

DRUG TESTING POLICY AND PROCEDURE



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PURPOSE:

The purpose of this policy is to provide an alcohol and drug-free workplace for the protection and well being of the Helena Police Department, its employees, and the public it serves along with City property, equipment, and operations. Employees are expected to report to work alcohol and drug free in order to enable safe and efficient job performance. Employees are expected to engage in activities while on-the-job, while on department premises, or in the scope and course of employment which are appropriate for the work environment and do not compromise the department's integrity or interest in maintaining a safe, secure, and alcohol and drug free workplace.

POLICY:

The Helena Police Department (HPD) is committed to protecting the safety, health, and well being of all sworn and civilian employees and the individuals we come into contact with as we fulfill our mission statement of serving the City of Helena. Therefore, we have established a alcohol and drug-free workplace program that balances our respect for individuals with the need to maintain an alcohol and drug-free environment.

If there are employees who have drug or alcohol problems, the City remains willing to assist in the resolution of these problems and encourages affected employees to seek help through the Employee Assistance Program (EAP) which is available free to employees and eligible family members. The City will not terminate employment, discipline, or discriminate against an employee solely because an employee voluntarily seeks treatment for an alcohol or substance abuse problem by following the safe-harbor provisions of this policy.

The unlawful manufacture, distribution, possession, sale, transfer, or use of an illegal drug or the illegal use of a legally obtainable drug or substance or impairment by over-the-counter prescription drugs or misuse of alcohol is strictly prohibited. Illegal possession of drug paraphernalia is prohibited. As a condition of employment, all employees must abide by this prohibition while in any employment capacity with the City, and while on City property, in any City vehicle, or at any City office or facility. All employees are expected to be at work without being under the influence of drugs and/or alcohol, including controlled substances, in order to enable safe and efficient job performance.

NOTE:

A glossary of key terms is available at the end of this policy.

For the purposes of this policy:

Alcohol – means an intoxicating agent in alcoholic beverages, food, or medication; ethyl alcohol, also called ethanol; or the hydrated oxide of ethyl.

Controlled Substance(s) – means any drug, substance, or precursor included in Schedules I through V as defined by Section 812 of Title 21 of the United States Code (21 USC 812) or any drug, substance, or precursor included within the definition of "Dangerous Drug" in Title 50 Chapter 32 Part 2, Montana Code Annotated (for example, but not limited to: cocaine, marijuana, medical marijuana, and methamphetamine.) For the purpose of this policy, the term 'controlled substance' does not include the use of prescribed drugs, which have been legally obtained and are being used in the manner and for the purpose for which they were prescribed. It does include medical marijuana.

Illegally Used Drugs / Illegal use of drugs – means:

- a. any prescribed drug which is legally obtainable but has not been legally obtained or is not being used for prescribed purposes or in the prescribed manner;
- b. all designer drugs not listed in the Controlled Substances Act (for example, but not limited to: MDA, fentanyl); or
- c. any other over-the-counter or non-drug substances (for example, but not limited to: airplane glue) being used for other than their intended purpose.

Legal Drugs - Legally obtained drugs (prescription and non-prescription remedies) used according to directions to alleviate a specific condition.

PROCEDURE:

I. EMPLOYEES/APPLICANTS SUBJECT TO THIS POLICY

- A. All sworn officers, regardless of rank or assignment, are subject to this policy. This includes supervisors and management up to and including the Chief of Police.
- B. Prospective police officer job applicants are subject to pre-employment testing after a job offer has been made.
- C. Current sworn officers that have been away from work for more than ninety (90) consecutive calendar days are subject to test upon return to work.

II. EMPLOYEE ASSISTANCE PROGRAM

- A. Any employee needing help in dealing with drug and/or alcohol problems is encouraged to use the City's Employee Assistance Program (EAP) and the benefits available through the City's medical plan. Additional information regarding the City's Employee Assistance Program is available by contacting the Human Resources Office. The City EAP plays an important role in preventing and resolving problem alcohol and drug use by:
 - 1. Providing confidential counseling and assistance to employees and their qualifying family members who self-refer for treatment or whose tests have been verified positive and monitoring the employee's progress through treatment and rehabilitation;
 - 2. Providing educational materials and training to employees on alcohol & drug use issues;
 - 3. Ensuring the confidentiality of test results and related medical treatment and rehabilitation records, which they maintain.
- B. The EAP will not be involved in the collection of test samples or the initial reporting of test results. The City's designated testing professional will be responsible for such testing.

III. SAFE HARBOR REFERRAL

- A. A fundamental purpose of the Department's Alcohol and Drug-Free Workplace Policy and procedures is to assist employees who themselves are seeking treatment for alcohol or controlled substance use or misuse of prescription drugs. For this reason, the Department will not initiate disciplinary action against any employee regarding the disclosure of his or her drug or alcohol related problem who meets all three of the following conditions:
 - 1. Voluntarily identifies him/herself to Human Resources as a misuser of alcohol and/or illegal drugs and/or misuses prescription drugs, as they apply to this policy, prior to being identified through other means, or prior to being asked to provide a urine and/or breath sample for testing;
 - 2. Obtains evaluation, counseling or rehabilitation from an approved facility; and
 - 3. Thereafter refrains from using controlled substances or misusing prescription drugs and/or alcohol. The employee may be subject to a return-to-work agreement.
- B. This provision is not intended to allow an employee to evade disciplinary action. The key to this provision's rehabilitative effectiveness is an employee's willingness to admit his/her problem. Since the key to this provision's rehabilitative effectiveness is an employee's willingness to admit the problem, this provision is not available to an employee who requests protection under this provision after:
 - 1. Being identified through other means; or
 - 2. Being asked to provide a urine sample for testing; or
 - 3. Having had a verified positive test result for alcohol and/or controlled substances pursuant to this policy.
- C. Drug or alcohol related incidents that are subject to discipline and occurred prior to seeking Safe Harbor are not covered by Safe Harbor protections.

