

**RESOLUTION NO. 1332**

**A RESOLUTION ADOPTING A REVISED CITY OF CANBY DRUG & ALCOHOL POLICY FOR USE WITH DOT REGULATED EMPLOYEES AND IDENTIFYING AN EFFECTIVE DATE AND REPEALING RESOLUTION NO. 1281.**

**WHEREAS**, the City of Canby is committed to a safe and drug free workplace; and

**WHEREAS**, for individuals performing safety-sensitive functions, an employee substance abuse testing program is mandated under U.S. Department of Transportation (DOT), and Federal Transit Administration (FTA) regulations; and

**WHEREAS**, Section III-14a of the Oregon State Management Plan for Public Transportation programs requires that certain grant sub recipients develop and adopt an anti-drug use and alcohol abuse policy in accordance with 49 CFR Part 655; and

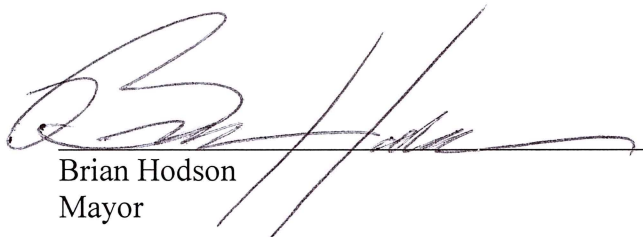
**WHEREAS**, the City of Canby has these Drug and Alcohol Testing policies for safety and for compliance with the FTA regulations 49 CFR Parts 40 and 655.

**NOW THEREFORE, IT IS HEREBY RESOLVED** by the City Council of the City of Canby, as follows:


To adopt the City of Canby Drug & Alcohol Policy for Use with DOT Regulated Employees and to identify an effective date, attached hereto as Exhibit "A".

This resolution repeals Resolution No. 1281, which was effect February 21, 2018.

**ADOPTED** this 1st day of April, 2020, by the Canby City Council.

  
Brian Hodson  
Mayor

ATTEST:

  
Melissa Bisset  
City Recorder

**CITY OF CANBY, OREGON  
DRUG AND ALCOHOL POLICY  
FOR USE WITH DOT REGULATED EMPLOYEES**

**Effective March 18, 2020**

The City of Canby ("CITY") is committed to a safe and drug free workplace. For individuals performing safety-sensitive functions, an employee substance abuse testing program is mandated under U.S. Department of Transportation (DOT), Federal Transit Administration (FTA) regulations. City of Canby has these Drug and Alcohol Testing policies for safety and for compliance with the FTA regulations 49 CFR Parts 40 and 655.

**Any provisions set forth in this policy that are included under the sole authority of City of Canby and are not provided under the authority of the above named Federal regulations are underlined. Tests conducted under the sole authority of City of Canby will be performed on non-USDOT forms and will be separate from USDOT testing in all respects.**

This Policy includes communication of resources for employees who voluntarily seek assistance before an alcohol or drug dependency problem affects their work performance or is discovered through a drug and alcohol test.

This Drug and Alcohol Testing Policy is intended to comply with FTA regulations.

This policy applies to the job classifications which are safety sensitive, but may not be limited to: drivers, dispatchers and fleet maintenance workers. These job classifications are considered safety-sensitive positions and individuals filling these positions are subject to this policy as a condition of employment.

A safety-sensitive function is operation of public transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), maintenance of a revenue service vehicle or equipment used in revenue service, security personnel who carry firearms, dispatchers or persons controlling the movement of revenue service vehicles and any transit employee who operates a vehicle that requires a Commercial Driver's License to operate. Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment used in revenue service. Supervisors are only safety sensitive if they perform one of the above functions. Volunteers are considered safety sensitive and subject to testing if they are required to hold a CDL, or receive remuneration for service in excess of actual expense.

This policy provides guidelines for circumstances under which this Department of Transportation (DOT) mandated testing will be conducted.

