

DRUG AND ALCOHOL FREE WORKPLACE

Revised November 2021

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A. PURPOSE

This Section has been established to support the City's goals of: (1) assuring employees report to work fit for duty and able to safely and effectively perform their work duties, (2) fostering a workplace that is safe, productive, and free from the effects of unlawful drug and alcohol use and activity, and, (3) to reasonably protect City assets.

This Section establishes our drug and alcohol free workplace standard, communicates what is expected of employees, and identifies initiatives the City uses to monitor and enforce the policy.

This Section provides information on our Employee Assistance Plan (EAP)/Voluntary treatment program and other matters that may arise.

This Section provides procedural information regarding Tooele City's limited drug and alcohol testing program of safety-sensitive employees ("company authority testing") as well as our testing of CDL-required employees ("DOT required testing").

B. POLICY

1. Employees are to report to work fit for duty and able to safely and effectively perform their work duties.
2. Employees may not unlawfully use or be impaired/under the influence of drugs or alcohol while on duty or while operating a City vehicle after hours.
3. Employees may not engage in illegal activity while on duty nor use City equipment, facilities, or resources as part of illegal activity such as the unlawful sale, purchase, transfer, manufacture, dispense, possession, storage, or distribution of alcohol, drugs, or paraphernalia.

To maintain a positive public perception, employees may not use a City vehicle or equipment to patron a liquor store or establishment deemed a bar, nor may alcohol be stored in City equipment, facilities, or resources.

City approved exceptions include, but are not limited to:

- Employees may possess paraphernalia in the workplace that is required for their lawful use of prescriptions (i.e. needles for injections of prescriptions) and provided the employee takes prudent safety measures to prevent potential for injury to another person (i.e. sharps container disposal).
- Employees may possess drug paraphernalia in performance of their work duties such as cleaning up needles.
- Non-CDL drivers may have and use alcohol-containing products that are not

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designed for consumption such as hand sanitizer and disinfecting products.

- Police department employees may be exempt from policy requirements in performance of official police business and in compliance with police department policies & procedures.
- Authorized golf course staff may sell, purchase, transfer, dispense, possess, store and distribute alcohol for patron consumption when part of their job duties.

4. Use of Prescriptions & Over the Counter Drugs

Employees may not unlawfully use or misuse prescriptions, including medical cannabis, and over the counter drugs while on duty, while on City premises, or in the workplace.

Employees may lawfully use prescribed or over the counter drugs, including medical cannabis, provided the use does not adversely affect their fitness for duty and/or their ability to safely and effectively perform their work duties.

Any employee lawfully taking a prescribed or over the counter drug are expected to consult with their prescribing physician and/or pharmacist to determine whether the drug has the potential to adversely affect their fitness for duty and ability to safely and effectively perform their work duties. Employees shall use appropriate personnel procedures (i.e. call in sick, use accrued leave, request change of duty, notify supervisor, notify human resources, exercise FMLA rights, request accommodation, etc.) to ensure they do not violate any provision of this policy.

In general, employee's lawful use and possession of **medical cannabis** is handled in the same manner as the lawful use of any other prescribed drug, unless:

- Use of medical cannabis would jeopardize federal funding for the employee's position;
- Use of medical cannabis would jeopardize a federal security clearance required for the employee's position;
- The employee's position is dependent on a license that is subject to federal regulations; or,
- Use of medical cannabis conflicts with any other federal background determination required for the employee's position. This provision restricts CDL drivers' use of medical cannabis due to the Federal DOT testing requirements.

Employees lawfully using medical cannabis, pursuant to Utah State law, are

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subject to the same policy requirements for lawful use of other prescriptions.

Employees are encouraged to carefully consider the risk that **Cannabidiol (CBD) products** may result in a positive drug test in violation of this policy.

Cannabidiol (CBD) products are an unregulated industry and many CBD products contain trace amounts of delta-9-tetrahydrocannabinol (THC), marijuana's main active ingredient. For purposes of this Section, CBD products are not considered an over the counter drug and does not negate a positive drug test.

C. WORKPLACE INSPECTIONS

Tooele City reserves the right to conduct unannounced inspections of the workplace, equipment, facilities, and resources whether used solely by the employee or shared with others. Tooele City recognizes that employees have a reasonable expectation of privacy to be free from unwarranted searches of their personal items such as their personal bags, purses, coats, wallets, etc. This expectation of privacy does not apply, however, if alcohol, drugs, or paraphernalia are in plain view. Tooele City also reserves the right to utilize detection methods including, but not limited to electronic detection equipment and trained animals.