IV. ALCOHOL MISUSE

- A. These prohibitions apply while an officer is on duty and applies in all City owned facilities, on all City owned property, in any City owned or leased vehicle, and at any City approved activity.
- B. Employees are prohibited from consuming alcohol while on duty, during a City approved activity such as training, or while on standby.
- C. No member shall report for duty with the odor of alcoholic beverage on his or her breath or while under the influence of any intoxicant.

- D. This policy includes unanticipated call-out situations. In the event a member is ordered to work from off duty by a supervisor, the member will advise the supervisor if he or she has consumed any intoxicants which may affect his or her work performance. It will be left to the supervisor's judgment whether to allow the member to report for duty.
- E. Officers in plain-clothes assignments shall not consume intoxicating beverages unless prior approval is obtained from the officer's supervisor and consumption is done in the performance of his or her duty.
- F. Handling alcoholic beverages during normal policing activities, such as for evidentiary purposes, while on duty is an exception to the policy and is not prohibited.
- G. Alcohol is a legal substance therefore it is not the intention of this policy to prohibit employees from consuming alcohol when not on duty.

V. CONTROLLED SUBSTANCE AND/OR DRUG USE

- A. These prohibitions apply in all City owned facilities, on all City owned property, in any City owned or leased vehicle, and at any City approved activity.
- B. The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited.
- C. The illegal use of a legally obtainable drug or substance is prohibited.
- D. Use and possession of legally obtained prescription drugs when taken as prescribed and over-the-counter drugs is not prohibited by this part subject to the following:
 - 1. When properly prescribed, members shall not use legally obtained prescriptions to such extent that their performance is affected while on-duty. An employee using any medication which has side effects that might impair or affect the employee's job performance while on duty shall notify his or her immediate supervisor regarding use of the medication. The officer's supervisor will determine whether the employee will be allowed to perform his or her regular duties or will be relieved of duty for that shift. An employee using such medications on a long-term or ongoing basis will provide his or her supervisor a written explanation of the circumstances, including the medication prescribed and possible side effects. The information will be forwarded to the Patrol Division Commander for consideration of the officer's work assignment while using the medication.
 - 2. Employees taking over-the-counter medication that could cause impairment shall notify a supervisor when reporting for duty of the name, dosage, and dosing frequency.
 - 3. A supervisor, under reasonable suspicion, may relieve an employee from duty if it is determined that a medication is causing impairment to an employee's ability to perform the functions of his or her job.

The employee will be required to utilize his/her accrued sick, vacation or compensatory leave time until such time that the employee is no longer impaired by the medication. If the employee runs out of leave time he/she may then be placed on unpaid leave. Employees are not eligible to apply for donated sick leave.

- E. The use, possession, or cultivation of marijuana is strictly prohibited. This includes a prohibition against the use, possession, or cultivation of marijuana for medicinal purposes whether or not the employee has a medical marijuana or caregiver card.

VI. TYPES OF TESTING

A. Pre-employment Testing

A negative pre-employment drug test result is required before a potential employee officially starts employment or a current employee (moving from a non-sworn position to a sworn position) can first perform the new duties. Failure of a drug test will disqualify an applicant for employment. Human Resources will schedule an acceptable time, preferably no more than 3-4 working days prior to start date, with the potential employee. The potential employee will be responsible for getting themselves to the test collection site on the scheduled date and time. Once negative results are received, Human Resources will notify the department to proceed with the hiring process. If positive results are received, Human Resources will notify the potential employee that the employment offer has been rescinded.

B. Reasonable Suspicion Testing

1. All sworn officers will be tested for alcohol and/or controlled substances and/or illegally used drugs when there is reasonable suspicion of on-duty use or impairment. Examples of reasonable suspicion include, but are not limited to the following:
 - a. observable phenomena, including but not limited to direct observation of drug or alcohol use or possession and/or the physical symptoms of being under the influence of a drug or alcohol such as the odor of an alcoholic beverage;
 - b. a pattern of abnormal conduct or erratic behavior;
 - c. arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
 - d. information provided by reliable and credible sources or which is independently corroborated; or
 - e. newly discovered evidence that the employee has tampered with a previous alcohol or drug test.
 - f. adequate documentation of unsatisfactory work performance or on-the-job behavior.
 - g. physical signs and symptoms consistent with prohibited substance use.
 - h. evidence of the manufacture, distribution, dispensing, possession or use of controlled substances, drugs, alcohol or other prohibited substances.

