

City of Frankfort

Policy : **Drug Abuse Policy**

Effective Date: November 28, 2018

This policy supersedes any other policy, memo, or agreement unless stipulated otherwise by collective bargaining agreements(s), law(s), or other mandates. This policy supplements (adds to) the employee handbook and serves to further clarify the handbook as approved. If there is a conflict with the Employee handbook, the handbook will prevail. The use of the word “City” refers to the City of Frankfort.

STATEMENT OF PURPOSE AND POLICY

Employees are an extremely valuable resource for The City of Frankfort’s business. The health and safety of city employees is a serious concern to everyone. Drug or alcohol use may pose a serious threat to employee’s health and safety. It is therefore, the policy of the City of Frankfort to prevent substance use or abuse from having an adverse effect on our employees. The City maintains that the work environment is safer and more productive without the presence of alcohol, illegal or inappropriate drugs in the body or on company property. Furthermore, employees have a right to work in an alcohol and drug-free environment and to work with employees free from the effects of alcohol and drugs. Employees who abuse alcohol or use drugs are a danger to themselves, their coworkers and the City’s assets.

Specifically, it is the policy of the City that the use, sale, purchase, transfer, possession or presence in one’s system of any controlled substance (except medically prescribed drugs) by any employee while on company premises, engaged in company business, while operating company equipment, or while under the authority of the City is strictly prohibited.

The execution and enforcement of this policy will follow set procedures to screen body fluids (urinalysis), conduct breath testing, and/or search all employee applicants for alcohol and drug use, and those employees suspected of violating this policy who are involved in a reportable accident or who are periodically or randomly selected pursuant to these procedures. These procedures are designed not only to detect violations of this policy, but also to ensure fairness to each employee. Every effort will be made to maintain the dignity of employees or applicants involved. Disciplinary action will, however, be taken as necessary.

Neither this policy nor any of its terms are intended to create a contract of employment or to contain the terms of any contract of employment. The City retains the sole right to change, amend or modify any term or provision of this policy without notice. This policy supersedes any other policy, memo, or agreement unless stipulated otherwise by collective bargaining agreements(s), law(s), or other mandates.

The Board of Works and Safety (BOW) has final administrative discretion in all matters of this policy.

Purpose

This purpose of this administrative guide is to set forth the procedures for the implementation of controlled substance and alcohol use and testing of employee applicants, current employees and employees pursuant to The City of Frankfort's Alcohol and Drug Abuse Policy. These procedures are intended as a guide only, and are in no way intended to alter any existing relationship between the City of Frankfort and any employee. The City of Frankfort's alcohol and drug program administrator designated to monitor, facilitate, and answer questions pertaining to these procedures is the Human Resource Director and/or Benefits Coordinator.

Application

This policy applies to all City of Frankfort employees.

Prohibited Conduct

The following shall be considered a prohibited conduct for purposes of this policy:

1. The presence of any detectable amount of any illegal drug or illegal controlled substance in an employee's body while performing City business or while in a City facility is prohibited.
2. No employee shall use alcohol while performing his/her duties.
3. No employee shall drive a city vehicle within four (4) hours after using alcohol.
4. No employee required to take a post-accident test shall use alcohol for eight (8) hours following the accident or until he or she undergoes a post-accident test, whichever occurs first.
5. No employee shall refuse to submit to a random, post-accident, reasonable suspicion, return-to-duty, or follow-up alcohol or drug test.
6. Employees must report to their supervisor if they are prescribed and under the influence of any medication that may affect the safety of their work performance.

Refusal to Test

Refusal to submit to types of drug and alcohol test employed by the City will be grounds to discipline employee(s). A refusal to test would include any of the following situations:

1. Failing to appear for any test within a reasonable time after being directed to do so.
2. Failing to remain at the testing site until the testing process is completed.
3. Failure to provide a breath sample, saliva sample or urine sample as directed.
4. Failure to permit, if the situation requires, the observation or monitoring of providing a urine specimen.
5. Failure to provide a urine, breath or saliva specimen with required periods may be considered a refusal. If an employee cannot provide a sufficient quantity of urine or breath, he/she will be directed to be evaluated by a physician of the City's choice. If the physician cannot find a legitimate medical explanation for the inability to provide a specimen (either breath or urine), it will be considered a refusal to test.
6. Failure to undergo a medical examination or evaluation, as directed by the Medical

- Review Officer as part of the verification process, or as directed by the City as part of a shy bladder or insufficient breath situation.
7. Failing or declining to take a second test as required by this policy.
 8. Failure to cooperate with any part of the testing process and/or conduct that would obstruct the proper administration of a test.
 9. A report from the health care facility that you have a verified adulterated or substituted test result.