Individuals covered by this policy have been provided a copy of these DOT provisions and by your signature, you are verifying that you have read and understand the policy. Employees should note that in addition to the required DOT regulations they are also subject to any other CITY drug and alcohol policy.

The following conditions and activities are expressly prohibited:

The manufacture, sale, use, or possession of alcohol, any controlled or illegal substance, or prohibited drug or any other substances that may impair job performance or pose a hazard, when use or possession occurs on CITY premises or property, or during work time, or while representing the CITY in any work-related fashion.

Reporting for work having consumed alcohol; or used illegal or prohibited drugs, on or off-duty; or controlled substances at a time, or in such quantities, or in a manner that may impair work performance is prohibited. The

covered employee may be subject to drug testing at any time during his/her work day. Random and Reasonable Suspicion alcohol testing will be conducted just before, during or just after performing safety-sensitive functions. No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions. 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 .04 or greater regardless of when the alcohol was consumed. 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.

For purposes of this policy, having any detectable level of an illegal or controlled drug in one's system while covered by this policy will be considered to be a violation and subject to discipline. Employees with an alcohol concentration of less than .04 will not be subject to discipline beyond the provisions listed in this policy. If an employee has one or more events where their BAC was .04 or greater, the employee may be subject to discipline, up to and including termination.

The City of Canby 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.

### **Alcohol and Drug Problems**

In some cases alcohol and drug abuse can be a result of chemical dependency that can be successfully treated with professional help. Individuals who are having problems with alcohol or drug use are encouraged to seek voluntary counseling and treatment. The individual is responsible for seeking help when needed, and prior to any discovery of a substance abuse problem on the job. The following Substance Abuse Professionals can provide help and referrals:

**Katherine Hager**  
**3276 Commercial Street SE**  
**Salem, OR 97302**  
**503.428.7211**

**Or**

**Peter Barbur**  
**107 NE Broadway, Suite 220**  
**Portland, OR 97232**  
**503.295.7974**

In addition, the City offers an Employee Assistance Program, which is a free and confidential counseling and referral service for you. Assistance is available 24 hours a day by calling toll free 888-993-7650 or visiting [www.deeroakseap.com](http://www.deeroakseap.com).

Any tests conducted as part of the return to work agreement will be conducted under company authority and will be performed using non-DOT testing forms. A self-referral or management referral to the employer's counseling professional that was not precipitated by a positive test result does not constitute a violation of the Federal regulations.

### **Education and Training**

It is the CITY's policy that training and education programs will be made available to all covered employees and independent contractors. Covered employees will receive at least 60 minutes of training on the signs and symptoms of drug use, including the effects and consequences of drug use on personal health, safety, and the



work environment. The training will also include manifestations and behavioral cues that may indicate prohibited drug use.

All supervisory personnel or company officials who are in a position to determine employee 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.

### **Definitions**

**"Alcohol"** means the intoxicating agent in beverage alcohol.

**"Alcohol concentration (or content), BAC"** means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under 49 CFR Part 40.

**"Alcohol use"** means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

**"Contractor"** means a person or organization that provides a safety-sensitive service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

**"Covered Employee"** means any person, including an applicant or transferee, who performs or will perform a safety-sensitive function for an entity subject to 49 CFR Part 655.

**"Drug"** has the meaning of any controlled substances, prescription, or over-the-counter medication.

**"EBT (or evidential breath testing device)"** means an EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL), and identified on the CPL as conforming with the model specifications available from the National Highway Traffic Safety Administration, Office of Alcohol and State Programs.

**"Employer"** means a recipient or other entity that provides public transportation service or which performs a safety-sensitive function for such recipient or other entity. This term includes subrecipients, operators, and contractors.