- i. occurrence of a serious or potentially serious accident or incident that may have been caused by human error.
 - j. Flagrant disregard or violations of established safety, security or other operating procedures.
2. Although reasonable suspicion testing does not require certainty, mere hunches alone are not sufficient to meet the standard for a test.
3. If an employee is suspected of using or being impaired by alcohol, controlled substances, or illegal drugs in violation of this policy, the appropriate supervisor will gather all information, facts, and circumstances leading to and supporting this suspicion and will present those for concurrence with another supervisor. Concurrence may be from the Chief of Police, Assistant Chief of Police, Captain, Lieutenant, Sergeant, Corporal or a representative from Human Resources.
4. When there are indications that an employee has been affected by the use of an intoxicant while on duty, or has reported to duty with the odor of alcoholic beverages on his/her breath, the employee shall be required to immediately submit to tests for intoxicants, including, but not limited to, a breath alcohol test. The employee has the right to have a witness, the test will not be delayed more than twenty (20) minutes in the event a witness is requested.
5. The employee shall remain on duty, but shall not be allowed to operate a vehicle or perform job functions until the circumstances are evaluated, and the supervisor receives concurrence.
6. Employees who are subject to reasonable suspicion testing shall be transported to and from the collection facility by a supervisor.
7. Alcohol testing will be conducted by an HPD Supervisor.
8. The appropriate supervisor will, within 48 hours, prepare a written report detailing the circumstances that formed the basis to warrant the testing. This report should include the appropriate dates and times of reported alcohol or drug related incidents, reliable/credible sources of information, rationale leading to the test, and the action taken. All documentation related to the determination shall be forwarded to Human Resources.

C. Post-Incident Testing

1. Employees involved in critical incidents, on-the-job accidents, or who engage in unsafe on-duty job-related activities that pose a danger to themselves or others or the overall operation of the Department may be subject to testing. The Chief of Police or designee may initiate testing when such circumstances involve:
 - a. Death; or
 - b. Serious bodily injury requiring immediate medical treatment away from the scene; or
 - c. Disabling damage* to one or more motor vehicles, requiring towing or other method away from the scene;
 - d. Damage to government or private property estimated in excess of \$1,500; or
 - e. At the request of the employee.

**Disabling damage--damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs. Includes where the vehicle could have been driven, but would have been further damaged if so driven. Excludes damage that can be remedied temporarily at the scene of the accident without special tools or parts; tire disablement without other damage even when no spare is available; headlamp or tail light damage, damage to turn signals, horn or windshield wipers.*

2. An employee subject to post-incident testing shall remain immediately available for up to two (2) hours for such testing, or the Department may consider the employee to have refused to submit to testing.
 - a. If there were extenuating circumstances that kept the employee from submitting to a test within 2 hours after the incident, the Chief of Police or his designee in coordination with the Human Resource Director or designee shall evaluate those circumstances and make the final determination as to whether or not it will be deemed a refusal.
 - b. An employee will be subject to call-in for up to 24-hours following the incident for testing if a test was not conducted within the initial two-hour period.
 - c. An employee subject to post-incident testing shall not consume alcohol or drugs, either legal or illegal, prior to the testing. Exceptions may be made for previously prescribed maintenance medications and/or medications administered to treat any personal injury.
3. If a test under this provision is not administered within two (2) hours of the occurrence, the supervisor shall document the reason(s) why it was not promptly administered. If more than eight (8) hours pass, then no alcohol test will be administered. If more than twenty-four (24) hours pass, no drug test shall be administered. If either test is not completed, the supervisor shall document the reason(s) why. The documentation shall be forwarded to Human Resources.

D. Random Testing

1. Random testing for alcohol and/or controlled substances will be conducted on all sworn officers. The testing will occur during the officer's regular working hours whenever possible.
2. Random tests will be unannounced, unpredictable, and will occur throughout the calendar year.
3. The random selections will be conducted by a designated Human Resources representative using a lottery system conducted by an outside agency. To ensure that all employees who have been designated for testing have an equal chance of being randomly tested, a scientifically valid random process is used.
 - a. The annual number of random alcohol and drug tests will be no more than fifty percent (50%) of the average number of employees subject to random testing.

4. Human Resources will notify the employee's supervisor or designee and provide the name of the individual selected for random testing. The employee shall not be given advance notice of the scheduled testing. Upon notification by the supervisor, employees shall proceed immediately to the testing site.

Supervisors that release testing information such as dates/times prior to authorization may be disciplined.

5. Substances Tested For During Random Testing

a. The Department will use a 9-Panel drug panel and test for the following substances:

- (1) Marijuana;
- (2) Cocaine;
- (3) Amphetamines (Amphetamines and Methamphetamines);
- (4) Opiates (Morphine, Codeine, Heroin, Hydrocodone, Hydromorphone, Oxycodone);
- (5) Phencyclidine (PCP);
- (6) Morphine;
- (7) Barbiturates;
- (8) Benzodiazepines; and
- (9) Propoxyphene

6. Employees should be aware that use of hemp oil products will not be an acceptable defense for a positive Delta-9-tetrahydrocanna-binol-9-carboxylic acid (THC) test.
7. Alcohol shall be confirmed positive if both the initial and confirmation tests reveal a breath alcohol content of .02 grams of alcohol per 210 liters of breath or higher. If the initial and confirmation test is above .02, the employee will be immediately placed on administrative leave without pay status and will be subject to progressive discipline. If the initial and confirmation test is below .02 but confirms the use of alcohol, the employee may be relieved of duty pending an investigation.

