

MOUNTAIN BROOK FIRE DEPARTMENT

POLICY NO. 102.01

VOLUME: I

SUBJECT: Drug-free Workplace Policy & Alcohol and Drug Testing Policy

SIGNED: 
ROBERT W. EZEKIEL, FIRE CHIEF

June 6, 2013
DATE

SCOPE AND PURPOSE: The City of Mountain Brook has adopted and implemented its Drug-Free Workplace Policy and Alcohol and Drug testing policy with the objectives of ensuring the safety of the public and the City's employees, promoting the City's provision of quality services to our residents and preserving the public's continued confidence in our operations. As part of City Government, the Fire Department is an integral part of this program.

POLICY: The City of Mountain Brook by Resolution, has established, **THE ALCOHOL AND DRUG TESTING POLICY OF THE CITY OF MOUNTAIN BROOK AND THE DRUG FREE WORKPLACE POLICY.**

- POLICY AREAS:**
- A. Alcohol and Illegal Drugs are Prohibited
 - B. Alcohol and Drug Testing
 - 1. Applicant Testing
 - 2. Work-Related Injuries
 - 3. Damage to Property
 - 4. Reasonable Suspicion
 - 5. Employees in Safety Sensitive Positions
 - C. Notification Regarding Testing
 - D. Searches
 - E. Employee Assistance Program
 - F. Disciplinary Action
 - G. Administration of Policy

**DRUG-FREE WORKPLACE POLICY
OF THE CITY OF MOUNTAIN BROOK**

The problems associated with abuse of drugs and alcohol not only affect the individual and his or her family, but also co-workers and the public that we serve. Alcohol and drug abuse can result in tardiness, absenteeism, lost productivity, accidents and death. Further, careless or unsafe acts by employees due to drug or alcohol use could cause severe consequences to residents, employees and visitors to the City. In compliance with the federal Drug-Free Workplace Act of 1988, 41 U.S.C. §701 *et seq.*, and the Alabama Drug-Free Workplace Act, Code of Alabama §25-5-330 *et seq.*, to promote a drug-free workplace, to safeguard the safety and health of our residents and the public and to ensure their continued trust and confidence in the City's operations, the City has adopted and implemented the following drug and alcohol policy.

A. Alcohol and Illegal Use of Drugs are Prohibited

The unlawful or unauthorized manufacture, distribution, dispensation, receipt, possession, or use of a controlled substance or alcoholic beverage at any facility or work site of the City of Mountain Brook is prohibited. Employees are further prohibited from being unfit for duty because of alcohol or drug use while at work or on duty. A controlled substance is any illegal drug, including, but not limited to, marijuana, cocaine, amphetamines, barbiturates, opiates, hallucinogens, heroin, and phencyclidine (PCP). The phrase "unlawful or unauthorized use" includes not only the use of illegal controlled substances, but also the use of prescription drugs without a proper prescription or in doses in excess of the prescription.

An employee required by a physician to take prescription medication that will affect the employee's ability to perform his/her assigned duties shall provide his/her supervisor with the name of the physician prescribing the medication, the name of the prescription medication, and its possible side effects. Supervisors may adjust the employee's work assignments in response to the information.

For purposes of this policy, an employee will be deemed to be unfit for duty if 1) both an initial and confirmatory screen for controlled substances yields a "positive" result, as established by the standards of the National Institute of Drug Abuse (NIDA), unless the controlled substance for which the employee tested positive is being taken by the employee in accordance with a valid physician's prescription or orders; and the employee advised his or her supervisor of the use of the prescription medication and its possible side effects before the employee was advised of the drug screen; or 2) if a blood screen or "Breathalyzer" test indicates a blood alcohol content level of 0.04% for any time the employee was on duty on the day of such test. (Personnel that are instructed by their supervisor to submit to blood alcohol content testing may elect whether the initial test will be conducted using a Breathalyzer, or by blood test).

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B. Notification of Drug Convictions

An employee convicted under any federal or state criminal drug statute for a violation occurring while off duty must notify their Department Head of the conviction no later than five (5) calendar days after such conviction.

C. Violations of Policy

The terms of this policy constitute a term and condition of your employment. Any employee who violates any of the above provisions will be subject to appropriate disciplinary action, up to and including discharge. Any employee who violates this policy or who is convicted of a violation of a federal or state criminal drug statute for a violation occurring while on duty may, in the discretion of the Department Head, be required to satisfactorily complete a drug or alcohol abuse counseling, assistance or rehabilitation program as a condition of continued employment or re-employment. In accordance with the Alabama Drug-Free Workplace Act, §25-5-335(a)(4), Code of Alabama, and employee returning to work following the successful completion of a counseling, assistance or rehabilitation program will be subject to drug or alcohol testing a minimum of once a year for a period of two (2) years following his or her return to work.

