

	<b>Responsible Department:</b> Human Resources  <b>Approvals:</b>  Jim Thompson, City Manager DBB Donna B. Brown, Human Resources Director	<b>Effective Date:</b> January 28, 2021  <b>Date Approved:</b> January 28, 2021 January 28, 2021
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**1.0 PURPOSE**

- 1.1. Protect the workplace, employees, and the public we serve by preventing accidents, lack of productivity and problems that could be caused by an employee's use of medications or substances that may impair an employee's ability to safely perform the job.

**2.0 APPLICABILITY**

- 2.1. This Administrative Regulation is applicable to all employees and applicants for employment to include contract workers and volunteers, as applicable.

**3.0 POLICY**

- 3.1. For purposes of this policy, any references to medications or other substances include, but are not limited to, marijuana, alcohol, and any drug or hormone regardless of whether it is a controlled substance and regardless of whether the employee has a prescription.
- 3.2. The City of Scottsdale prohibits unlawful discrimination against employees or applicants based on their status as a medical marijuana cardholder.
- 3.3. Prohibited Conduct:
  - 3.3.1. While on City time, using or being under the influence of a medication or any substance that may impair the employee's ability to safely perform their job without having first discussed the potential side effects of the medication and/or substance with their supervisor. (See AR 325, Drug Free Workplace policy - It is also prohibited to use, possess, sell, trade, and/or offer for sale alcohol, illegal drugs or intoxicants while on City business).
  - 3.3.2. Refusing to submit to a work-related alcohol and/or drug test requested pursuant to this policy.
  - 3.3.3. Interfering with, altering, substituting, adulterating, or in any way affecting, or attempting to affect, the outcome of the alcohol or drug testing procedure or results.
  - 3.3.4. Testing positive for alcohol or illegal substances while performing work-related activities.
  - 3.3.5. Testing positive for alcohol or addictive or controlled substances after being released by a Substance Abuse Professional ("SAP") or Employee Assistance Program (counselor) ("EAP").

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- 3.3.6. Using, possessing or being impaired by marijuana in the workplace or during work hours.
- 3.3.7. Pursuant to Federal Firearms laws and regulations (See 18 USC 922 and advisory ATF letter to all licensees' date September 21, 2011), using medical marijuana at any time when authorized to carry a firearm or ammunition as part of their duties with the City of Scottsdale.

### **4.0 PROCEDURES**

#### **4.1. Types of Alcohol and Controlled Substance Testing**

- 4.1.1. Sworn police employees involved in an officer involved shooting are required to submit to alcohol and drug tests.
- 4.1.2. All City employees are subject to reasonable suspicion testing, return-to-duty testing, post-accident testing, and follow-up testing as reasonably necessary.
- 4.1.3. HR will be responsible for authorizing testing, in conjunction with applicable department management, and the City Attorney's office.

#### **4.2. Pre-employment Testing for Internal and External Applicants**

- 4.2.1 All applicants for City employment that are hired or promoted into a safety/sensitive position are subject to pre-employment drug testing, within one business day of acceptance of the job offer, as a condition of employment or pursuant to 4.2.3 below.
- 4.2.2 New hires and employees cannot begin work until all pre-employment requirements are passed.
- 4.2.3 Pre-employment tests for out of state applicants must be arranged by contacting HR staff. The time limits for testing and hiring set forth in this subsection may be modified by the HR director, when the director believes that the modifications are reasonably necessary given the hiring circumstances for a specific position and it is in the best interests of the City.
- 4.2.3 If an applicant has a verified positive test result, HR staff will notify the department supervisor of the positive test result. If a violation of AR 325 – Drug Free Workplace, the conditional job offer will be rescinded. Other positive test results will be reviewed for appropriate action, which may include rescinding the job offer.
- 4.2.4 The Medical Review Officer (MRO) and HR will contact the employee or applicant if the result is a verified positive result.
- 4.2.5 Any internal applicant or employee that tests positive on a pre-employment drug or alcohol test will not be placed in the job assignment and may be subject to discipline up to and including termination.

#### **4.3 Reasonable Suspicion Testing**

- 4.3.1 An employee will be required to submit to an alcohol and/or drug test when the City has reasonable suspicion to believe that the employee has violated the prohibitions of this regulation. The City's determination that

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reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, and speech or body odors of the employee. The observations may include indications of the chronic and withdrawal effects of controlled substances.

