- d. If the laboratory reports a specimen as adulterated or substituted, the MRO will treat the report in the same manner as a positive test result. If there is no

legitimate medical reason, the MRO will report the test as a Refusal to Test because of adulteration or substitution..

**G. Types of Testing.** The following types of tests will be required for all covered employees:

- Post-accident drug and/or alcohol tests
- Random drug and/or alcohol tests
- Reasonable suspicion drug and/or alcohol tests
- Return to duty drug and/or alcohol tests
- Follow-up drug/alcohol tests

The City of Lewiston drug and alcohol testing procedures incorporate the requirements outlined in the federal regulations to ensure employee confidentiality, the integrity of the testing process, the validity of the test results, and that the test results are attributed to the correct covered employee.

1. Specimen collection for urine drug testing will take place at collection sites designated by the City of Lewiston. Collection will be conducted on days and times that correspond to regular transit operations, as well as employees' work schedules, according to procedures outlined in 49 CFR Part 40, as amended. These procedures include the collection of a split - sample specimen; retesting whenever an inadequate sample has been provided; retesting under observed conditions, when the urine sample is outside the normal temperature range, or when suspected tampering has taken place; completion and distribution of a Federal Drug Testing Custody and Control Form; and transportation of the specimen by courier to the certified testing laboratory.
  - a. Analytical urine testing will be conducted in a Department of Health and Human Services (DHHS) certified laboratory for marijuana, cocaine, opiates, amphetamines, and phencyclidine.
  - b. Laboratory analysis of the submitted specimen will be conducted according to the procedures outlined in 49 CFR Part 40, as amended.
  - c. If the initial drug screen is positive, a confirmatory Gas Chromatography/Mass Spectrometry (GCMS) will be performed.
  - d. A positive test result, above the minimum thresholds set forth by federal regulations, and verified by a MRO, will be considered a violation of this policy.
2. Tests for alcohol concentration will be conducted using National Highway Traffic Safety Administration (NHTSA) approved evidential breath testing devices operated by trained breath alcohol technicians (BAT). Equipment will be

maintained according to the quality assurance plan developed for the particular piece of equipment. The collection process will be conducted according to procedures set forth in 49 CFR Part 40, as amended.

- a. U.S. Department of Transportation Breath Alcohol Testing Form will be completed with each collection.
- b. By the regulations, an employee who tests at 0.02 or above will be retested within 15 to 30 minutes of the first test. This second test is considered a confirmatory test.
- c. A confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and a violation of FTA regulations.

**H. Pre-employment Testing.** The following persons will be subject to pre-employment drug testing:

1. Applicants selected for hire into a safety-sensitive position.
2. Current City of Lewiston employees electing to transfer to a safety-sensitive position.
  - a. Applicants for safety-sensitive positions, or current employees seeking to transfer to a safety-sensitive position, who refuse to submit to a pre-employment drug test; are unable to produce the required specimen volume without a medically valid reason; attempt to alter, taint, or otherwise provide a false sample; or who test positive, may not be hired or transferred into a safety-sensitive position. Moreover, such applicants will be provided a list of Substance Abuse Professionals (SAPS) for self-referral.
  - b. Applicants, or covered employees, selected for hire or transfer into a safety-sensitive position that have been found to have previously failed an employment-related drug or alcohol test, must present proof of having successively completed a referral, evaluation, and treatment plan before performing the duties of a safety-sensitive position.
  - c. A covered employee or applicant who has not performed a safety-sensitive function for 90 consecutive calendar days, and is not in the random selection pool, shall be required to take a pre-employment drug test and attain a verified negative result.
3. Applicants, or covered employees, who have sustained a "cancelled test" on a pre-employment drug test, will be required to retest before performing a safety-sensitive function.
4. An applicant with a dilute negative test result will be required to retest prior to

beginning work.

**I. Post-Accident Tests.** All employees in covered positions will be required to undergo urine and breath testing if they are involved in an accident with a transit revenue service vehicle regardless of whether or not the vehicle is in revenue service that results in a fatality. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance cannot be completely discounted as a contributing factor to the accident. The post-accident test will be conducted as soon as practicable following the accident.