D. Alcohol and Drug Abuse Awareness Program

The City of Mountain Brook will conduct periodic meetings to educate employees regarding the dangers of alcohol and drug abuse. The City Manager will maintain a selection of educational materials concerning alcohol and drug abuse and a referral list of available drug counseling, rehabilitation or assistance programs in the area. Any employee interested in reviewing these materials or in obtaining information concerning the local assistance programs should contact the City Manager. All requests will be kept strictly confidential.

All supervisory employees will receive instruction on identifying alcohol or illegal drug use. Supervisors should be alert for production, attendance, health and safety problems which possibly may be caused by alcohol and drug abuse and should report any facts or circumstances indicating the existence of such problems to the City Manager.

E. Administration of Policy

The City Manager or his or her designee will be responsible for administering and enforcing this policy. All correspondence, notifications, requests for information, referrals and other related matters concerning this policy should be directed to the City Manager or his or her designee and will be kept strictly confidential.

**ALCOHOL AND DRUG TESTING POLICY
OF THE CITY OF MOUNTAIN BROOK
(RESOLUTION 10-171 DATED OCTOBER 11, 2011)**

A. Alcohol and Illegal Drugs are Prohibited

The manufacture, distribution, dispensation, receipt, possession, or use of a controlled substance or alcoholic beverage at any facility, work site, or in any vehicle or equipment of the City of Mountain Brook is prohibited. Employees are further prohibited from being unfit for duty because of alcohol or drug use while at work or on duty. A controlled substance is any illegal drug, including, but not limited to, marijuana, cocaine, amphetamines, barbiturates, opiates, hallucinogens, heroin, phencyclidine (PCP), and MDMA (Ecstasy).

The proper possession or use of over-the-counter or physician prescribed medications while on duty will not be considered a violation of this prohibition. An employee required by a physician to take prescription medication that will affect the employee's ability to perform his/her assigned duties shall provide his/her supervisor with the name of the physician prescribing the medication, the name of the prescription medication, and its possible side effects. Supervisors may adjust the employee's work assignments in response to the information provided. If there is a question regarding the employee's ability or inability to perform assigned duties, clearance from the prescribing physician will be obtained.

The violation of this prohibition may result in disciplinary action, up to and including discharge. Further, the manufacture, distribution, dispensation, receipt, possession, or use of a controlled substance or alcoholic beverages off City property and while not on duty may be cause for discipline where such conduct has an adverse impact on the City's interests, including its public image and the employee's safe performance of his or her duties. A conviction of an employee for the sale of, or the possession of with intent to distribute, controlled substances at any time or place is cause for immediate dismissal.

B. Alcohol and Drug Testing

To further aid in the enforcement of this policy, the City has elected to require drug and alcohol testing of applicants and employees. For the mutual protection of the City and applicants and employees being tested, all collection and testing will be performed in accordance with the procedures prescribed in the Alabama Drug Free Workplace Act, ALA. CODE §25-5-335©, and applicable federal law. The applicant or employee to be tested will be given an opportunity to record in writing any information he or she considers relevant to the testing procedure or test, including, but not limited to, any prescription or nonprescription medications the applicant or employee has recently taken, or other condition which might impact the results of the test. Appropriate collection, chain of custody, labeling, storage and transportation safeguards will be followed to prevent substitution or contamination of the specimen or sample, or erroneous identification of specimens and test results. If a specimen tests positive, a confirmation test will be performed on the specimen. Within five (5) working days of its receipt of a positive confirmed test, the City will notify the applicant or the employee in writing of the results, the consequences of the results, and the options available to the applicant or employee under the terms of this

policy. An applicant or employee who receives a positive confirmed test result may contest or explain the result within five (5) working days after written notification of the test result. Upon written request, an applicant or employee will be given a copy of his or her test results. All documentation relating to and the results of any testing performed under this policy will be treated as confidential records and information and the City Manager will keep such information strictly confidential, informing only those City personnel with a legitimate need to know. To ensure confidentiality, the actual tests results will be maintained by the testing facility. The City will pay for the cost of all testing performed under the terms of this policy. In instances where an employee will be required to submit to an alcohol and/or drug test as determined by the City Manager and the employee's Department Head, the following procedures will apply.

Employees being tested for alcohol use will be given the option of having a Breathalyzer test performed at a testing facility of the City's choosing at the City's expense, or a blood test being performed at Trinity Hospital or other testing laboratory at the employee's expense. Employees registering over 0.04% on the Breathalyzer will have the further option of requesting a blood test at Trinity Hospital or other testing facility at the employee's expense. The refusal to submit to, or the failure to cooperate during, a drug and/or alcohol test may result in appropriate disciplinary action, up to and including discharge.