D. FITNESS FOR DUTY EVALUATION/VERIFICATION

Tooele City reserves the right to establish that an employee is fit for duty and able to safely and effectively perform their work duties. This includes, but is not limited to, requiring an employee to produce documentation from the prescribing medical provider assuring that the employee is/was deemed fit for duty. Tooele City also reserves the right to obtain second and third opinions, at the City's expense, and to use resources available under other applicable laws including, but not limited to, the American's with Disabilities Act and Family & Medical Leave Act.

E. EMPLOYEE ASSISTANCE/VOLUNTARY TREATMENT

Early recognition and treatment is important for successful rehabilitation. Employees are urged to seek treatment prior to being identified for testing, and are reminded that treatment and counseling services may be available through the employee assistance program (EAP) and group health insurance plan.

F. CRIMINAL CONVICTIONS & OTHER RELIABLE EVIDENCE

An employee who is convicted for violation under federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing, selling, purchasing, or consuming a controlled substance shall notify their supervisor of the conviction no later than 5 calendar days after the conviction. Convictions are not necessarily disqualifiers from employment. A case-by-case analysis is conducted for workplace safety and job relevancy. An employee who is required to drive a vehicle as an essential function of the job, may no longer qualify for the job where the employee's driver license is suspended or

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revoked due to a drug or alcohol conviction or offense.

Test results generated by law enforcement officers, emergency responders, or health care providers may also be considered by Tooele City for determining policy compliance. For example, an employee is arrested for DUI in their personal vehicle on their way home for lunch. The test results are deemed credible and indicate that the employee was likely to have been under the influence while on duty as the employee had only recently left the workplace.

G. LIMITED DRUG & ALCOHOL TESTING OF SAFETY SENSITIVE EMPLOYEES & CDL DRIVERS

While all employees are required to maintain a drug and alcohol free workplace pursuant to this policy, only certain employees are subject to workplace testing for drugs and alcohol. Tooele City's drug and alcohol testing program applies to safety-sensitive employees ("company authority testing") and CDL-required employees ("DOT required testing").

1. Testing of Safety-Sensitive & CDL-required Drivers

Pre-employment Testing. Pre-employment drug testing is a condition of offers of employment and offers of reassignment to existing employees who have applied for and been offered a new safety-sensitive or CDL-required position. Pre-employment tests for alcohol will not be given.

Random Testing. Random drug and/or alcohol testing is required of employees in safety sensitive positions and/or CDL-required positions. To ensure that employees are selected on a random basis, Tooele City uses a third-party administrator to manage random selections. Employees are subject to random testing anytime they are on duty. If an employee is absent at the time of testing, another employee is selected from the alternate list except for when a police officer or lifeguard is off-duty, they are sent for testing when next at work, or as soon as practical.

Reasonable Suspicion Testing. Reasonable suspicion drug and/or alcohol testing may be required of employees in safety sensitive positions and/or CDL-required positions if a supervisor or company official who has been trained in recognizing the signs and symptoms of drug or alcohol use suspects an employee is under the influence of drugs and/or alcohol while on duty. Testing cannot be required based solely on a guess, hunch, complaint, or tip from another person. The suspicion must be based on specific, contemporaneous, articulable, and documented observations consistent with the signs and symptoms of drug and alcohol use such

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as the following: odors (e.g., smell of alcohol, body odor, urine); movements (e.g., unsteady, fidgety, dizzy); eyes (e.g., dilated, constricted or watery eyes, involuntary eye movements); face (e.g., flushed, sweating, confused or blank look); speech (e.g., slurred, slow, distracted mid-thought, inability to verbalize thoughts); emotions (e.g., argumentative, agitated, irritable, drowsy); actions (e.g., yawning, twitching); inactions (e.g., sleeping, unconscious, no or slow reaction to questions).

When reasonable suspicion testing is warranted, management should relieve the employee from performing safety sensitive work duties and meet with the employee to explain the observations. The employee shall be given an opportunity to offer an explanation of the observations. If, after the explanation, management continues to have reasonable suspicion of drug or alcohol use in violation of this policy, or would need further verification, the employee will be notified of the requirement to undergo a drug/alcohol test. In a rare circumstance where an employee is unconscious and unable to give an explanation or to test, reasonable suspicion testing may not be administered (i.e. as it relates to employment testing, Tooele City cannot catheterize an unconscious employee nor take blood for reasonable suspicion testing). Other means shall be used to address the situation.