**"FTA"** means the Federal Transit Administration, an agency of the US Department of Transportation.

**"Licensed Medical practitioner"** means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

**"Medical Review Officer (MRO)"** means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.



**"Performing (a safety-sensitive function)"** means a covered employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

**"Prohibited drug"** Identified as marijuana, cocaine, opioids, amphetamines, or phencyclidine at levels above the minimum thresholds specified in 49 CFR Part 40, as amended

**"Recipient"** means a person/entity that receives Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311 directly from the Federal Government.

**"Refuse to submit (to an alcohol or drug test)"** means that a covered employee:

- Fails to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer.
- Fails to remain at the testing site until the testing process is complete; provided that an applicant who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused the test. The testing process commences once the applicant has been provided the specimen collection cup.
- Fails to attempt to provide a urine or breath specimen for any drug or alcohol test required by 49 CFR Part 40 or DOT agency regulations. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
- In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the provision of a specimen.
- Fails or declines to take a second test the employer or collector has directed.
- Fails to provide a sufficient amount of urine when directed, unless it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure to provide.
- Fails to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.
- Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the Designated Employer Representative (DER) under 40.193(d) for drug testing. In the case of pre-employment drug testing, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment.
- Fails to undergo a medical examination or evaluation, as directed by the Designated Employer Representative (DER) as part of the insufficient breath procedures outlined at 40.265(c).
- Fails to sign the certification at Step 2 of the alcohol testing form (ATF).
- Fails to cooperate (e.g., refuse to empty pockets when so directed by the collector, fail to wash hands after being directed to do so by the collector) or otherwise interferes with any part of the testing process.
- Is reported by the MRO as having a verified adulterated or substituted test result.
- For an observed collection, fails to follow the observer's instructions to raise his/her clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if he/she has any type of prosthetic or other device that could be used to interfere with the collection process.
- Possesses or wears a prosthetic or other device that could be used to interfere with the collection process.
- Admits to the collector or MRO that he/she has adulterated or substituted the specimen.

- Fail to remain readily available following an accident.
- Any refusal as reflected in this section constitutes a violation of employer policy.

**"Performing"** (a safety sensitive function) means a covered employee is considered to be performing a safety sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

**"Safety-sensitive function"** means:

- Operating a revenue service vehicle, including when not in revenue service;
- Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Drivers License;
- Controlling movement or dispatch of a revenue service vehicle;
- Maintaining a revenue service vehicle or equipment used in revenue service, unless the recipient receives Section 5307 funding and is in an area of less than 200,000 population; or, Section 5311 funding and contracts out such services.
- Carrying a firearm for security purposes.

**"Substance Abuse Professional"** means licensed physician (Medical Doctor or Doctor of Osteopathy); or a licensed or certified psychologist, social worker, or employee assistance professional; state-licensed or certified marriage and family therapist; or addiction drug and alcohol counselor (certified by the National Association of Alcohol and Drug Abuse Counselors Certification Commission (NAADAC), the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse (ICRC), or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC)). All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug -related disorders.

**"Vehicle"** means a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, work truck, vessel. A "public transit vehicle" is a vehicle used for public transportation or ancillary services.

### **Prohibited Substances**

**Prohibited substances addressed by this policy include the following:**

**1. Illegally Used Controlled Substance 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, opioids, 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, which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy.**

Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all employees covered under FTA authority be tested for marijuana, cocaine, amphetamines, opioids, and phencyclidine as described in 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.

**2. 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 that mental functioning, motor skills, or judgment may be adversely affected must be reported to a [TRANSIT SYSTEM**



NAME] 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.

3. Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited.