**1.** The Transit Manager or other qualified person shall be responsible for making a determination as to whether a post-accident drug and/or alcohol test is required in any accident where:

- a. A fatality has occurred; or,
- b. A non-fatal accident involving a revenue service vehicle in which the performance of the employee cannot be discounted as a contributing factor, and/or where:
- c. Injuries were sustained requiring the injured person to receive immediate medical attention away from the scene; or where any vehicle involved in the accident is disabled and must be pushed, pulled, or towed away.

**2.** A covered employee required to submit to post-accident drug and alcohol testing should be tested as soon as possible following the accident, preferably within two (2) hours of the accident. Under FTA regulations, drug test must be conducted within thirty-two (32) hours following the accident; alcohol tests must be conducted within eight (8) hours of the accident. Whenever practicable, alcohol test should be administered first. If an alcohol test is not performed within two hours of the accident, the Transit Manager or designee will document the reason(s) for the delay. If the alcohol test is not conducted within eight (8) hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

**3.** A covered employee must remain readily available for post-accident drug and alcohol testing including notifying Transit Manager, or designee, of his/her location if he/she leaves the scene of an accident prior to submission to these tests.

- a. Failure to remain readily available for post-accident testing constitutes a refusal to test.
- b. Post-accident testing may be delayed while the covered employee assists in the resolution of the accident or receives medical attention following the accident.
- c. If the employee is unable to voluntarily submit to post-accident drug and alcohol tests (i.e. employee is unconscious, hospitalized, incarcerated, or dead), the

City may accept test results of local law enforcement officers. Such test results, in lieu of the FTA mandated tests, will only be accepted if the test results are obtained consistent with state and local law.

4. An employee required to take a post-accident drug and alcohol test will be transported to the collection site. The employee must provide a urine and breath sample unless it is determined by a medical examination that the employee is medically unable to provide the required samples. Following the test, the employee will be placed on administrative leave pending receipt of the test results from the MRO.

**J. Random Tests.** The City will maintain a listing of all the covered employees subject to random drug and alcohol testing. Random tests will be unannounced and conducted on all days and hours during which safety-sensitive functions are performed.

1. A computer-based random number generator, which is a scientifically valid method, is used for random selection. During each calendar year, drug and alcohol tests will be administered to all covered employees on a continuous, random selection basis, as called for in the FTA regulations. Each covered employee shall have an equal chance of being selected every time selections are made.
2. Covered employees required to submit to random drug and alcohol testing for more than one DOT agency (i.e. FTA, FMCSA) will be tested under the requirements of the DOT agency regulating more than 50% of the employee's work function.
3. Random alcohol tests may only be administered just before, during, or immediately following completion of a safety-sensitive function. Random drug tests can be administered anytime while on duty.
4. Employees selected for random drug and alcohol testing shall be notified on the date of the test and either transported to the collection site or notified to proceed to the test site immediately where they will be required to provide a urine and/or breath sample.
5. If the MRO reports a negative dilute result, the employee will not be required to retest, unless the MRO directs the City to do a recollection.

**K. Reasonable Suspicion Tests.** All covered employees will be subject to a reasonable suspicion drug and/or alcohol test when there are reasons to believe that drug or alcohol use is impacting job performance and safety. Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by a supervisor who is trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. A reasonable suspicion alcohol test can only be conducted

just before, during, or just after the performance of a safety-sensitive job function. Employees will be transported to the collection site and will be required to provide a urine and/or breath sample. Following completion of the test(s), the employee will be placed on administrative leave pending the results of the test by the MRO.

A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation prior to the release of the test results. This written record shall be submitted to the Human Resources Manager and shall be attached to the forms reporting the test results.

When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol or other substances to a supervisor in his/her chain of command, the employee shall be referred to the SAP for an assessment. The Transit Manager shall place the employee on administrative leave in accordance with the provisions of this policy. Testing in this circumstance would be performed under the direct authority of the City. Since the employee self-referred to management, testing under this circumstance would not be considered a violation of this policy or a positive test result under Federal authority. However, self-referral does not exempt the covered employee from testing under Federal authority as specified in Sections (reasonable suspicion and random) of this policy or the associated consequences defined in this policy.