E. Return to Duty and Follow-up Testing

If termination of employment is not recommended, the following will occur:

1. After a verified positive test result for drugs and/or alcohol, employees must have a negative test result before returning to work.
2. All employees referred through administrative channels who undergo a counseling or rehabilitation program will be subject to unannounced drug and/or alcohol testing from the time they return to work for a period of five years following completion of such a program.
 - a. Such employees shall be tested at the frequency recommended by the Substance Abuse Professional (SAP) during the first year with a minimum of six (6) tests the first year.

- b. Such testing is distinct from testing which may be imposed as a component of a rehabilitation program.
3. Confirmation of and continuing participation in a rehabilitation program, as recommended by SAP, is required of an employee returning to duty.
4. In some instances, the SAP may require completion of a program prior to returning to duty.
5. The SAP will notify Human Resources when an employee has completed a rehabilitation program.
6. After an employee returns to work during or following a rehabilitation program, a single positive test result for alcohol or a controlled substance or the illegal use of a legal drug or failure to successfully complete the recommended rehabilitation program will result in referral to the Chief of Police and Human Resources Office for investigation. If an employee is found to have violated this part, the penalty shall be termination of employment.

VII. TEST PROCEDURES

- A. All urine tests are collected and stored as sealed split samples. If the test results of a primary drug test are positive, the employee may request through the MRO (within 72 hours of notice of the initial test result) that an additional test be conducted. The test will be done on the split sample that was provided at the same time as the original sample, but will be analyzed at a different testing DHHS-certified laboratory. All costs for such testing are paid by the employee, after testing is complete, unless the second test invalidates the original test. Any requests to the MRO after 72 hours of notice of the initial test result will only be accepted if the delay was due to documentable facts that were beyond the control of the employee.
- B. Employees subject to testing shall comply with all requirements of the testing process and personnel. Employees will complete all requirements of initial and follow-up tests.

Failure to do so will result in disciplinary action the same as if the test was verified positive. For alcohol testing, failure to do so will result in disciplinary action the same as if the test was verified positive for an alcohol concentration of .02 or above.

C. Procedures for Alcohol Testing

1. All alcohol tests will be breath testing only.
2. The test will be administered by an HPD supervisor, the same procedures will be used as collecting an evidentiary test in a criminal case. As described above, the employee may request a witness.
 - a. If the employee has any concerns following the testing process, the employee should advise the employee's supervisor or Human Resources.

D. Procedures for Drug Testing

1. An employee will be verbally notified by a supervisor that he/she has been chosen for a random drug test.
2. The employee will report immediately to the collection site.
3. The employee will strictly follow all directions from collection site personnel before, during, and after collection.
4. Upon arrival at the collection site, the employee will show photo identification. Acceptable identification includes an actual Montana driver's license or Departmental ID.
5. The employee will remove outer garments, such as a jacket or coat. The employee will not be required to remove clothing such as a shirt and pants, and will not be required to put on a hospital gown. All personal belongings, such as a bag or purse, must remain with the outer garments.
6. An employee subject to testing for controlled substances or illegally used drugs under this policy shall be permitted to provide urine specimens in private and in a restroom stall or similar enclosure so that the employee is not visually observed while providing the sample except under circumstances described below.
7. Collection site personnel may be within hearing range so they can confirm the sample was physically produced at that time.
8. The employee is encouraged to observe the entire collection procedure.
9. Collection site personnel may require the employee to sign forms.
10. If the employee has any concerns following the testing process, the employee should advise a supervisor at the collection site, the employee's supervisor, or Human Resources.

VIII. Special Testing Procedures

A. Direct Observation Testing

1. Collection site personnel of the same gender as the employee tested may observe the employee provide the urine specimen when:
 - a. Collection site personnel may have reason to believe that a particular individual has altered or substituted the specimen, or
 - b. The employee has previously tampered with a sample, or
 - c. The employee has equipment or implements capable of tampering with or altering urine samples.

2. Direct observation shall not be the norm.
3. In addition to the procedures listed under Random Testing, the procedure will include direct inspection of the employee with shirt lifted and trousers lowered.
4. Collection site personnel will directly observe the urine leaving the body and entering the collection container.

B. Specimen Temperature Outside of Range

If the temperature of the specimen is outside the range of 32-38 degrees C / 90-100 degrees F or shows signs of contaminants, then there is reason to believe the donor may have altered or substituted the specimen, and another specimen shall be collected for testing under the direct observation of a representative from the collection facility.

C. Dilute Sample

1. If the Medical Review Officer (MRO) notifies the City that an employee's test was positive and dilute, the test will be treated as verified positive. The employee shall not be required to submit another test.
2. If a test is reported as a negative test that was dilute:
 - a. The MRO may direct employer to conduct a recollection under direct observation (i.e., because creatinine concentration was equal to or greater than acceptable range). Recollection must be performed immediately or;
 - b. The employee will be required to take another test immediately. Such recollection will not be directly observed.
 - c. Result of the test will be treated as the result of record.
 - d. If the result of the second test is also negative and dilute, the employee will not be required to take an additional test (unless 2nd test was not observed and MRO determines a direct observed sample is required). The result will be recorded as negative. If the employee declines to take a test as required above, it will be considered a test refusal.