- 4.3.2 If a supervisor, or the supervisor's designee, suspects an employee is impaired, the following actions must take place:
  - 4.3.2.1 The supervisor will immediately stop the employee from performing their current job duties to ensure the safety of the employee and other employees.
  - 4.3.2.2 The supervisor, along with another supervisor/manager, will meet with the employee to ask questions about his/her behavior. Each supervisor or manager will individually document their own observations, involvement and conversation with the employee. The written observation records must be sent to HR by the end of business day of or the morning following the observed behavior or before the test results are released, whichever is earlier.
  - 4.3.2.3 A supervisor must have approval of the HR director, or designee, prior to requiring an employee to submit to a drug or alcohol test. If a decision is made not to require testing, the HR director, or designee, will discuss with the supervisor the appropriate action, if any, to take with the employee.
- 4.3.3 If HR authorizes testing, the supervisor will notify the employee of the required tests. Refusal of an employee to submit to a required test may result in the termination of the employee.
- 4.3.4 The supervisor, or designee, will immediately take the employee to an authorized collection site. HR will notify the laboratory and/or collection site of the authorized tests.
- 4.3.5 The supervisor, or designee, will remain at the collection site while the required test is being conducted and then ensure the employee is transported home.

### **4.4 Random Testing**

- 4.4.1 Sworn police employees assigned to the drug enforcement agency or drug enforcement units will participate in a random selection drug test monthly.
- 4.4.2 Other limited job classifications may be subject to random testing, depending on the requirements of the job as authorized in conjunction with HR, and the City Attorney's office (i.e., jobs that require a Commercial Driver's License or other applicable requirements). See AR 323 – Commercial Driver's License, and AR 322 - Compliance with Department of Transportation Regulations Regarding Drugs and Alcohol.

### **4.5 Return to Duty Testing**

- 4.5.1 If an employee has engaged in conduct prohibited by this regulation, the employee may be required to participate in SAP or EAP as a condition of

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continued employment if authorized by HR and applicable department management in consultation with the City Attorney's office.

- 4.5.2 If the employee complies with recommended treatment, has been released by the SAP to return to work, and has been approved to return to work by HR and department management, the employee may be required to undergo a return to duty drug or alcohol test and a controlled substances test with a verified negative result before reporting to work.
- 4.5.3 Once the employee returns to duty, the employee may be subject to follow-up testing. Follow-up tests will be coordinated through Human Resources in consultation with the City Attorney's office.

### **4.6 Post-Accident Testing**

- 4.6.1 Employees involved in an accident during work hours, whether in a City or personal vehicle may be subject to drug and alcohol testing immediately following the accident.

### **4.7 Substances Tested**

- 4.7.1 Any medication or substance that causes or could cause impairment can be tested, including but not limited to: alcohol, amphetamines, barbiturates, benzodiazepines, cocaine, cannabinoids, methadone, opiates, phencyclidine, ecstasy, and propoxyphene.

### **4.8 Collection and Testing Procedures**

- 4.8.1 The only drug and alcohol tests that will be accepted are those from collection and testing organizations authorized by the HR.

### **4.9 Inability to Provide Samples**

- 4.9.1 If an employee is unable to provide an amount of breath enough to permit a valid breath test or urine to provide a valid urine test, the employee may be deemed to have refused testing. The only acceptable reason for an employee to not provide an adequate sample is a medical condition; this determination requires a medical evaluation by a City-approved medical professional. If the medical professional determines that a medical condition does not exist that would cause the inability to provide an adequate sample, the employee shall be deemed to have refused testing.

### **4.10 Reporting Test Results**

- 4.10.1 Alcohol breath test results are immediately known at the time of testing. HR will be contacted by the authorized testing facility as soon as a confirmed positive alcohol test result has occurred. The collection site or laboratory will provide a copy of the alcohol test results to the employee at the conclusion of the test. A "dilute" sample is a specimen with creatinine and specific gravity values that are lower than expected for human urine. For results reported as "negative and dilute," HR will direct the applicant/employee to immediately take a second test. If the second test is also dilute, the job offer will be rescinded, and the employee may have further disciplinary actions.

- 4.10.2 The City will release required test results for a minor (under the age of 18) to the minor's parent or legal guardian who has signed the release to have the minor applicant/employee tested and has submitted a written request

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to HR for the results. If the City does not receive a signed consent form for pre-employment testing, this will constitute a refusal to test.

