



# ADMINISTRATIVE REGULATION (AR)

AR-00039 DRUG-FREE WORKPLACE

Effective: 03/24/2017

## I. SCOPE:

This Administrative Regulation applies to all City of Loveland departments and all City of Loveland employees including Regular, Temporary, Seasonal, and Volunteers. Individuals subject to testing under Department of Transportation (DOT) or Federal Transportation Authority (FTA) regulations are governed by the procedures outlined in this AR as well as the procedures for testing contained in AR-00040 (DOT) and AR-00041 (FTA).

## II. PURPOSE:

This Administrative Regulation ensures that all City of Loveland departments and employees are complying with the Drug-Free Workplace Act of 1988 and City policy.

## III. DEFINITIONS:

- **MRO** refers to Medical Review Officer.
- **SAP** refers to Substance Abuse Professional.
- **Safety Sensitive** (for the purpose of the Drug-Free Workplace AR) refers to a job or position where the employee holding the position has the responsibility for the safety and security of people.

## IV. POLICY:

The purpose of this regulation is to promote a safe work place for City employees and volunteers as well as a safe environment for citizens by eliminating the hazards created by the misuse of alcohol and/or controlled substances. **All persons covered by this policy should be aware that the City has adopted a ZERO TOLERANCE policy regarding drug abuse or alcohol misuse and violations of the policy will likely result in termination of employment from the City of Loveland.** City personnel may not:

- Unlawfully, buy, sell, use, possess, or transfer controlled substances ("drugs");
- Report to work with a blood alcohol content percentage (BAC) of 0.02 or more; or,
- Use alcohol while on duty. (This prohibition does not apply to undercover Police Officers acting in conformance with Police Directive 43.)

Employees in positions that require a valid driver's license in order to perform their job must immediately inform their supervisor if they receive a citation for any traffic violation that results in a suspension or revocation of their driver's license. As required by the *Drug-Free Workplace Act*, employees shall notify the City of **any criminal drug statute conviction** in the workplace. As a provision of the Act, all employees must notify the City of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction. Failure to comply with this provision shall result in disciplinary action, up to and including termination.

**NOTE: An employee who tests positive, as it relates to this policy, for any non-prescribed, controlled substance or inappropriate use of alcohol will be recommended for termination of employment. The City prohibits the use of marijuana (including recreational and/or medical marijuana) per Federal law. If the positive test result is based on inappropriate use of legally prescribed medication, the employee will be recommended for termination, but this MAY be considered a mitigating circumstance.**



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The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates mental functioning, motor skills, or judgment may be adversely affected must be reported to supervisory personnel. Medical advice, along with a release to work statement from a licensed physician, must be sought by the employee as appropriate before performing work-related duties. If there are work restrictions that cannot be temporarily accommodated, the employee may be required to take leave time or work in an alternate assignment.

## **Basis For Mandate:**

- Drug-Free Workplace Act of 1988

## **V. PROCEDURE:**

### **Screening**

City personnel are subject to various types of screening based on the individual position as outlined in this policy under the section: *Grounds for Administering Screens*.

### **Types of Screens**

1. *Alcohol Screens*: The percentage of alcohol in an individual's blood stream ("blood alcohol content" or "BAC") can be ascertained through the analysis of a breath or blood sample. Since obtaining a blood sample is more intrusive than obtaining a breath sample, blood screens will only be used when an accurate reading cannot be obtained through breath analysis.
2. *Drug Screens*: The City will screen for drugs that are illegal according to Federal laws, 49 CFR Part 40 (As Amended) which include marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP) through urinalysis. In the event there is reason to believe an employee is abusing a substance other than the drugs listed above, the City reserves the right under its own authority to test for additional drugs using standard laboratory testing protocols.

### **Time requirements**

Because the presence of alcohol and drugs diminishes with the passage of time, it is critical that screens be conducted expeditiously. Accordingly, once notified of the need for a test or tests, City personnel must submit to the administration of the test(s) within two (2) hours, unless physically incapable of doing so. If an individual is physically incapable of submitting to the test(s), *and such inability is beyond the individual's control*, the supervisor may authorize a delay in the administration of the test(s). Such authorization must be in writing, must specify the reason for the delay and require the individual submit to the test(s) as soon as physically capable. This written documentation must include an explanation as to why the test was not promptly administered and must be forwarded to the Human Resources Department within 24 hours.

If an individual is not tested for *alcohol* within eight (8) hours of request or is not tested for *drugs* within 32 hours of request, all attempts to require such test(s) will cease. In absence of a documented physical inability, the failure to submit to the test(s) within two (2) hours of notice is a violation of this policy and is grounds for discipline. In addition, the failure to submit to the test(s) within this time frame shall result in the presumption of a positive test result.