D. Insufficient Urine Specimen Volume

45mL of urine is required to constitute sufficient testing volume. If the employee does not provide sufficient volume, the following "shy bladder" procedures will apply. If the employee declines to complete or does not complete these procedures, it will be treated as a test refusal.

For purposes of this section, permanent or long-term medical conditions are those physiological, anatomic, or psychological abnormalities documented as being present prior to the attempted collection, and considered not amenable to correction or cure for an extended period of time, if ever. Examples would include destruction (any cause) of the glomerular filtration system leading to renal failure; unrepaired traumatic disruption of the urinary tract; or a severe psychiatric disorder focused on genito-urinary matters. Acute or temporary medical conditions, such as cystitis, urethritis or prostatitis, though they might interfere with collection for a limited period of time, cannot receive the same exceptional consideration as permanent or long-term conditions.

Shy Bladder Procedure:

1. The insufficient specimen will be discarded. Specimens may not be combined.
2. Employees will be advised to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a sufficient urine specimen, whichever occurs first. The employee may decline to drink, but will still be required to provide a sufficient urine specimen.
3. The employee shall remain in the testing area under observation during the three hour period.
4. If the employee has not provided a sufficient specimen within three hours of the first unsuccessful attempt to provide the specimen, the collection attempt will be discontinued, and the employer will be notified.
5. The employee will be directed to obtain, within seven calendar days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen.
6. After completing the evaluation, the referral physician must provide a written statement of his/her recommendations and the basis for those to the MRO. Detailed information on the employee's medical condition beyond what is necessary to explain the conclusion must not be in this statement. The MRO will seriously consider and assess the referral physician's recommendations in making a determination about whether the employee has a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. The MRO will notify Human Resources as soon as a determination is made.
 - a. If the employee refuses to obtain the evaluation, the test will be deemed a refusal.
 - b. If the evaluation determines the employee has a medical condition, and the medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine, the test will be cancelled.

- c. If the evaluation determines that the employee's medical condition is a serious and permanent or long-term disability that is highly likely to prevent the employee from providing a sufficient amount of urine for a very long or indefinite period of time, the MRO will conduct a further medical evaluation to determine if there is clinical evidence that the employee is using a controlled substance or illegally using drugs. During this evaluation, a blood test may be required.
- (1) If the medical evaluation reveals no clinical evidence of controlled substance use or illegal use of drugs, the test result shall be negative.
- (2) If the medical evaluation reveals clinical evidence of controlled substance use or illegal use of legal drugs, the test result shall be cancelled. (Because this is a cancelled test, it does not serve the purposes of a negative test, *i.e.*, the employer is not authorized to allow the employee to begin or resume duty, because a negative test is needed for that purpose).
- d. If the evaluation determines that there is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine, the test will be considered a refusal.

IX. Test Refusal

- A. Refusals will result in administrative action the same as if the test was verified positive. In the case of a breath test refusal, administrative action will be the same as if the test was verified in excess of .02.
- B. Employees will be considered to have refused testing if they:
- Refuse/fail to provide a breath or urine specimen; or
 - Refuse to complete all required tests as directed; or
 - Fail to report for a required test at the scheduled time; or
 - Engage in conduct that clearly obstructs the testing process; or
 - Tamper with the test; or
 - Alter or substitute the specimen; or
 - Fail to provide adequate breath or specimen volume without a verified medical explanation; or
 - Leave the scene of an accident without just cause prior to submitting to a test; or
 - Leave the collection facility prior to test completion; or
 - Fail to permit an observed or monitored collection when required; or
 - Fail to take a second test when required; or
 - Fail to undergo a medical examination when required; or
 - Fail to sign Step 2 of alcohol test form; or
 - Once test is underway, fail to remain at site and provide a specimen.

X. Deferral of Testing

- A. An employee selected for random drug and alcohol testing may obtain a deferral of testing if Human Resources concurs that a compelling need necessitates a deferral on the grounds that the employee is:
 - 1. In a leave status (sick, vacation, comp. time, out of area training, administrative leave, etc.); or
 - 2. In official travel status away from the test site or imminently embarking on official travel scheduled prior to testing notification.
- B. An employee whose random drug and/or alcohol test is deferred will be subject to an unannounced test within the following 60 days.

XI. Positive Drug Test Result Procedure

- A. The applicant or employee will be contacted by the Medical Review Officer (MRO) and have the opportunity to provide an explanation of a positive result, which may include providing medical documentation of lawful use of a prescription or over-the-counter medication.
- B. If the MRO determines there is no justification for the positive result, such result will then be considered a verified positive test result.
- C. The Medical Review Officer shall notify Human Resources of a verified positive test result.
 - 1. The MRO will notify the employee of the verified positive test result. Once notified, the employee may within 72 hours of notification request the split specimen be tested by another DHHS certified lab.
 - 2. If the employee is unable, for a legitimate reason, to make this request within the 72 hour period, the split specimen test will automatically be conducted.
 - 3. The employer shall pay for the additional test if the additional test results are negative. The employee shall pay for the additional tests if the additional tests are positive.