Following are examples of circumstances that may require alcohol and/or drug testing:

1. Applicant Testing

All applicants for employment with the City are subject to, and must consent to, being tested for the use of controlled substances before he or she will be considered for employment with the City of Mountain Brook. The drug testing procedures described above will be utilized in the testing of applicants. An applicant who has unacceptable levels of a controlled substance or alcohol in his or her system will not be considered further for employment.

2. Work-Related Injuries

In accordance with the Alabama Workers' Compensation Act, an employee who sustains a work-related injury, no matter how minor he or she believes the injury to be, must immediately report the injury to his or her supervisor. At the discretion of the Department Head, or in his or her absence, the Department Head's designee or the City Manager, an employee who sustains a work-related injury resulting in time off from work may be required to undergo a drug and/or alcohol test. An employee who has caused or contributed to an on-the-job injury which resulted in time off from work shall be required to submit to a substance abuse test. The refusal to submit to, or the failure to cooperate during, a drug and/or alcohol test will result in a loss of any right to benefits under the Alabama Workers' Compensation Act and may result in disciplinary action, up to and including discharge.

3. Damage to Property

An employee who is involved in an accident while on duty which causes damage to City property or private property, or injury to a person, no matter how minor he or she believes the accident to

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be, must immediately report the accident to his or her Supervisor. The failure to report an accident may result in discipline. Employees in "safety sensitive" positions, as defined below, will be required to undergo a drug and/or alcohol test if: 1) the accident involved the loss of human life; 2) a person is required to seek medical attention as the result of the accident, 3) the accident results in property damage estimated by the employee's Department Head to be in excess of \$500, or 4) after an investigation of the circumstances of the accident, the Department Head determines that the employee could have been at fault.

4. Reasonable Suspicion

An employee may be required to submit to an alcohol or drug test if a supervisor has a reasonable suspicion that the employee has violated this policy. "Reasonable suspicion" will be determined based upon objective facts. Such supporting objective facts include, but are not limited to, the following:

- a. Direct observation of a violation of this policy,
- b. A report of a violation of this policy from a reliable and credible source,
- c. Odor of alcohol on breath, body or clothing,
- d. Loss of coordination or motor skills, slurred speech, bloodshot or glassy eyes, or dilated pupils,
- e. Participation in a verbal or physical altercation,
- f. Aggressive, hostile, threatening, disruptive or unusual behavior,
- g. Evidence of tampering with an alcohol or drug test,
- h. Excessive tardiness or absences.

If an employee is sent for testing on the basis of reasonable suspicion, the City will detail in writing the circumstances which formed the basis of the reasonable suspicion. On written request from the employee, the City will provide a copy of the record detailing such circumstances.

Any employee who observes or has reason to believe that a violation of this drug and alcohol policy has occurred must immediately report the facts to his or her Department Head. An employee who fails to report a known violation may be subject to disciplinary action. The Department Head will report such facts to the City Manager and the City Manager and the Department Head will decide whether the employee will be required to undergo a drug and/or alcohol test.

5. Employees in Safety Sensitive Positions

In addition to the situations described above, employees promoted or transferred to "safety sensitive" positions must submit to a drug test before promotion or transfer. Further, employees occupying "safety sensitive" positions or that routinely drive City vehicles are subject to being tested for alcohol and drug use on a random basis.

A "safety sensitive" position is a position which involves duties, functions, or situations which have the potential for causing serious harm to the employee, co-workers or members of the public. Such positions include, but are not limited to:

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- a. Law enforcement personnel,
- b. Public safety radio dispatchers,
- c. Operators and mechanics of vehicles and equipment requiring a commercial driver's license, or emergency response vehicles, including but not limited to, law enforcement vehicles, fire protection vehicles and emergency medical vehicles.
- d. Firefighters, Emergency Medical Technicians, and Supervisors in the Fire Department,
- e. All other City employees who drive a vehicle owned or leased by the City in the course of his or her employment

The testing pool will be selected using a random name generation computer program. Random means that every member of the safety sensitive population has an equal chance of being selected for testing during each sampling. The City Manager, the Mayor and the City Council will determine the frequency of the random testing and the percentage of the "safety sensitive" population to be tested in each random sampling. The sample selection process shall be conducted by the City Manager or his or her designee who shall be a Department Head of the City and shall be conducted in the presence of at least one other City employee.

If an employee in a "safety sensitive" position is permitted to return to work following a positive test, said employee must submit to return-to-work alcohol and/or drug test before being returning to work.