### **4.11 Consequences of Positive Results**

#### **4.11.1 Pre-employment testing**

- 4.11.1.1 Job offers for safety/sensitive positions are contingent upon test results. An external applicant who tests positive for illegal substances or alcohol, will have their conditional job offer rescinded. An internal applicant will be immediately removed from safety-sensitive duties, will not be promoted/transferred and will be subject to disciplinary action, up to and including termination of City employment.
- 4.11.1.2 An applicant who tests positive for medications or substances other than those described above will be allowed an opportunity to provide a legitimate medical explanation such as a prescription. However, the presence of a prescription does not prohibit the City from rescinding the conditional job offer and in the case of an internal applicant, taking other disciplinary action up to and including termination of City employment.
- 4.11.1.3 A job applicant who interferes with, alters, substitutes, adulterates, contaminates, or in any way affects, or attempts to affect, the outcome of the drug test procedures will not be hired for City employment.

#### **4.11.2 Post-Hire Testing**

- 4.11.2.1 An employee who refuses to submit to a required test may be terminated from City employment.
- 4.11.2.2 An employee who engages in prohibited conduct will be removed immediately from their safety/sensitive and/or driving position and will be subject to disciplinary action up to and including termination of City employment.
- 4.11.2.3 An employee who has knowledge of another employee who has violated this administrative regulation and does not report it immediately to management or HR will be subject to disciplinary action up to and including termination of City employment.
- 4.11.2.4 An employee who is convicted of any federal, state or local crime involving controlled substances will notify their immediate supervisor no later than five working days following the conviction. Failure to give timely notice of the conviction may be grounds for termination of City employment. An employee who is convicted of violating any criminal drug statute may be subject to disciplinary action up to and including termination of City employment.
- 4.11.2.5 Verified positive test results and related administrative and/or criminal information will be reviewed on a case-by-case basis by management, HR and the City Attorney's office to determine appropriate disciplinary action up to and including termination of City employment.

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4.11.2.6 All City property, equipment and vehicles are subject to inspection by the City at any time. Any employee who fails to cooperate with inspections under this regulation will be subject to disciplinary action up to and including termination of City employment.

### **4.12 If Treatment/Rehabilitation is Approved**

- 4.12.1 HR staff will contact the employee and advise him/her of the test results. If discipline is warranted, division management and HR staff will meet with the employee to discuss the disciplinary action and future expectations.
- 4.12.2 HR staff will contact the employee to provide SAP contact and location information. The employee must contact the SAP to set up an appointment and sign the SAP medical release. The SAP will evaluate the employee, recommend a treatment program and will report program performance results to HR staff.
- 4.12.3 The employee must keep in regular contact and forward required paperwork to HR staff.
- 4.12.4 When the employee is released from the SAP, HR staff and division management will determine a return to work date.
- 4.12.5 HR staff will notify the employee of the required return to duty drug and alcohol tests and the scheduled return to work date, pending the results of the test. After verified tests results have been received, HR will notify management and the employee that return to work is authorized.

### **4.13 Authorized Laboratory**

- 4.13.1 The City of Scottsdale uses a Department of Health and Human Services ("DHHS") certified laboratory, for all controlled substances tests for all City employees. The DHHS certification standards and the proficiency testing requirements are the most stringent laboratory accreditation program standards and requirements available in analytical forensic toxicology for urine drug testing.
- 4.13.2 Certified laboratories have a quality assurance program, which encompasses all aspects of the testing process, including but not limited to specimen acquisition, chain of custody security and reporting of results, initial and confirmatory testing and validation of analytical procedures.

### **4.14 Cost of Testing**

- 4.14.1 The City will pay for the drug and alcohol tests (requested or required).

## **5.0 RESPONSIBILITIES**

### **Human Resources (HR)**

- 5.1. HR is responsible for the administration and training of this AR.

### **Supervisors**

- 5.2. Supervisors, who have actual knowledge or reasonable suspicion of a violation of this administrative regulation, shall not permit the employee to continue performing their job and/or safety/sensitive duties, and immediately notifying HR.

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### Employees

- 5.3. It is the employee's responsibility to comply with this administrative regulation.
- 5.4. An employee who voluntarily self-discloses to their supervisor and/or City representative that they have an alcohol and/or substance abuse problem will be provided assistance through the EAP. Upon successful release from the EAP, the employee must complete a return to duty drug and alcohol test with a verified negative result to be allowed to return to work.