XII. FINDINGS AND ADMINISTRATIVE ACTION:

- A. An employee may be found in violation of this policy on the basis of any appropriate evidence including, but not limited to:
 - 1. direct observation of prohibited alcohol use or illegal drug use including misuse of prescription medication; or

2. evidence obtained from an arrest or criminal conviction for a drug or alcohol related offense; or
 3. a verified positive test result; or
 4. an employee's voluntary admission, unless the employee is meeting the requirements as outlined under the Safe Harbor Referral; or
 5. test refusal.
- B. If an employee is found to be in actual and illegal possession of a controlled substance, illegally used drug, and/or related paraphernalia, he/she may be prosecuted under the applicable state or federal law (refer to Federal Controlled Substances Act Title 21 United States Code, Offenses Involving Dangerous Drugs Title 45 Chapter 9 Montana Code Annotated, and Model Drug Paraphernalia Act Title 45 Chapter 10 Montana Code Annotated.)
- C. An employee may also be subject to criminal sanctions for reckless conduct leading to actual loss of life, injury, or damage to property pursuant to state and federal law.

D. Effects of Positive Drug Testing Results

1. A recommendation to the City Manager for termination of employment will be made if any employee receives a verified positive test for a controlled substance.
2. Any employee receiving a verified positive test for illegally used drugs, i.e., prescription medication or over-the-counter medication, shall be subject disciplinary action up to and including termination. The severity of the action chosen will depend on the circumstances of each case.
3. If recommendation for termination is not made, successful completion of any rehabilitation recommended will be a condition of continued employment.
 - a. The cost of rehabilitation will be the responsibility of the employee.
 - b. Employees may be allowed to use accrued leave (sick leave followed by vacation and/or compensatory leave) to complete rehabilitation until such leave is exhausted at which time the employee may be allowed to go on unpaid leave. Employee is not eligible for donated sick leave.
 - c. The employee remains responsible for successful completion of a SAP designated treatment program, and assertions regarding the effectiveness of a program shall not constitute either an acceptable explanation or excuse for continuing to misuse alcohol and/or drugs or a defense to disciplinary action if the employee does not complete treatment.
4. The Department may initiate action to terminate an employee for refusing to obtain and complete counseling or rehabilitation through an SAP or a state licensed facility as recommended by SAP.

5. The employee must have a negative test result before returning to work.
6. The employee shall be subject to a re-entry agreement.

E. Effects of Positive Alcohol Testing Results

1. When an employee is found to be in violation of the alcohol provisions of this policy, mandatory administrative action will result, such as referral to SAP and disciplinary action up to and including termination. The severity of the action chosen will depend on the circumstances of each case.
2. Any rehabilitation recommended will be a condition of continued employment.
 - a. The cost of rehabilitation will be the responsibility of the employee.
 - b. Employees may be allowed to use accrued leave to complete rehabilitation until such leave is exhausted at which time the employee may be allowed to go on unpaid leave. Employees are not eligible to apply for donated sick leave.
 - c. The employee remains responsible for successful completion of a treatment program, and assertions regarding the effectiveness of a program shall not constitute either an acceptable explanation or excuse for continuing to misuse alcohol and/or drugs or a defense to disciplinary action if the employee does not complete treatment.
3. The Department may initiate action to terminate an employee for refusing to obtain counseling or rehabilitation through an SAP or a state licensed facility.
4. The employee may be subject to a re-entry agreement.
5. Any subsequent positive test for alcohol use will cause the employee to be subject to disciplinary action up to and including termination.
6. Following a verified positive test and after returning to duty, the employee will be subject to unannounced testing for a period of time determined by the SAP.

XIII. RECORDS AND REPORTS

- A. The employee's privacy shall be maintained. All testing information specifically relating to individuals pursuant to this program and any intervention steps, including referral for treatment, counseling or rehabilitation programs, is confidential and shall be treated as such by everyone authorized to review or compile program records.
- B. In order to efficiently implement this requirement and to make information readily retrievable, Human Resources shall maintain all records relating to testing, suspicion of tampering, and any other authorized documentation necessary to implement this policy. Such information shall remain confidential, with only authorized individuals who have a need-to-know having access to them.

- C. The results of a test of an employee for alcohol, controlled substances, or illegally used drugs along with all information, interviews, reports, statements, and memoranda may not be disclosed to an outside entity without the prior written consent of such employee, unless the disclosure is to:
1. the tested employee;
 2. to the Medical Review Officer;
 3. to the SAP in which the employee is receiving counseling or treatment or is otherwise participating;
 4. to Human Resources and/or to any supervisory or management official within the Department and/or City having authority to take, process, or implement adverse personnel action against such employee;
 5. pursuant to the order of a court of competent jurisdiction or where required by the Department to defend against any challenges of adverse personnel action by the City;
- D. Test results with all identifying information removed may be used for data collection and other activities necessary to comply with testing requirements.
- F. Information obtained through testing that is unrelated to the alcohol use, controlled substance use, or illegal use of a drug must be held in strict confidentiality by the Medical Review Officer and may not be released to the employer without the written consent of the employee tested.