#### **Prohibited Conduct**

The following is considered prohibited conduct under this policy:

1. No covered employees shall report for duty or remain 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
2. No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
3. No covered employee shall use alcohol while performing safety-sensitive functions.
4. No covered employee shall perform safety-sensitive functions within four hours after using alcohol. *On call employees* are prohibited from consuming alcohol during the specified hours that he/she is on-call. The following procedure shall be followed:
  - (a) The opportunity for the covered employee to acknowledge the use of alcohol at the time he/she is called to report to duty and the inability to perform his/her safety-sensitive function.
  - (b) The requirement that the covered employee take an alcohol test, if the individual has acknowledged the use of alcohol, but claims ability to perform his/her safety-sensitive function.
5. No covered employee shall refuse to submit to a drug and/or alcohol test required by 49 CFR Part 655 or 49 CFR Part 40. A refusal to test constitutes a positive test result.
6. No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the individual uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, who has advised the individual that the substance will not adversely affect his/her ability to safely and effectively perform his/her assigned duties.
7. Prescription Medications: The appropriate use of legally prescribed medications is not prohibited. However, the employee has the responsibility to discuss the potential effects of any prescription medication in relation to his/her safety-sensitive job duties with the prescribing medical practitioner including its potential to impair mental functioning, motor skills, or judgment. The employee must refrain from performing any safety-sensitive function any time their ability to safely perform their job duties is adversely impacted by the use of a prescription medication or any time the prescribing medical practitioner indicated that the employee's fitness-for-duty may be compromised.
  - a) A legally prescribed drug means the employee has a prescription or other written approval from a medical practitioner for his/her use of a drug in the course of medical treatment. The written statement must include the employee's name, the name of the substance, quantity/amount to be taken, and the period of authorization.



- b) The misuse or abuse of prescription medications is prohibited. Examples of misuse and/or abuse include:
- Use of a medication that is not prescribed for the employee.
  - The employee exceeds the prescribed dosage or frequency of use.
  - Use of medication for purposes other than their intended use.
  - Use of any medication that contains alcohol within four hours of performing safety-sensitive functions.
  - The use of any prescription medications that adversely impacts the employee's ability to safely perform his/her safety-sensitive job functions.
- c) In some instances employees may be able to judge how a substance is impacting him/her. As such, the employee has the responsibility to inform the prescribing medical practitioner of performance altering side effects and request medical disqualification from performance of his/her safety-sensitive duties. The employee is encouraged to discuss/consider alternative treatments that do not have the performance altering side effects.
- d) Additionally, an employee will be medically disqualified from the performance of safety-sensitive functions if the medical practitioner determines that the employee's medical history, current condition, side effects of the medication being prescribed and other indications pose a potential threat to the safety of coworkers, the public and/or the employee.
- e) The medical practitioner statements and any other medical information obtained through this process are confidential information and will be maintained in confidential medical files in the HR Manager's office.

If, as a result of testing under this policy, the individual is found to have the presence of controlled substances in the body which is a result of the use of his/her legally prescribed medication that has not been reported, the individual shall be removed from service until it is determined that the use of medication will not impair his/her ability to safely and effectively perform assigned duties.

8. No covered employee shall report for duty, remain on duty, or perform a safety-sensitive function, if the individual tests positive for alcohol or prohibited drugs.

#### **Other Related Alcohol Conduct**

Although not a violation of USDOT-FTA regulation, following a BAC of 0.02 or greater, but less than 0.04, the employee will be immediately removed from safety-sensitive duties for at least eight hours unless a retest results in the employee's alcohol concentration being less than 0.02.

#### **Drug and Alcohol Testing**

The covered employee may be subject to drug testing at any time during his/her work day, except pre-employment, and alcohol testing will be conducted just before, during or just after performing safety-sensitive functions.

In addition, any covered employee who receives a negative dilute test result will be required to submit a second test. Once notified the applicant/covered employee must proceed immediately to the collection site. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.

Employees and / or applicants will be subject to testing as follows:

#### **Pre-Employment**

Covered employees will be tested for prohibited drugs, and the employer must receive notification of a verified negative drug test result, prior to the individual performing any safety-sensitive function. An individual may not

transfer from a non safety-sensitive function to a safety-sensitive function until he/she takes a drug test with a verified negative test result. A covered employee who has not performed a safety-sensitive function for 90 consecutive calendar days, regardless of reason, and was removed from the random testing pool during that time, shall submit to a pre-employment drug test with a verified negative result prior to resuming performance of safety-sensitive functions. If the applicant or employee's test is canceled, then he/she must take another pre-employment drug test. An applicant who tests positive on a pre-employment test will not be hired and will not be eligible to reapply for employment with the City of Canby.

