

AN ORDINANCE

**AMENDING: CITY OF MARIETTA ARTICLE 4-4-26 - ALCOHOL AND
CONTROLLED SUBSTANCE POLICY AND PROCEDURAL GUIDE**

**NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE MAYOR AND COUNCIL
OF THE CITY OF MARIETTA, GEORGIA, THAT:**

4-4-26-080, Screening test program, shall read:

4-4-26-080 - Screening test program.

A. Testing Quality and Techniques to be Utilized.

1. The city/BLW will establish a professional relationship with a professional laboratory which shall comply with all current National Institute of Drug Abuse standards. An assessment of the laboratory will be performed which will include a review of how samples are actually tested; all procedures involved (chain of custody of sample, notation of time and place sample was taken, the amount of turn around time that will elapse before a result is reached, etc.); qualifications of the laboratory personnel; and a check of the internal quality control records of the laboratory.
2. All samples will be collected at the laboratory, hospital or other city designated testing facility including but not limited to any law enforcement agency that has an Intox 5000 or similar device. The samples will be carefully checked and marked with the name of the employee, the date and time the sample was collected, and the location where the sample was collected. A chain of custody/control will be established so that samples are properly handled before testing occurs. Every effort must be made to assure that the sample being tested is the sample actually collected from the employee/applicant in question.
3. When testing for alcohol, a breathalyzer, such as the Intox 5000 or other similar device. Any measurable amount of alcohol found will be sufficient for a presumption of impairment, unless such measurement is the result of consumption of alcohol or an alcohol related product that is prescribed by a licensed physician. Some departments may require more restrictive standards than described herein. The employee has the right to request a blood test if he so desires. This test will be at the employee's expense.
4. The city/BLW will use urine samples for controlled substance testing even though the presence of foreign metabolites in urine does not necessarily indicate impairment, but rather recent exposure to the substance. However, alternatives such as blood tests and hair analysis may be interpreted as more intrusive, but may be used if necessary.

5. The city/BLW will utilize the testing standards of the department of transportation regulations as provided in 49 CFR Part 40, as amended and as may be hereafter amended. The following is a brief outline of the methods to be used. The city/BLW will utilize the technique known as immunoassay technique of chemical testing. The immunoassay technique has a high degree of reliability under "optimal" conditions. However, all positive immunoassay tests on current employees shall be confirmed by another more elaborate and thorough test method. Confirmatory methods include any one of the following techniques: thin layer chromatography, gas chromatography and gas chromatography/mass spectrometry. All positive immunoassay tests on samples from applicants will be confirmed with a repeat administration of the immunoassay technique on the sample.

B. Testing Procedure. The alcohol and controlled substance policy provides for testing in six different situations: the preemployment or promotion/demotion/transfer screen; the screen as part of any required annual physical examination; the "reasonable suspicion" screen; post accident screen; random test program for safety sensitive positions and drivers of city/BLW vehicles; and random test program after return to work after an alcohol and/or controlled substance policy violation.

1. Post Employment Offer or Promotion/Demotion/Transfer Screen.

- a. After an employment offer has been made to a prospective employee, but before employment has begun or any employee who has applied for and is offered a safety sensitive position, a position requiring driving of a city/BLW vehicle or any other position with the city/BLW not prohibited by law, will be sent to the human resources department and scheduled for a post employment offer alcohol and controlled substance test. The applicant when sent to the testing facility will be asked to sign consent and notice form. Job candidate applicants, including current employees, are required to provide truthful statements to the questions asked. Any false statements provided will result in rescission of the employment offer and in the case of current employees, could result in disciplinary action up to and including termination of employment.
- b. Should the applicant refuse to sign the consent form, the application process will continue. On the application it will be noted only that the applicant "refused screen". It will not mention suspected alcohol or drug use by the applicant. The applicant has a right to refuse to consent to the test, but the city/BLW has a parallel right to refuse to hire/promote/transfer/voluntarily demote the applicant. However, should an inquiry as to that specific application be made by the applicant or a third party at a later date, the city will protect the confidentiality of the application process. For instance, if another employer contacts the city/BLW in the context of a reference check, the only information that will be supplied is that the applicant did apply and that the applicant "failed to meet the qualifications necessary for employment". It will never be revealed that the applicant refused to consent to an alcohol/controlled substances screen unless required to defend, answer and/or litigate a suit or through some other legal action.
- c. If the applicant being considered for the position has consented to the test and the test results are negative, the applicant will continue with the hiring process. However, should the test results come back positive, the test must be confirmed utilizing the same sample originally provided.

- d. All test results are confidential except as provided herein. If a preemployment test is confirmed a positive result, all inquiries as to why the applicant who is not a current city/BLW employee, was not hired will be answered by stating, "the applicant failed to meet the qualifications necessary for the position". However, the city/BLW reserves the right to notify the current department head of any employee who tests positive on any alcohol/drug screen conducted as a part of any application process for another position within the city/BLW organization. All applicants with a confirmed positive result may reapply at a later date at which time he/she will submit to another alcohol/controlled substance screening test.