XIV. ROLES AND RESPONSIBILITIES:

- A. Employees are expected to report to work drug and alcohol free in order to enable safe and efficient job performance. Employees are expected to engage in activities while on-the-job, while on Department premises, or while in the scope and course of employment, which are appropriate for the working environment and do not compromise the Department's integrity or interest in maintaining a safe, secure alcohol and drug-free workplace. Employees are prohibited from use of controlled substances and the illegal use of drugs while off duty. Employees are prohibited from the use of alcohol off duty that adversely affects the employee's work performance, the safety of the employee or others at work, or the City's regard or reputation in the community.
- B. Supervisor/Command Staff are expected to:
1. Attend training sessions on alcohol misuse, controlled substance misuse, and the illegal use of drugs in the workplace when offered;
 2. When reasonable suspicion is confirmed, initiate an alcohol/drug test as described in this policy;

3. Refer employees to the City's designated Substance Abuse Professional (SAP) under appropriate conditions for assistance in obtaining counseling and rehabilitation upon a finding of alcohol misuse, use of controlled substances, or illegal use of drugs;
4. Initiate appropriate disciplinary action upon a finding of alcohol use, controlled substance use, and/or the illegal use of legal drugs;
5. In conjunction with Human Resources, assist higher-level supervisors and the SAP Administrator in evaluating employee performance and/or personnel problems that may be related to alcohol misuse, use of controlled substances or the illegal use of drugs; and
6. Ensure confidentiality of all information regarding employee testing, disciplinary action and rehabilitation.

C. Human Resources shall:

1. direct and implement this program to ensure it is administered consistently;
2. consult with the Chief of Police or designee in determining appropriate action for situations related to this program; and
3. ensure that all records and information of personnel actions taken against employees with verified positive test results remain confidential and only shared with individuals having a legal right to access.

XV. ADDITIONAL PROVISIONS

Notification of Arrest, Charge, and/or Convictions. Any employee who is arrested for, charged with, and/or convicted of a criminal drug or alcohol related violation must notify the Chief of Police or designee and the Human Resources Director immediately following an arrest, charge, and/or conviction. A conviction, a plea of guilty, a plea of no contest, receiving a suspended imposition of a sentence, and a withheld judgment will all be considered the same as a conviction. This obligation to report applies irrespective of whether adjudication is withheld.

Limitation of Adverse Action. No adverse action, including follow-up testing, may be taken by the employer if the employee presents a reasonable explanation confirmed by the MRO indicating that the original test results were not caused by the use of controlled substances, by alcohol consumption, or by the illegal use of drugs. Reasonableness shall be determined by the Chief of Police or designee and the Human Resource Director or designee. If the employee presents a reasonable explanation confirmed by the MRO, the test results must be removed from the employee's record and destroyed.

Employee's Right of Rebuttal. The employer shall provide an employee or prospective employee who has been tested under any qualified testing program with a copy of the test report. The employee or prospective employee will be given the opportunity to provide notification to the MRO of any medical information that is relevant to interpreting test results, including information concerning currently or recently used prescription or nonprescription drugs.

New Employee Notification. Applicants for police officer positions will be informed about the drug-free workplace policy on the vacancy announcement. During the screening process applicants will be notified of the testing requirements and that appointment to the position is contingent upon a negative pre-employment drug test. Upon hiring, new employees will receive a copy of this policy.

Employee Policy Confirmation Receipt. Employees will be required to sign a statement that confirms that he/she has received a copy of the alcohol and drug-free workplace policy. The statement will be maintained in the employee's personnel file.

Cost. Testing must be at the employer's expense. If an employee contests the verification test results, another test will be conducted. If that test is positive, the employee will be responsible for payment. If it is negative, the employer will be responsible for payment. Employees will be compensated at the employee's regular rate, including benefits, for time attributable to the testing program.

Voluntary Testing. Employees may volunteer for testing as part of a Department investigation. The employee must cooperate with all parts of the test and complete all requirements of collection site personnel.

Association Representation. Employees may have a association representative present during the testing process. The testing shall be delayed no more than 20 minutes to await the arrival of an association representative. If an association representative is not available, testing shall proceed.

XVI. Reservations

Employees who are enrolled in and are participating in, or have completed a supervised rehabilitation program and are no longer engaging in the misuse of alcohol, use of controlled substances, or illegal use of drugs, shall be protected from discrimination and harassment through the Americans with Disabilities Act of 1990. This prohibition does not preclude follow-up testing.

This program is intended to carry out the Department's Alcohol and Drug-Free Workplace Policy. All situations will be handled in accordance with this policy and in consultation with the Human Resources Director or designee. Situations not specified by the policy will be referred to and reviewed by the Chief of Police and Human Resources Director.

The final decision on any discipline or issues with this policy remains with the City Manager.

XVII. Definitions

Adulterant – Adulterating substance or agent aimed to corrupt, debase, or make impure.

Adulterated specimen – A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

Alcohol – means an intoxicating agent in alcoholic beverages, food, or medication; ethyl alcohol, also called ethanol; or the hydrated oxide of ethyl.

Alcohol concentration – The alcohol in a volume of is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath-testing device.

Alcohol Use - The ingesting of any beverage, liquid mixture, or preparation, including any medication, containing alcohol.

Breath Alcohol Technician (BAT) – A person who instructs and assists individuals in the alcohol testing process and operates an EBT.

Cancelled test – A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test. Having a cancelled test does not relieve the employee of the responsibility to provide a test that produces a measured outcome.

Chain of Custody – The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal drug Testing Custody and Control Form (CCF).