C. Notification Regarding Testing

Testing for applicants will be scheduled by the City and the applicant will be notified one (1) day in advance of the date and time of the test. If an applicant cannot attend the test as scheduled, he or she must inform the City of the conflict and the reason for the conflict at the time he or she is notified by the City of the date and time for the test. If there is good reason for the applicant's inability to be tested at the date and time scheduled, the City may, in its sole discretion, reschedule the applicant's test. An applicant who fails to appear for the test at the scheduled date and time will not be considered for employment.

Employees selected for random testing will be notified of the test the morning of the test. An employee's failure or refusal to undergo a drug or alcohol test, or attempting to tamper with the testing protocol or results will result in disciplinary action up to and including discharge.

D. Searches

To aid in the enforcement of this policy, the City reserves the right to conduct searches of City property, including City property in the custody or control of its employees such as City automobiles, desks, file cabinets, and locker facilities.

No search will be conducted unless the City has reasonable suspicion to believe that the search will reveal evidence of an employee's violation of this policy. Reasonable suspicion will be determined by the employee's Department Head based upon objective facts. Such objective facts include, but are not limited to:

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- a. Direct observation of a violation of this policy;
- b. A report of a violation of this policy from a reliable and credible source;
- c. Odor of alcohol on breath, body or clothing;
- d. Loss of coordination or motor skills, slurred speech, bloodshot or glassy eyes, or dilated pupils;
- e. Participation in a verbal or physical altercation;
- f. Aggressive, hostile, threatening, disruptive or unusual behavior;
- g. Evidence of tampering with an alcohol or drug test;
- h. Excessive tardiness or absences.

Prior to conducting any search, the City will explain the reason for the search and the objective facts supporting its determination of reasonable suspicion. To ensure minimal intrusion into an employee's privacy, searches will be performed by a Department Head or other supervisor.

E. Employee Assistance Program

The City recognizes the value of each of our employees and encourages employees to seek help before a drug or alcohol problem becomes a performance or disciplinary matter. To encourage employees to seek assistance, the City will allow an employee who notifies his or her Department Head of a drug or alcohol problem and requests assistance before he or she is selected for a drug or alcohol test or otherwise shown to be in violation of this policy to take a personal leave of absence to undergo counseling, treatment, or rehabilitation. An employee who notifies his or her Department Head of a drug or alcohol problem only after being selected for testing, or who is already under investigation for possible violations of this policy, will be subject to disciplinary action, up to and including discharge from employment, if a violation of this policy is established.

Employees choosing to participate in a residential or inpatient counseling, treatment or rehabilitation program will be allowed a personal leave of absence of up to sixty (60) days. An employee choosing to participate in a non-residential or outpatient counseling, treatment or rehabilitation program will be allowed a personal leave of absence of up to thirty (30) days. Absent extraordinary circumstances, only one personal leave of absence for this purpose will be granted over the course of employment with the City. During the personal leave, employees will be required to use earned sick and vacation leaves. After the exhaustion of any such earned leave, the remainder of the personal leave will be without pay. An employee seeking assistance may do so independently or request appropriate referrals from his or her Department Head.

An employee who is allowed a personal leave may return to work at the end of such leave upon certification of the successful completion of the counseling, treatment or rehabilitation program. An employee who has not been so certified by the end of the personal leave will be discharged from employment. In accordance with the Alabama Drug-Free Workplace Act, Code of Alabama, §25-5-335(a)(4), an employee returning to work following the successful completion of a program will be subject to drug or alcohol testing a minimum of once each year for a period of two (2) years following his or her return to work.

The cost of any counseling, treatment or rehabilitation program will be the responsibility of the

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employee and no provision in this policy should be construed to obligate the City to bear the cost of any such program to which an employee may be referred.

F. Disciplinary Action

Any applicant who tests positive for the use of a controlled substance or whose blood alcohol level exceeds 0.04%, or who attempts to tamper with the protocol or results of drug or alcohol test, or who violates any other provision of this policy, will not be considered for employment with the City.

Any employee who refuses to submit to a drug or alcohol test, a search, who tests positive for the use of a controlled substance or whose blood alcohol level exceeds 0.04%, or who attempts to tamper with the protocol or results of drug or alcohol test, or who violates any other provision of this policy, will be subject to disciplinary action, up to and including termination.

Any employee who holds a "safety sensitive" position whose blood alcohol level exceeds 0.02% but is less than 0.04% will be immediately removed from safety sensitive duties for at least eight hours unless a retest results in a blood alcohol level of less than 0.02%.

G. Administration of Policy

The City Manager or his or her designee will be responsible for administering and enforcing this policy. All correspondence, notifications, requests for information, referrals and other related matters concerning this policy should be directed to the City Manager or his or her designee and will be kept strictly confidential.