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## Results and Retesting

1. **Negative Results:** Screens that do not identify the presence of drugs and/or alcohol or screens that result in a BAC of less than 0.02 are considered negative. All drug test samples will be discarded after 72 hours.
2. **Positive Results:**
  - a. Alcohol - If the first test is positive, a second test shall be administered after a waiting period of 20 minutes.
  - b. Drug screens - If the result of the first test is positive and the employee questions the results of the test, the employee may request testing of the split specimen.

The employee's request must be made to the Medical Review Officer (MRO) within 72 hours of notice of the first test result.

## Grounds for Administering Screens

### 1. **All Employees:**

- a. **Reasonable Suspicion:** Any City employee or volunteer reasonably suspected of being impaired by alcohol or drugs while on duty may be required to submit to a drug and/or alcohol test. The observation of any aspect of the individual's appearance, behavior, speech, or body odors which lead a supervisor or other official trained in recognizing the signs and symptoms of drug and alcohol use, to believe that the individual is under the influence of alcohol or drugs is sufficient to establish reasonable suspicion. The person who makes the observations shall document the basis in writing and contact the Human Resources Department immediately. If HR is not available for consultation, the person should try to consult with another supervisor or other City personnel that has been trained in recognizing the signs and symptoms of alcohol and drug abuse. The person who made the observations will not administer the alcohol or drug test. If an individual is required to be tested under these circumstances, the City will provide transportation to and from the testing site, unless other appropriate arrangements satisfactory to a supervisor have been made. In no event will the individual be authorized to drive to the testing site.
- b. **Post-accident:** While general employees and volunteers are not subject to *automatic* post-accident screening, the City may require drug and/or alcohol screen(s) after an accident when there are reasonable grounds to suspect that the individual was under the influence of drugs and/or alcohol at the time of the accident.
- c. **On-call:** On-call employees are "on-duty" during the on-call period and they are subject to the same drug and alcohol requirements as other "on-duty" employees. If an on-call employee is requested to report for duty and has consumed alcohol, he/she must acknowledge the use to his/her supervisor and his/her inability to perform safety-sensitive functions. Such acknowledgment or a failure to report for duty without a verifiable emergency excuse will be deemed an admission of having an alcohol concentration of 0.02 or greater, and the employee will be subject to disciplinary action up to and including termination. If the employee acknowledges the use, but believes his/her ability to work is not compromised, the employee must submit to an alcohol test



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prior to working. If the City requires an employee to be tested under these circumstances, in no event shall the employee be authorized to drive to any testing site.

- d. **Call-back:** "Off-duty" employees who are called back to work must advise their supervisor, prior to reporting for work, if the employee reasonably believes he/she would violate this policy by reporting for work. "Off-duty" employees will not be disciplined for self-reporting under the Drug and Alcohol policy. However, employees with excessive self-reporting incidents may be subject to discipline under AR-00012. It is a violation of this AR to return to work in an impaired condition or to fail to advise the supervisor of the employee's impaired condition.
- e. **Return to Duty:** Employees with positive drug or alcohol test results will, in all likelihood, be recommended for termination. In the unlikely event that mitigating factors result in the decision not to terminate the employee, the return-to-duty and follow-up testing policies will apply.
- f. **Follow-up Testing:** All City personnel who test positive for drugs and/or alcohol but have not been terminated, will be evaluated by a Substance Abuse Professional (SAP) assigned by the City and will be subject to additional testing. The number and frequency of such testing shall be as directed by the SAP. A minimum of six (6) unannounced follow-up tests will be administered during the first 12 months following return-to-duty. Further, if the SAP decides that an individual needs additional follow-up testing, that individual will be subject to unannounced follow-up screens for a period up to 60 months.

2. **Recreation Department Safety-Sensitive Positions:** Individuals in or applying for safety-sensitive positions are subject to greater scrutiny for drug and alcohol use.

For the purpose of this administrative regulation, Recreation Department "safety-sensitive" positions are limited to Aquatics areas and are those that interact with and/or protect others in the water and where failure to properly perform the job duties would put the employee or others at risk of injury or death. Aquatics positions include, but may not be limited to:

- Slide Attendant
- Swim Aide
- Water Safety Instructor (WSI)
- Lifeguard
- Lead Lifeguard
- Assistant Manager (Winona Pool & Swim Beach)
- Manager (Winona Pool & Swim Beach)
- Facility Coordinator (Building & Aquatics)
- CARA Swim Coach
- Masters Swim Coach

In addition to being subject to testing based upon reasonable suspicion, as described above, individuals in safety-sensitive positions will be subject to the following screening:

- a. **Pre-employment:** The City will notify applicants of this policy at the time of application. Applicants must sign a consent form by which the applicant submits to such screen(s). Refusal to sign the consent form and/or to submit to the screens will





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disqualify the applicant from employment in the position. Any individual failing the pre-employment screen(s) will be notified that the conditional offer has been withdrawn and the individual will NOT be hired for the position.

3. **Police Department Safety-Sensitive Positions:** Individuals in or applying for safety-sensitive positions are subject to greater scrutiny for drug and alcohol use.