Collection site – A place designated by the employer where employees present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs or providing a breath sample to be analyzed for the presence of alcohol.

Confirmation test - In drug testing, a second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite. In alcohol testing, a second test that provides quantitative data of alcohol concentration.

Controlled Substance – means any drug, substance, or precursor included in Schedules I through V as defined by Section 812 of Title 21 of the United States Code (21 USC 812) or any drug, substance, or precursor included within the definition of "Dangerous Drug" in Title 50 Chapter 32 Part 2, Montana Code Annotated (for example, but not limited to: cocaine, marijuana, methamphetamine, and anabolic steroids.) For the purpose of this policy, the term 'controlled substance' does not include the use of prescribed drugs, which have been legally obtained and are being used in the manner and for the purpose for which they were prescribed. The term does not include distilled spirits, wine, malt beverages, or tobacco.

Critical Incident – means any incident in which someone is killed or is seriously injured, such as a police shooting incident.

Dilute specimen – means a urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

Direct observation – means an employee being directly observed while providing a urine sample. The procedure will include direct inspection of the employee with shirt lifted and trousers lowered and will include direct observation of urine leaving the body and entering the collection container.

Employee – means any sworn officer up to and including the Chief of Police.

Employee Assistance Program (EAP) – A program provided by the City of Helena to assist employees and their families in dealing with drug or alcohol dependency and other personal problems.

Employer – means the City of Helena.

Evidential Breath Testing Device (EBT) – Evidential Breath Testing device used to measure breath alcohol concentration.

Illegally Used Drugs / Illegal Use of Drugs – means:

- a. any prescribed drug which is legally obtainable but has not been legally obtained or is not being used for prescribed purposes or in the prescribed manner;
- b. all designer drugs not listed in the Controlled Substances Act (for example, but not limited to: MDA, fentanyl); or
- c. any other over-the-counter or non-drug substances (for example, but not limited to: airplane glue) being used for other than their intended purpose.

Insufficient urine specimen – means less than the 45mL of urine required to constitute a sufficient testing volume. An insufficient specimen will prompt “shy bladder” procedures.

Invalid Drug Test - The result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test, as verified by the MRO.

Legal Drugs - Legally obtained drugs (prescription and non-prescription remedies) used according to directions to alleviate a specific condition.

Medical Review Officer (MRO) – A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer’s drug testing program and evaluating medical explanations for certain drug test results.

Metabolite - The specific substance produced when the human body metabolizes a given drug as it passes through the body and is excreted in urine.

Precursors – means a biochemical substance which can be processed or synthesized into one of the categories of drugs to be tested under this policy.

Non-negative Test – A urine specimen that is reported as adulterated, substitute, positive (for drug(s) or drug metabolites) and/or invalid. Non-negative results are considered a positive test or refusal to test if the MRO cannot determine legitimate medical explanation.

Positive Alcohol Test -The confirmed presence of alcohol in the body system at a concentration of 0.02 or greater as measured by an Evidential Breath Testing (EBT) device. Refusal to take a breath test without a valid medical explanation also constitutes a positive alcohol test.

Positive Drug Test – The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations as verified by the MRO. A refusal to take a drug test without a valid medical explanation also constitutes a positive drug test.

Referral Physician – means a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised when an employee provides and insufficient urine specimen. The MRO may act in this capacity if he/she has appropriate expertise.

Re-entry Agreement – means an agreement between the employer and an employee that allows an employee continued employment under stringent guidelines prohibiting use of drugs and alcohol. An employee's failure to meet the terms of the agreement may result in termination.

Sample – means a breath or urine specimen that is used to determine the presence of a controlled substance, illegally used drug, or a breath alcohol content.

Shy bladder procedure – means the procedure that is followed when an employee does not provide a sufficient urine volume (45mL) for testing.

Split specimen – means, in drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

Substance Abuse Professional (SAP) – A licensed physician or a licensed certified psychologist, social worker, employee assistance professional, or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of drug- and alcohol-related disorders. A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing and aftercare.

Supervisor – means an employee of the Police Department holding the rank of Corporal or above up to and including the Chief of Police and Human Resources Director.

Unannounced test – means a test for alcohol, controlled substances, and/or illegally used drugs previously scheduled and announced only to the employee just prior to the scheduled time, allowing only appropriate time for the employee to immediately proceed directly to the scheduled testing site.

Verified Positive Test Result for Alcohol – means the presence of alcohol in the breath at a level of .02 or greater as confirmed by two tests with evidential breath testing devices and administered by a trained and certified Breath Alcohol Technician.

REFERENCES:

Montana Workforce Drug and Alcohol Testing Act
39-2-205 through 39-2-211 Montana Code Annotated (MCA)

Procedures for Transportation Workplace Drug and Alcohol Testing Programs
Title 49 Part 40 (and Part 382) Code of Federal Regulations (CFR)

Federal Controlled Substances Act
Title 21 United States Code (USC)

Offenses Involving Dangerous Drugs and Procedural Provisions
Title 45 Chapter 9 Montana Code Annotated (MCA)

Model Drug Paraphernalia Act
Title 45 Chapter 10 Montana Code Annotated (MCA)

Controlled Substances Codes
Title 50 Chapter 32 Montana Code Annotated (MCA)

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