Applicants are required (even if ultimately not hired) to provide the City of Canby with signed written releases requesting FTA drug and alcohol records from all previous, DOT-covered, employers that the applicant has worked for within the last two years. Failure to do so will result in the employment offer being rescinded. The City of Canby is required to ask all applicants (even if ultimately not hired) if they have tested positive or refused to test on a pre-employment test for a DOT covered employer within the last two years. If the applicant has tested positive or refused to test on a pre-employment test for a DOT covered employer, the applicant must provide The City of Canby proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G. The driver/applicant will be responsible to pay for the pre-treatment evaluation, education and/or treatment, and the subsequent pre-employment test. This is a condition of employment. Refusing will result in the job offer being withdrawn. If an applicant or transferring employee's test is canceled, then he/she must take another pre-employment drug test.

#### **Random**

The employer is using a consortium/third party administrator to facilitate the random selection and notification to the employer of the covered employee(s) and individual contractor(s) selected for testing. The consortium/third party administrator is:

**Bio-Med Testing Service Inc.**  
**3110 25<sup>th</sup> St. SE**  
**Salem, OR 97302**  
**503-585-6654**

Covered employees and individual contractors will be subject to random alcohol and drug testing under the following program:

1. Random selection of covered employees and individual contractors will be made by a scientifically valid method using a computer-based random number generator that is matched with the individual's Employer identification number.
2. Each covered employee shall have an equal chance of being drawn each time selections are made.
3. Selections for testing are unannounced and reasonably spread throughout the calendar year.
4. Random selections are made to ensure testing for prohibited drugs is conducted at not less than the minimum annual rates, as established by the Federal Transit Administration (FTA). The current year random testing rates can be viewed online at [www.transportation.gov/odapc/random-testing-rates](http://www.transportation.gov/odapc/random-testing-rates).
5. A covered employee shall only be randomly tested for alcohol just before, during, or just after performing safety-sensitive functions, however, he/she may be tested for prohibited drugs anytime while performing work for the employer.



6. Once a covered employee is notified of selection for random alcohol and/or drug testing he/she shall proceed to the test site immediately.
7. Random drug and alcohol tests conducted under this part are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year. Random testing is conducted at all times of the day when safety-sensitive functions are performed.

### **Reasonable Suspicion**

Covered employees will be tested for alcohol and/or drugs whenever the employer has reasonable suspicion that the individual has used a prohibited drug and/or engaged in alcohol misuse.

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 drug testing is authorized when the supervisor's observation of the covered employee's behavior occurs anytime during the workday. Reasonable suspicion alcohol testing is authorized only if the supervisor's observation of the covered employee's behavior has been made during, just preceding, or just after the employee was performing any safety-sensitive function.

Reasonable Suspicion documentation is evaluated by the HR Director (or the City Administrator, if the supervisor in question is the HR Director) to prevent abuse of Reasonable Suspicion testing. In the interest of safety, such review may occur after removing the employee from service and sending the employee to testing.

The alcohol test must be completed within two (2) hours of the observation, if not, the CITY must document the reasons for the delay, and shall continue to have the test conducted up to eight (8) hours following the observation. After eight (8) hours the attempt to test will cease, and the CITY must again provide the reasons for the test not being administered.

If an alcohol test is not completed within the two (2) or eight (8) hour time periods, the employer shall prepare and maintain on file a record stating the reasons the test was not administered within the appropriate time frames.

Supervisors and any CITY representative that may be expected to serve in a supervisory capacity, and who may be required to make a reasonable suspicion determination, must have received at least 60 minutes of training on the indications of probable drug use and an additional 60 minutes training on the indicators of probable alcohol misuse. Only those individuals who have received this two (2) hours of training are qualified to make these decisions.