For the purpose of this administrative regulation, Police Department "safety-sensitive" positions include any position whose incumbents are authorized by the City to carry a firearm and Community Service Officers who may be required to use defensive tactics and less lethal force, as well as employees in the Communications Division.

In addition to being subject to testing based upon reasonable suspicion, as described above, individuals in safety-sensitive positions will be subject to screening in the following three circumstances:

- a. **Pre-Employment:** A pre-employment drug screen will be conducted after an individual has accepted a safety-sensitive position but before assuming any safety-sensitive duties. An alcohol screen may also be required. The offer of any safety-sensitive position is conditional upon the individual passing the screen(s). Any individual failing the pre-employment screen(s) will be notified that the conditional offer has been withdrawn and the individual will NOT be hired for the position.

The City will notify applicants of this policy at the time of application. Applicants must sign a consent form by which the applicant submits to such screen(s). Refusal to sign the consent form and/or to submit to the screens will disqualify the applicant from employment in the position.

*All non-safety sensitive Police Department employees will be subject to reasonable suspicion and pre-employment drug and/or alcohol screens.*

- b. **Random Screens:** As a condition of employment, individuals holding safety-sensitive positions will be randomly selected for drug and/or alcohol screens.
- i. Random **alcohol** screens may only be administered while an individual is performing, just before an individual performs, or just after an individual has performed his/her safety sensitive duties.
  - ii. Random **drug** screens may be performed at any time an individual holding a safety sensitive position is performing his/her duties.

- c. **Post-Accident/Incident:** (1) After an accident/incident occurs, and in absence of reasonable suspicion, the employee may be offered the opportunity to voluntarily submit to testing if it is deemed to be in the best interest of the City and/or individual; or (2) as required by the Officer-Involved Incident Protocol prescribed by the Office of the District Attorney, Eighth Judicial District.

An individual involved in an accident or incident *who is not in need of immediate medical attention* must remain available for testing; failure to remain on the scene will be considered a refusal to test and, as such, will be grounds for discipline and will result in the presumption of a positive test result.



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## DISCIPLINE AND TREATMENT

In the unlikely event that mitigating factors result in the decision not to terminate an employee who tests positive for either drugs or alcohol under the provisions of this policy, the following policies will apply.

### Discipline

Any individual who: (1) fails the test for alcohol and/or drugs; (2) fails to submit to the administration of such testing within the time limits set forth in this regulation (absent physical inability); or (3) in any fashion, knowingly obstructs, impedes, delays, or interferes with such testing shall be subject to termination proceedings.

An employee will be suspended pending termination proceedings. The absence will be considered an unexcused absence and the employee will be required to use accrued leave to cover his/her absence. If the employee does not have any accrued leaves the employee will be on leave without pay.

### Treatment

An individual who tests positive for drugs and/or alcohol will be recommended for termination of employment. Individuals who are not terminated will be required to be evaluated by a Substance Abuse Professional (SAP) at their own expense. Treatment, if recommended, will be at the employee's expense. Further, such individual may not perform any job duties until:

- The SAP documents the successful completion of any required rehabilitation or confirms that no rehabilitation is required; and,
- Return-to-duty testing has been conducted documenting a BAC of less than 0.02 and/or a verified negative drug test result.

## INFORMATION AND TRAINING

The City of Loveland will conduct classes outlining the above procedures and make written copies of procedures available to City of Loveland employees and volunteers. All supervisors and managers must receive training on drug use, alcohol misuse, and reasonable suspicion. All individuals should be made aware of the dangers of alcohol and drug use in their jobs and further advised of how to obtain help through the Employee Assistance Program (EAP).

## RECORDKEEPING

The types of records to be maintained include documents related to testing, education and training. These documents will be shared on a need-to-know basis and in accordance with applicable law.

## VI. OTHER RELATED REGULATIONS & PROCEDURES:

- AR-00043 Discipline: Notice and Process for Serious Discipline
- AR-00012 Discipline: Verbal and Written

## VII. CITY MANAGER SIGNATURE:

Stephen C. Adams, City Manager



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## CITY OF LOVELAND EMPLOYEE ACKNOWLEDGEMENT OF RECEIPT DRUG-FREE WORKPLACE

I, \_\_\_\_\_ acknowledge that I have received/reviewed a copy of the **City's Drug-Free Workplace Administrative Regulation**. I understand that I will be held responsible for the content. I agree to comply with the content of this document and understand that cooperation with testing is a condition of employment. I understand and agree that I may be drug and/or alcohol tested as outlined in the Administrative Regulation.

In addition, I understand and agree that, as a condition of employment by the City of Loveland, as a provision of the Drug-Free Workplace Act of 1988, I must notify the City of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction. I understand that if I am in a position that requires me to drive to perform my job, I must immediately inform my supervisor if I receive a citation for any traffic violation.

I understand that the City is entitled to take appropriate disciplinary action against me, up to and including termination.

The newest revision of this administrative regulation supersedes any previous versions.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Date**