**L. Return-to-Work Testing.** Employees who have tested positive for one or more of the substances listed above, and, in order to maintain employment have been given the opportunity to successfully complete a prescribed treatment program under the direction of a Substance Abuse Professional (SAP), will be required to take a return-to-duty drug and/or alcohol test. Covered employees may be returned to a safety-sensitive position only upon verification of a negative test result.

**M. Follow-up Testing.** Employees allowed to resume their safety-sensitive function, after successfully completing a prescribed treatment program, will be required to submit to a minimum of six (6) follow-up drug and/or alcohol tests during the first twelve (12) months following the employee's return to work. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up drug and/or alcohol tests recommended by the SAP shall be in addition to any random, post-accident, reasonable suspicion, and return-to-duty tests the employee may experience, and may continue for up to sixty (60) months. The Human Resources Manager shall be responsible for maintaining all records relating to the SAP's recommendations and will assure that all required follow-up tests are conducted.

**N. Refusal to Test.** Refusals to test are listed in 40 CFR Part 40, as amended, or 49 CFR

40 as amended for urine collections and 49 CFR Part 40.261 as amended for breath tests. A copy of 49 CFR Part 40 is available upon request.

#### **O. Action Upon Receiving Test Results**

The Medical Review Officer will report all verified positive test results or refusal to test results because of adulteration or substitution to the employee and City of Lewiston Transit Manager or Human Resources staff member.

Following notification of a verified positive drug test or refusal to test results because of adulteration or substitution, the MRO will inform the employee that he/she has seventy-two (72) hours from the time they are first notified to request the split urine specimen be tested by another Department of Health and Human Services (DHHS) certified testing laboratory.

1. Failure to request a split sample test within seventy-two (72) hours of being notified of a positive test result by the MRO will mean the test results from the original specimen shall be accepted as final.
2. If the split sample test is positive, the employee will be expected to reimburse the City for the cost of the test. If the split sample test is negative, the City will bear the cost of the test.
3. Any refusal to submit to a drug test will be immediately reported by the collection site to City of Lewiston Transit Manager or Human Resources staff member.

Any covered employee who experiences a confirmed positive drug or alcohol test will be removed from his/her safety-sensitive function, provided educational materials, and referred to a Substance Abuse Professional (SAP). The employee may be subject to disciplinary action, up to and including termination.

**P. Consequences.** Covered employees who have a confirmed positive drug and/or alcohol test will be immediately removed from their safety-sensitive positions. He/she will be placed on leave-without-pay status, provided educational materials on drug abuse and alcohol misuse, and referred to a Substance Abuse Professional (SAP) for assistance. The SAP is a licensed physician (Medical Doctor or Doctor of Osteopathy), a licensed or certified psychologist, a licensed or certified social worker, or a licensed or certified employee assistance professional. In addition, alcohol and drug abuse counselors certified by the National Association of Alcoholism and Drug Abuse Counselors (NAADAC) Certification Commission, are included in the SAP definition. The SAP will evaluate each employee to determine what assistance the employee needs in resolving problems associated with substance abuse. Assessment by a SAP does not protect an employee from disciplinary action or guarantee continued employment. The City will evaluate on a case-by-case basis whether or not a covered employee will be given the opportunity for rehabilitation and retention.

**Q. Termination.** Covered employees may be terminated if the employee:

1. Uses, sells, possess, purchases, manufactures, or distributes alcoholic beverages, illegal or controlled substances, or other performance impairing substances, while on duty, or on City property;
2. Consumes alcohol within four (4) hours of the employee's scheduled time to report to work or within eight (8) hours following an accident and before completing a post-accident alcohol and/or drug test;
3. Refuses to submit to a drug and/or alcohol test when directed by the City to do so;
4. Alters, substitutes, tampers, or attempts to tamper with a drug or alcohol test;
5. Tests positive for drugs and/or alcohol following an accident resulting in death, serious injury, or extensive property damage;
6. Tests positive for drugs and/or alcohol and events surrounding the test(s) preclude rehabilitation and retention;
7. Tests positive for drugs or alcohol during his/her "trial" period; or, as a result of a "return-to-duty" or "follow-up" drug or alcohol test;
8. Fails to notify his/her supervisor of the use of legal or illegal drugs, including prescription medication, that may impair on-the-job performance;
9. Fails to notify his/her supervisor of a citation or conviction under a criminal drug statute within five (5) calendar days of incurring the citation or conviction; or,
10. Fails to notify his/her supervisor of any moving violation involving drugs or alcohol, occurring on or off the job, causing loss of driver's license.