### **Post-Accident Testing**

As soon as practicable following an accident, each surviving covered employee on duty in the vehicle at the time of the accident shall be tested for prohibited drugs and alcohol. Any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information at the time of the decision, shall be tested for prohibited drugs and alcohol if any of the following conditions are met:

1. If the accident involved the loss of human life (fatality).
2. If the accident involved bodily injury to any person who, as a result of the accident, immediately receives medical treatment away from the scene of the accident.



3. If the accident involved one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle. Disabling damage includes any damage, which precludes the departure of a motor vehicle from the scene of an accident in its usual manner in daylight after simple repair. This includes damage to vehicles that could have been driven, but would have been further damaged by such movement (i.e. limped away).

A covered employee may not consume alcohol for eight (8) hours following an accident that requires the DOT alcohol test. The alcohol test must be completed within two (2) hours of the accident, if not, the covered employee or independent contractor must advise the CITY of the reasons for the delay, and shall continue to have the test conducted up to eight (8) hours following the accident. After eight (8) hours the attempt to test will cease, and the individual must again provide the reasons for the test being administered

If an alcohol test is not completed within the two (2) or eight (8) hour time periods, the employer shall prepare and maintain on file a record stating the reasons the test was not administered within the appropriate time frames. Upon request, these records shall be submitted to the FTA Administrator.

A drug test shall be administered as soon as practicable following the incident, up to 32 hours following the accident. After 32 hours the attempt to test will cease, and the covered employee or individual contractor must provide the reasons for the test not being administered properly.

All covered employees will be required to undergo urine and breath testing if they are involved in an accident with a transit 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 could have contributed to the accident.

A post-accident test of the operator will be conducted if a non-fatal accident results in injuries requiring immediate transportation to a medical treatment facility; or one or more vehicles incurs disabling damage, unless the operator's performance can be completely discounted as a contributing factor to the accident. Additionally, any other covered employee will be tested whose performance cannot be completely discounted as a contributing factor to the accident.

A covered employee must remain readily available for testing, or may be deemed by the CITY to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident, or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

In the rare event that the CITY is unable to perform a drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), the CITY may use drug and alcohol post-accident test results administered by local, state, or federal law enforcement officials in lieu of the test. The local, state, or federal law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

#### **Return-to-Duty**

All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. Following the initial assessment, the SAP has full authority over the type(s) of return-to-duty testing an employee is required to take and will recommend a course of

rehabilitation unique to the individual. If a return-to-duty drug test is required, it shall be conducted under direct observation.

#### **Follow-Up Testing**

Covered employees will be required to undergo frequent, unannounced drug and/or alcohol testing following their return-to-duty. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. 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 testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing. If a follow-up drug test is required, it shall be conducted under direct observation.

#### **Failure to Cooperate**

Individuals who are subject to this policy are expected to comply fully with any required testing as a condition of employment.

Any covered employee that has a verified positive drug or alcohol test, or test refusal, will be removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP) for assessment. No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the SAP and the employer.

This will also be considered a violation of CITY policy that will subject the individual to discipline, up to and including termination of employment and/or contract.

The CITY also reserves the right to involve law enforcement officials for any conduct it believes might be in violation of local, state or federal law.

#### **Testing Procedures**

Drug and alcohol testing will be conducted in accordance with procedures of 49 CFR Part 40, as amended. Detailed collection and alcohol testing procedures are available to all covered employees and can be obtained from the HR Director.

#### **Medical Review**

All drug test results will be reviewed by a Medical Review Officer (MRO) before being reported to the CITY. The MRO will attempt to contact the covered employee to discuss the test results before reporting positive results to the CITY.