2. Medical Examination Screen.

- a. At the time the employee is to undergo a required medical examination, the alcohol and controlled substance policy should be explained to the employee and he/she will sign the "employee consent and notice" form at the testing facility. Alcohol testing may be performed by the use of the standard breathalyzer, Intox 5000 or any similar device approved by the state crime lab director at a city designated testing facility including, but not limited to, any law enforcement agency that has such equipment.
- b. Should the employee refuse to sign the consent form, the medical examination will proceed. After the examination has been completed, the employee will be suspended with pay, following the procedure set forth in Article 4-4-20 of these rules and regulations. The employee may be terminated for "insubordination", pursuant to the procedure set forth in Article 4-4-20 of these rules and regulations. The stated reason for terminating an employee will never be "refusal to submit to urinalysis", but rather "insubordination" or "failure to follow the legitimate instructions of supervisors", or other reason listed in Article 4-4-20.
- c. If the employee consents to the test and the test results are negative, the employee can return to work if he has passed the rest of the medical examination. However, should the test results indicate the presence of alcohol or controlled substances, that test result must and will be confirmed by one of the more specific confirmatory tests cited above utilizing the same sample originally provided. If the confirmatory test also indicates the presence of alcohol/controlled substances, the employee will be assumed to be impaired, and may be suspended with pay pending investigation for discharge, in accordance with the alcohol and controlled substance policy and Article 4-4-20 of this chapter.
- d. During the period of suspension, an intensive investigation into the employee's employment background and the circumstances behind the alleged policy violation will take place. After the investigation is completed, and there is sufficient cause to believe that a policy violation has occurred, the employee will be either:
 - (1) Disciplined up to and including termination; or
 - (2) Referred for assessment/treatment by his department head.
- e. If after the investigation has been completed it is determined that a policy violation has not occurred (for example, if the employee successfully rebuts the assumption of impairment by submitting to a blood test within three hours after the original test, and the results of which are negative), the employee will be reinstated to his former position.

3. "Reasonable Suspicion" Screen.

- a. The screen upon reasonable suspicion involves a great deal of discretion on the part of supervisory personnel. The supervisory training program will provide precise guidelines as to what is involved with identifying a potential alcohol or controlled substance abuser. The task of identifying potential abusers does not include diagnosing a worker. The fact that a problem exists is all that is to be discussed when dealing with an employee; that is, demonstrated employee behavior. It is not the position of the supervisor to act in the role of a diagnostician. When it is suspected that an employee has violated the alcohol and controlled substance policy, the employee will only be told that job-related problems have developed and that it is suspected that these job-related problems are the result of alcohol and/or controlled substance abuse. The underlying cause of such abuse should not be a concern of the supervisor.
 - b. The phrase "reasonable suspicion" means that a screening test should be administered if it is reasonable to suspect that an employee has violated this policy.
 - c. A "suspicion" must be based upon objective indications of substance abuse or other policy violations. Therefore, forms have been developed to provide guidance to supervisors in assessing whether a "reasonable suspicion" exists as well as providing documentation of the basis of a decision to require an alcohol or controlled substance test. Thorough documentation of all steps of an investigation for a possible violation of this policy is a must including the date and time of any discussion with the employee. For further information, see Section 4-4-26-040 above, procedural guide for violations.
4. Post Accident Screen. After an on-the-job accident involving significant bodily harm or fatality, significant property damage, or loss of work time. The department head, with approval of the human resources director, may require testing for alcohol and/or controlled substances.
5. Random Testing for Safety Sensitive Positions. The random testing program shall include all employees who 1) perform safety sensitive functions (see Section 4-4-26-015(D) above) which shall include but is not limited to those employees who regularly drive a city/BLW vehicle as part of the required duties of their position; or 2) are required by the Federal Highway Administration (FHWA), 49 CFR, Part 382, to maintain a commercial driver's license. Employees in safety sensitive positions as described above are subject to random alcohol and controlled substance testing at an annual percentage for the calendar year as prescribed by the Federal Highway Administration for all CDL holders. The tests will be unannounced and will be reasonably spaced throughout the year. Drivers chosen for a random test must proceed immediately upon notification of the random test to the designated test site.
6. Return to Duty After Policy Violation. If an employee has been relieved of duty for a prohibited use of alcohol or controlled substances, that employee shall undergo an alcohol and controlled substance test before returning to work, if permitted to do so. The results of such test must be negative. If an employee is returned to duty, the employee is required to comply with the conditions of a rehabilitation program, such employee shall be subject up to nine unannounced tests in the first 12 months after their return and up to 18 unannounced tests in the 36 months following return to duty.

(Code 1978, § 4-1168; Ord. No. 5575, 6/12/96; Ord. No. 6905, 4/12/2006, § 2; Ord. No. 7043, 5/9/2007, § 12; Ord. No. 7191, 6/11/2008, § 1)

Section 3: All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 4: This Ordinance shall become effective upon the signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

DATE: 01/08/2024

APPROVED: 
R. Steve Tumlin, Mayor

ATTEST: 
Stephanie Guy, City Clerk

Approved as to form: 
Douglas R. Haynie, City Attorney