Types of Tests

In accordance with this policy, the City has implemented seven circumstances for drug and alcohol testing:

1. Random
2. Pre-employment (drug testing only);
3. Post-accident testing;
4. Reasonable suspicion;
5. Return-to-duty testing; and
6. Follow-up testing
7. Take Home Vehicle

Random

The City of Frankfort will sporadically test randomly selected employees for alcohol and/or drugs. Employees may be selected at random for alcohol and/or drug testing at any time. These tests are unannounced and unexpected by employees. A random selection process is used to equally select employees for testing. There is potential for employees to be selected multiple times for testing. The random selection process also creates an equal chance for all employees to be selected. Random drug testing has little to no advanced notice and is administered by Human Resources.

Post-Accident Testing

Following any accident of a city vehicle, the employee must contact their supervisor as soon as possible.

The employee must submit to a drug and alcohol test any time he or she is involved in an accident:

1. When the employee is the operator of a motor vehicle or equipment involved in an accident and any of the following factors is present: (a) the employee receives a citation for a moving violation involving the accident; (b) the accident results in a fatality to any person; (c) a person is injured as a result of the accident and the injuries require immediate medical treatment to the person away from the accident site; (d) one or more motor vehicles involved in the accident incurs disabling damage such that its tow away from the accident site is required; or (e) the employee's department head or a law enforcement agency called to the scene

- of the accident requests that the test be administered.
2. When the employee is involved in an accident that does not involve the operation of a motor vehicle or equipment, but the job activity poses a danger to the employee or other persons, and where the employee's department head determines that testing should be initiated due to evidence of any of the following factors: (a) unsafe or reckless conduct by the employee; (b) significant and unnecessary damage to property; (c) significant injury to the employee or other persons that might have been the fault of the employee; or (d) a pattern of erratic incidents that the department head determines could have been the result of impairment.
 3. When required by regulations of the Indiana Department of Transportation (IDOT) and the Federal Motor Carrier Safety Administration (FMCSA) as to Street Department employees and any other City employee operating City owned or leased vehicles under a commercial driver's license (CDL).

The employee shall follow the instructions from the City or its representative to complete required testing.

For other accidents of a city vehicle not covered by the definition above, the City may require a non-regulated drug and alcohol test when:

1. The employee's actions may have contributed or cannot be completely discounted as a contributing factor to an accident.
2. In this case, an accident shall mean an incident that results in damage over \$500.00 or personal injury.
3. An incident results in a lost time injury.

Any time a post-accident drug or alcohol test is required, it must be performed as soon as practical. If no alcohol test can be made within eight (8) hours, attempts to perform an alcohol test shall cease.

If no urine collection can be obtained for the purpose of post-accident drug testing with thirty-two hours, attempts to make such collection shall cease. An employee is prohibited from consuming alcohol between the time of the accident and the test.

In the event that federal, state, or local officials conduct a breath or blood test for the use of alcohol and/or urine tests for the use of controlled substances following an accident, employees must comply with law enforcement personnel requests. The City may request testing documentation from such agencies, and may ask the employee to sign a release allowing the City to obtain such test results.

In the event an employee is so seriously injured that the employee cannot provide a sample of

urine, breath or saliva at the time of the accident, the employee must provide necessary authorization for the City to obtain hospital records or other documents that would indicate the presence of controlled substances or alcohol in the employees system at the time of the accident.

Reasonable Suspicion Testing

Reasonable suspicion for requiring an employee to submit to drug and/or alcohol testing shall be deemed to exist when an employee manifests physical, behavioral, speech or performance symptoms or reactions commonly attributed to the use of controlled substances or alcohol. A supervisor observing such conditions will take the following actions immediately:

1. Keep under direct observation until the situation is resolved.
2. Secure the department head's concurrence to observations. After discussing the circumstances with the department head, arrangements will be made to observe or talk with the employee. The attached Observation Checklist will be completed and signed by two supervisors. If both supervisors concur after observing or talking to the employee, that the conduct or performance problem could be due to substance abuse, the employee will be immediately required to submit to a breath test or urinalysis. If the employee refuses to submit to testing for any reason, the employee will be informed that continued refusal would result in possible disciplinary actions.
3. Employees will be asked to release any evidence relating to the observation for further testing. Failure to comply may subject the employee to subsequent discipline or suspension from all duties. All confiscated evidence will be receipted for with signatures of both the receiving supervisor, as well as the provider.
4. The department head shall immediately begin written documentation the particular facts related to the behavior or performance problems that led to the reasonable suspicion test and maintain this documentation in appropriate files.
5. The department head shall remove or cause the removal of the employee from the city-owned vehicle or duties and ensure that the employee is transported to an appropriate collection site and thereafter to the employee's residence or, where appropriate, to a place of lodging. Under no circumstance will that employee be allowed to continue to drive a city vehicle or his/her own vehicle until a confirmed negative test result is received.