### Medical Marijuana

- 5.5. Under no circumstance should any employee work while under the influence or use of marijuana or have a detectable level while in a safety/sensitive position.
- 5.6. It is the responsibility of the employee to provide written notice to human resources of his/her intent to use medical marijuana under the provisions of the Arizona Medical Marijuana Act. The City will make a reasonable attempt to reassign the employee to a non-safety sensitive position or place on paid or unpaid leave during the duration of the legal medical marijuana treatment. Failure to notify the City of the legal use of medical marijuana and a subsequent positive result on any drug test (post-accident, random, or reasonable suspicion) will result in disciplinary action up to and including termination.

### Prescription Drugs or Over the Counter Medication

- 5.7. An employee under the treatment of a physician will advise the physician of the kind of work done by the employee and the essential functions of the job. Each employee is responsible for discussing the effects of taking prescribed medication(s) or over-the-counter medication(s) with the prescribing physician to determine whether they may adversely affect the employee's ability to safely perform their job functions. An employee using medication or prescribed drugs that may affect job safety shall notify their supervisor prior to performing any job functions. Performing job duties while using a medication or any substance that may impair the employee's ability to safely perform their job is prohibited.
  - 5.7.1 Employees in positions that have been designated safety/sensitive (see definitions below) must notify their supervisor if being treated with medications or other substances that could cause impairment or lessen job performance. This notification includes employees who are qualified patients wishing to use medical marijuana. Employees in safety/sensitive positions who are using any prescribed drug that could cause impairment or lessen work performance will be prohibited from returning to work in a safety/sensitive position until the City can reasonably confirm that the employee will not suffer any impairment or lessened work performance while using any prescribed drug. (See ARS 23-493.06 (A) (7)). Any such employee should consult with their supervisor and/or HR about leave or other options that may be available to them during the time period they are unable to perform safety/sensitive duties. DOT safety/sensitive positions (employees in CDL positions) are not able to use medical marijuana under federal law and should refer to AR 323 for additional guidance.

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### **Medical Review Officer (“MRO”)**

- 5.8 An MRO is a licensed physician, who will be responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.
- 5.9. The MRO is responsible for reviewing all employee samples reported by the laboratory as positive, invalid, adulterated or substituted. The MRO conducts an investigation on all positive or suspicious test results.
- 5.10. The MRO contacts the employee directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. The employee will be given the opportunity to present a medical explanation for the result, including legally prescribed medication.
- 5.11. If the MRO is unsuccessful in contacting the employee, the MRO will contact HR staff and ask for assistance in contacting the employee. If the employee does not contact the MRO within 48 hours, the MRO will contact the HR staff member and report a Laboratory Positive result.
- 5.12. If the MRO determines that the laboratory positive test is the result of a medical condition, the MRO will report the test result as a negative test result. If use of a substance, even though not a violation of Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol rules, creates safety or fitness for duty problems, the MRO will report this information to the City's human resources staff member.
- 5.13. If the MRO determines that the positive drug test is not the result of a medical condition and is the result of substance use, the MRO will inform the employee that the City will be notified of a positive test result.
- 5.14. HR will review all test results pursuant to this Policy prior to taking or recommending any action.

### **6.0. OVERSIGHT/REVIEW**

- 6.1. HR will be responsible for the administration and training on this Administrative Regulation.
- 6.2. Employees and supervisors are responsible for complying with this AR.
- 6.3. Employees in violation of this AR are subject to discipline up to and including termination.
- 6.4. Contract workers or volunteers who violate this policy will be released.

### **7.0. DEFINITIONS**

- 7.1. **Applicants:** Potential employees who have received a conditional job offer.
- 7.2. **Controlled Substances:** Drugs whose general availability is restricted; any one of several drugs or other substances which are strictly regulated or outlawed because of their potential for abuse or addiction. Such drugs include those classified as narcotics, stimulants, anabolic steroids, depressants, hallucinogens, and cannabis (marijuana).