The Medical Review Officer for the City of Canby is:

**Dr. Fernando Proano**  
**1500 1<sup>st</sup> Avenue S, Suite 106**  
**Burien, WA 98148**  
**503.400.6660**

#### **Notification of Results**

The CITY will notify the affected covered employee of any alcohol or drug test that is reported positive by the BAT or MRO and will immediately remove the employee from performing safety-sensitive functions. An employee may request a copy of drug test results from the CITY with a written request.

#### **Reanalysis of Original Specimen or Split Specimen Retest**



Any covered employee who questions the results of a required drug test under this policy may request that the split sample be tested. Any covered employee who questions the results of an invalid test result may not request a split sample to be tested. The split sample test must be conducted at a second HHS-certified laboratory. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. The City of Canby will ensure that the cost for the split specimen are covered in order for a timely analysis of the sample, however The City of Canby will seek reimbursement for the split sample test from the employee.

If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled. If the split specimen is not available to analyze the MRO will direct The City of Canby to retest the employee under direct observation.

#### **Confidentiality and Information Disclosure**

Drug/alcohol testing records shall be maintained by the City of Canby Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.

The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP follow-up testing plans.

Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, and other transit system management personnel on a need to know basis.

Records will be released to a subsequent employer only upon receipt of a written request from the employee.

Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the proceeding.

Records will be released to the National Transportation Safety Board during an accident investigation.

Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.

Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.

Records will be released if requested by a Federal, state or local safety agency with regulatory authority over [GRANTEE/TRANSIT SYSTEM NAME] or the employee.



If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken

In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

#### **Evaluation and Referral**

DOT regulations require that any covered employee who violates the prohibitions of the alcohol and drug rules of 49 CFR Part 655 or Part 40 be advised of available evaluation resources and be evaluated by a Substance Abuse Professional. In addition to the CITY's Employee Assistance Program, the following Substance Abuse Professional can provide help and referrals:

**Katherine Hager**  
**3276 Commercial Street SE**  
**Salem, OR 97302**  
**503.428.7211**

#### **Consequences**

Employees violating this policy or federal regulations will be prohibited from performing any safety-sensitive functions as defined by this policy and may be subject to disciplinary action up to and including termination of employment. The CITY also reserves the right to involve law enforcement officials for any conduct, which it believes, might be in violation of local, state or federal law.

#### **Questions?**

If you have any questions about this policy or the regulations, you may contact the Designated Employer Representative (DER): - City of Canby HR Director 503.266.0635.

This policy replaces and supersedes any previously distributed policy.

The policy has been approved by:



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Signature

Amanda Zeiber, Interim City Administrator

Printed Name and Title

04-15-20

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Date

*Revision 1 effective April 1, 2015 – Resolution #1212*

*Revision 2 effective January 1, 2018 – Resolution #1281*

*Revision 3 effective March 18, 2020 – Resolution #1332*

**CITY OF CANBY, OREGON  
DRUG AND ALCOHOL POLICY  
FOR USE WITH DOT REGULATED EMPLOYEES**

**CERTIFICATE OF ACKNOWLEDGEMENT**

I hereby acknowledge that I was notified that the City of Canby would require me to complete a pre-employment drug test.

**CERTIFICATE OF RECEIPT**

I hereby certify that on the date shown below I received a copy of City of Canby Drug and Alcohol Policy for Use With DOT-Regulated Employees, consisting of thirteen (13) pages plus these Certificates of Receipt, and a copy of drug and alcohol awareness training materials. I agree to comply with this policy, including any required alcohol or drug testing.

**CERTIFICATE OF TRAINING**

I hereby certify that I have reviewed the drug and alcohol awareness training materials included with City of Canby Drug and Alcohol Policy.

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Signature

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Printed Name and Title

Date

-----Do Not Write Below – For Office Use -----

Time and Date of Pre-employment Test: \_\_\_\_\_

Time and Date Test Result Received: \_\_\_\_\_ Reported By: \_\_\_\_\_

Date Hired: \_\_\_\_\_

*(Original to be kept in employee file.)*

*(Employee to receive duplicate copy.)*