Return to Duty Testing

If so instructed by the City, a return to duty test may be required for all City employees who have violated this policy (test positive, have an adulterated or substituted specimen or refuse to test).

Follow-up Testing

If so requested by the City, any City employee who has returned to work following a violation of this drug and alcohol policy may be subject to follow-up testing. At a minimum six follow-up tests could be required within the first twelve months following the employee's return to work, and less frequently during the next 4 years. Follow up drug tests are at the expense of the employee.

Take Home Vehicle

Anyone assigned a take home vehicle may be subject to random drug tests.

Urine Collection Procedures:

If an employee is suspected of being under the influence of a controlled substance and/or alcohol and has no medical documentation for a prescription, the employee may be referred to a local health care facility for collection of a urine specimen

Diluted Specimens:

If a specimen is reported diluted by the testing facility, the facility will report this information to the appropriate city personnel. The City policy will require an immediate recollection for another test. The result of this test will stand as the final result.

Alcohol Testing Protocol

When notified by the City, employees shall report to the alcohol testing site as designated by the City. The employee shall follow all instructions given by the alcohol technician.

If the result of a screening test is a positive for any breath alcohol concentration (0% tolerance) after a 20 minute waiting period, then that employee is removed from their duties until an administrative decision can be made about their work status. Employees that test greater than 0% are considered to have engaged in prohibited conduct, which may result in disciplinary action up to and including termination. All alcohol test shall be performed just prior to, during, or just after the regular working shift. No employee should be allowed to drive himself or herself home after a positive test.

Disciplinary Procedures

Refusal to submit to alcohol and/or controlled substance testing as required will be recorded as a positive and the recommendation to the BOW or the USB will be termination. Refusal to submit to an alcohol or controlled substance test means that an employee:

- a. Fails to provide adequate breath for testing without valid medical explanation after he/she has received notice of the requirement for breath testing in accordance with this policy.
- b. Fails to provide adequate urine for controlled substance testing without a valid medical
- c. Engages in conduct that clearly obstructs the testing process.
- d. Fails to sign a release for alcohol and drug testing.
- e. Fails to report for testing.

All refusals are considered as refusal to carry out an order of a supervisor and the employee will be terminated.

Any employee who tests positive for drugs or alcohol during their current employment will be considered in violation of this policy. An employee who is tested and the results indicate an alcohol concentration of 0.01% or greater or the presence of prohibited substances will be removed from duty until an administrative decision can be made about their work status and future employment with the City. Discipline can range from a written warning to termination. The Department Head is required to report all violations of this policy to the Board of Works and Safety. The Department Head may make recommendations of discipline to the BOW ranging anywhere up to and including termination.

Voluntary Disclosure

The City encourages personnel to seek help if they feel they have a problem with drug or alcohol misuse before it becomes a matter of discipline with the company. The City will assist any employee who voluntarily discloses to the City that he/she believes that he/she has a drug or alcohol problem in seeking professional help to address their problem. This voluntary step of self-identification is the responsibility of the individual, and with the exception of certain condition, will alleviate the requirement for disciplinary action if brought to the City's attention prior to any testing conducted by a service. Upon disclosure of a problem to the City personnel, the employee will be removed from all duties without pay until completion of all steps outlined in Substance Abuse Evaluation section of this policy. The employee will be responsible for all costs associated with this process. If the employee makes no commitment to overcoming the problem and achieving a satisfactory level of performance, attendance, or behavior, then termination of employment will result.

Confidentiality and Release of Information

Under most circumstances, unless required or authorized by law, will alcohol or drug testing information or results for any employee or applicant be released without written request from the applicable employee.

The City may release information as follows:

1. Copies of the results of alcohol or drug testing to an identified person provided the employee has provided written consent.
2. Copies of information requested by the Secretary of Transportation, any DOT agency, or any State or local official with regulatory control over the City or any of its employees.
3. The results of post-accident testing when requested by the National Transportation Safety Board as part of an accident investigation.
4. Legal proceedings to include:
 - a. Lawsuits (e.g., wrongful discharge action).
 - b. Grievances (e.g., an arbitration concerning disciplinary action taken by the employer).
 - c. Administrative proceedings (e.g., an unemployment compensation hearing) brought on by, or on behalf of, an employee and resulting from a positive drug test or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results).

- d. Criminal or civil actions - to the decision maker in the proceeding (e.g., the court in the lawsuit).
- e. As required by state law.

Employees are entitled, upon written request, to obtain copies of any records pertaining to their use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substance tests.