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- 7.3. **Controlled Substance/Drug Abuse:** When drugs are used in a manner or amount inconsistent with the medical or social patterns of a culture. While legal pharmaceuticals placed under control in the Controlled Substance Act of 1970 (CSA) are prescribed outside the scope of sound medical practice is drug abuse (defined by the US Drug Enforcement Administration).
- 7.4. **Department of Transportation (DOT):** The Department of the US federal government that coordinates and institutes national transportation programs.
- 7.5. **Depressant:** Any one of various substances that diminish functional activity, usually by depressing the nervous system (alcohol, barbiturates, benzodiazepines).
- 7.6. **Drug:** Any chemical that, when absorbed into the body, alters the functions of both mind and body.
- 7.7. **Illegal Controlled Substances:** Illegal use as defined in ARS 13-3401 definitions under dangerous drugs, marijuana, narcotic drugs and illegal use of prescription-only drugs (which can include taking another person's prescription medication).
- 7.8. **Impairment:** Symptoms that an employee/individual may be under the influence of alcohol, drugs and/or a controlled substance while at work that may decrease or lessen his/her performance of the duties or tasks of his/her position.
- 7.9. **Medical Review Officer (MRO):** Is a licensed physician 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.
- 7.10. **Over the Counter (OTC) Drug:** A drug for which a prescription is not needed.
- 7.11. **Positive Alcohol and Controlled Substances Tests:**
  - 7.11.1. **Alcohol test** – A Breath alcohol concentration of 0.02 or greater is a positive test result or a verified positive test from an MRO.
  - 7.11.2. **Drug Test** – A positive for controlled substances is defined as a verified positive controlled substance test from an MRO under this administrative regulation.
- 7.12. **Prescription:** A qualified medical providers order for the preparation and administration of a drug or device for a patient.
- 7.13. **Refusal:** Instances where an employee shall be considered a refusal include, but are not limited to: failing to report for the test; failing to report for the test in a reasonable amount of time as determined by the HR department; adulterating or diluting the specimen; substituting the specimen with that of another or different specimen; sending an imposter; refusing to sign the required forms; or refusing to cooperate in the testing process in such a way that prevents completion of the test.
- 7.14. **Safety/Sensitive Position:** Safety/sensitive positions that are required to perform job-related functions in which the City believes could directly affect the safety, health, or well-being of the employee or others, to include but not limited to: 1) operating, maintaining or repairing motorized vehicles or equipment, or machinery; 2.) responsible for handling or maintaining firearms; 3) responsible for handling and working with hazardous chemicals and/or materials; 4) responsible for accessing criminal justice information; 5) preparing or handling food or

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medicine, 6) responsible for treating or delivering drinking water, 7) working in any occupation regulated by Arizona Revised Statutes Title 32; All other job classifications not identified above that should also be considered safety/sensitive will be reviewed in collaboration with HR, City Attorney's Office, and the Division/Department Director before a final decision is made.

- 7.15. **Substance Abuse Professional (“SAP”)**: A vendor that is trained and will make recommendations concerning education, treatment, follow-up testing and aftercare for referred employees.

### **8.0 RELATIONSHIPS TO ADOPTED POLICIES AND ORDINANCES**

- 8.1 Administrative Regulation #125 – Authorization and Operation of City Owned and Leased Motor Vehicles
- 8.2 Administrative Regulation #322 - Compliance with Department of Transportation Regulations Regarding Drugs and Alcohol
- 8.3 Administrative Regulation #323 – Commercial Driver License
- 8.4 Administrative Regulation #306 – Contract Workers
- 8.5 Administrative Regulation #308 – Citywide Volunteer Program

### **9.0 REVIEWED/AMENDED DATE(S) AND NOTES ON SIGNIFICANT CHANGES:**

- 9.1 Original Effective Date December 2, 2003, AR 324 – Substance Abuse
- 9.2 Amended May 2011:
  - 9.2.1 Clarification on self-disclosure.
  - 9.2.2 Clarification of self-referral.
  - 9.2.3 Inclusion of clarification on CDL portions.
  - 9.2.4 Responsibilities of DER.
- 9.3 Amended November 2015, updated title to AR 324 – Medication and Substance Abuse:
  - 9.3.1 Inclusion of Medical Marijuana
  - 9.3.2 Clarified definitions
  - 9.3.3 Moved CDL information to AR 323 – Commercial Driver's License
  - 9.3.4 Moved Drug-Free Workplace information to AR 325 – Drug-Free Workplace
- 9.4 Amended January 28, 2021:
  - 9.4.1 Included the recreational use of marijuana due to the passing of Prop 207.
  - 9.4.2 Adding the reference to Administrative Regulation #322 - Compliance with Department of Transportation Regulations Regarding Drugs and Alcohol.