**R. Rehabilitation and Retention.** Current covered employees, who test positive for drugs or alcohol from random, post-accident and reasonable suspicion tests and are not subject to the conditions for termination and will be provided an opportunity for rehabilitation and conditional retention of employment if they agree to the following:

1. Submit to an evaluation by an approved substance abuse professional (SAP); and,
2. Actively participate in a prescribed treatment or rehabilitation program; and,
3. Sign a Return-to-Work Agreement; and,
4. Test negative on a return-to-work drug and/or alcohol test; and,

5. Undergo unannounced follow-up drug and/or alcohol tests, as recommended by the SAP, with a minimum of six (6) tests during the first year in addition to any random tests that may be required; and,
6. Follow any specified after care requirements; and,
7. Understand that failure to abide by the return-to-work agreement, and/or a subsequent positive drug or alcohol test will result in immediate termination.

**S. Employee Assistance.** Employees who voluntarily seek assistance in treating a problem associated with drug and/or alcohol misuse will be afforded the same consideration as any other employee undergoing an illness.

1. Covered employees are encouraged to contact a specialist in drug or alcohol misuse.
2. Insurance coverage for treatment will be provided to the extent of the individual coverage.
3. Employees who wait to volunteer for treatment until after they are notified of a scheduled drug or alcohol test, or until contacted by the Medical Review Officer (MRO) following a positive test result, will be subject to the same penalties as any other "positive" test result.

**T. Confidentiality.** The City will strictly adhere to all standards of confidentiality and assures all employees that testing records and results will only be released to those authorized by the FTA rules to receive such information. Specifically, authorized personnel include:

- The employee, if requested in writing;
- The employer;
- NTSB, when investigating an accident;
- Decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee;
- Subsequent employers, if requested in writing by the employee; or other identified individuals or agencies, if requested in writing by the employee.

**U. Education and Training.** Employees who perform safety-sensitive functions for the Transit Division will receive a minimum of sixty (60) minutes of training regarding the effects of prohibited drug and alcohol misuse. In addition, supervisors who are designated to determine whether reasonable suspicion exists to require a covered employee to undergo an alcohol and/or drug test, will receive a minimum of one hundred twenty (120) minutes of training regarding the physical, behavioral, speech, and performance indicators of possible prohibited drug use and alcohol misuse.

***City of Lewiston***  
***Controlled Substance Testing Consent Form***  
***(Prospective Employees)***

As a part of my application for employment, I consent to take a drug test.

I understand that if I test positive for illegal drugs I will not be offered employment.

I understand that the collection, testing, and reporting of my specimen will be done in accordance with applicable chain of custody procedures.

I consent to the release of my drug test results received by the authorized representative of the City, and the Medical Review Officer, to management officials at the **City of Lewiston** and understand that all parties will hold those test results in confidence involved.

If I am applying for a position that would require a CDL license, I further consent to the City contacting those employers for whom I have worked as a commercial vehicle operator for the past two (2) years for the purpose of the **City of Lewiston** determining from my past employers whether I have tested positive for illegal drugs or alcohol, or have refused to test when requested to do so. In the event that the City receives information from a former employer that I have tested positive for drugs or alcohol within the last two (2) years, I will not be offered employment, or my conditional employment with the City will be terminated. I consent to the release of that information by those employers for whom I have worked during the past two (2) years as a commercial vehicle driver.

I have received, read, and understand the terms of the **City of Lewiston's** Drug & Alcohol Substance Abuse & Testing Policy, and agree to abide by those terms.

\_\_\_\_\_  
Applicant's Name (Print)

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

***City of Lewiston***  
***Certification of Receipt of Administrative Policy***  
***Drug & Alcohol Substance Abuse & Testing Policy***

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Department:** \_\_\_\_\_

I have received, read, and understand the terms of the **City of Lewiston's** Drug & Alcohol Substance Abuse & Testing Policy and agree to abide by those terms.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date