Responsibility

A. Employee - All City employees are responsible for abiding by this procedure as a condition of their employment.

B. Management Officials and Supervisors - All supervisors and the City officials are responsible for being alert to employee conduct that raises a reasonable suspicion that an employee is using or is under the influence of alcohol or controlled substances while on duty or otherwise performing City business.

This policy is not intended nor should it be constructed as a contract between the City and the employee. This policy may change any time at the sole discretion of the City and the City of Frankfort Board of Works and Public Safety and or Utilities Service Board.

City of Frankfort
Reasonable Suspicion Checklist

(The following checklist should be completed when a manager or supervisor suspects drug or alcohol use based on the physical appearance and behavior of the employee. Also completing the checklist should be all other managers or supervisors who witnessed the employee being unfit for duty.)

PART 1: EMPLOYEE INFORMATION

Employee Name: _____

Employee Job Title: _____

Observation Date: _____

Observation Time (indicate a.m. or p.m.): _____

Location: _____

PART 2: OBSERVATIONS

(Place a **checkmark** next to any of the following observations exhibited by the employee.)

PHYSICAL

Walking:

____ Holding on; ____ Stumbling; ____ Unable to walk; ____ Unsteady; ____ Staggering;
____ Swaying; ____ Falling; ____ Other (describe) _____

Standing:

____ Swaying; ____ Feet wide apart; ____ Unable to stand; ____ Rigid; ____ Staggering;
____ Sagging at knees; ____ Dizziness; ____ Other (describe) _____

Movements:

____ Fumbling; ____ Jerky; ____ Nervous; ____ Slow; ____ Normal; ____ Hyperactive;
____ Reduced reaction time; ____ Not following tasks; ____ Diminished coordination;
____ Tremors; ____ Other (describe) _____

Eyes:

____ Bloodshot; ____ Watery; ____ Droopy; ____ Glassy; ____ Closed;
____ Dilated/Constricted Pupils; ____ Other (describe) _____

Face:

____ Flushed; ____ Pale; ____ Sweaty; ____ Other (describe) _____

Breath:

____ No alcoholic odor; ____ Faint alcoholic odor; ____ Alcoholic odor; ____ Chemical odor;
____ Sweet/pungent tobacco odor; ____ Heavy use of breath spray;
____ Other (describe) _____

Speech:

___ Whispering; ___ Slurred; ___ Shouting; ___ Incoherent; ___ Slobbering; ___ Silent;
___ Rambling; ___ Mute; ___ Slow; ___ Other (describe)_____

Appearance:

___ Neat; ___ Unruly; ___ Messy; ___ Dirty; ___ Stains on clothing;
___ Marijuana Odor; ___ Partially dressed; ___ Bodily excrement stains;
___ Visible puncture marks or tracks; ___ Burnt rope smell on clothes, hair, body;
___ Excessive sweating in cool area; ___ Other (describe)_____

BEHAVIORAL

Demeanor:

___ Cooperative; ___ Calm; ___ Talkative/Rapid Speech; ___ Polite; ___ Sarcastic;
___ Sleepy; ___ Crying; ___ Sleeping on job; ___ Argumentative; ___ Excited;
___ Withdrawn; ___ Mood swings; ___ Overreacts to minor things; ___ Excessive laughter;
___ Forgetful; ___ Other (describe)_____

Actions:

___ Hostile; ___ Fighting; ___ Profanity; ___ Drowsy; ___ Threatening; ___ Erratic;
___ Hyperactive; ___ Calm; ___ Resisting communication; ___ Paranoid;
___ Possessing, using or distributing an illegal substance; ___ Baseless Panic;
___ Other (describe)_____

Appetite:

___ Always munching on something; ___ Constantly Chewing Gum;
___ Frequently Eating Candy; ___ Popping Mints Often;
___ Other (describe)_____

MISCELLANEOUS

___ Presence of alcohol and/or drugs in employee’s possession or vicinity
___ On-the-job misconduct by employee
___ Employee admission to alcohol and/or drug use or possession

CORROBORATING WITNESSES

(List names of all witnesses to the employee’s conduct below)

OTHER OBSERVATIONS

(List below any other observations not included in this checklist. Also provide details for any accident that the employee in question caused or was involved in.)

PART 3: EMPLOYEE’S RESPONSE

(Document below the employee’s explanation or reasons for his/her conduct)

PART 4: ACTION PLAN

Once the above parts of this Reasonable Suspicion Checklist are completed by you and a witness, you can proceed to an action plan in a meeting with the employee. Remember to follow your company’s procedures as outlined in its drug-free policy.

Place a **checkmark** next to the applicable action as agreed upon with the employee:

- Employee has agreed to testing
- Employee has **not** agreed to testing
- Employee referred to MAP/EAP
- No further action at this time

Supervisor/Manager Signature Date

Supervisor/Manager Signature Date

Witness Signature