Where reasonable suspicion of drug/alcohol use exists, under no circumstances should the suspected employee be allowed to drive to the testing facility or away from the workplace. A member of management is required to transport the employee or arrange for the employee's transportation.

The suspected employee may not perform safety sensitive duties until negative test results are received.

Post-accident/Incident Testing. Post-accident/incident drug and/or alcohol testing is required of employees in safety sensitive positions and/or CDL-required positions under certain circumstances. **Any employee required to be tested but needing medical assistance, must get the needed medical assistance first.** In a rare circumstance where an employee is unconscious and unable to give an explanation or to test, post-accident/incident testing may not be administered (i.e. as it relates to employment testing, Tooele City cannot catheterize an unconscious employee nor take blood for post-accident testing). Other means shall be used to address the situation.

The supervisor at the scene of the accident/incident or receiving information about the accident/incident away from the scene or thereafter, should review the testing criteria and make a good faith decision to test or not test and who is to be tested

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(e.g. testing is overbroad when it includes all employees in a vehicle, especially those whom the facts indicate could not have caused the accident) based on the information available at the time. If a test cannot happen within the established time limit, the supervisor should document the reasons.

Under no circumstances should the employee involved in an accident and subject to post-accident testing be allowed to drive to the testing facility or away. A member of management is required to transport the employee or arrange for other transportation.

Type	When Required	Time Limits
Safety-sensitive Drug Testing Company Authority	1. When there is a reasonable basis for concluding that: <ul style="list-style-type: none"> (a) the employee caused or contributed to an accident that seriously damaged a City vehicle, machinery, equipment, or property making it inoperable and/or resulting in immediate disruption to the work process; (b) the employee received or is likely to receive a moving traffic violation in relation to an accident; and/or, (c) the employee caused or reasonably appears may have caused an accident or incident that resulted in an injury to themselves or another person, requiring off-site medical attention; except that sworn police officers are not subject to automatic post-accident drug and alcohol testing in the instance of an injury to the officer or a suspect, when such injury occurs in the normal scope of their duties or in the course of a suspect's lawful constraint. Sworn police officers are, however, subject to post-accident/incident drug and alcohol testing following any incident deemed to be an officer's use of deadly force whether an injury occurred or not. Note: Deceased employees are not tested.	Within 12 hours, but cannot exceed 32 hours from time of event.
Safety-sensitive Alcohol Testing Company Authority		Within 2 hours, but cannot exceed 8 hours from time of event.
CDL Drivers Drug Test DOT- required	1. When there is one or more fatality; or 2. The driver is cited for a moving violation AND either: <ul style="list-style-type: none"> (a) The vehicle is towed from the scene; or (b) Someone incurs bodily injury with medical treatment away from the scene. Note: If these requirements cannot be met, the employee might still be tested pursuant to safety-sensitive drug or alcohol testing under company authority.	Within 12 hours, but cannot exceed 32 hours from time of event.
CDL Drivers Alcohol Test DOT- required		Within 2 hours, but cannot exceed 8 hours from time of event.

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Return-to-duty Testing/Follow-up Testing. Return-to-duty/follow-up drug and/or alcohol testing may be required of employees in sensitive positions and/or CDL-required positions when administered in conjunction with a City-approved program of return to duty, rehabilitation, counseling, education, and/or treatment. Return-to-duty testing shall be for a period of not less than 12 months, and generally not to exceed 36 months, and generally should be tested a minimum of 6 times in the first 12 months following their return to duty. Return-to-duty/follow-up testing shall be at the employee's expense. This policy does not alter the City's policies on leave or disability.

2. Testing Notice & Sample Collection / Testing Procedures / MRO Verifications

a. Testing Notice

Before performing an alcohol or drug test, the employee shall be notified whether the test is required pursuant to Tooele City's "company authority" testing of safety-sensitive employee or Tooele City's DOT testing of CDL drivers, and whether the test is pre-employment, reasonable suspicion, random, post-accident, or return-to-duty/follow-up testing.

b. Alcohol Testing

Alcohol testing is conducted at a City-designated location/facility and is a breath specimen. Breath specimens will be tested by trained technicians using federally approved breath alcohol testing devices capable of producing printed results that identify the employee. If an employee's breath alcohol concentration is .02 or more, a second breath specimen will be tested approximately 20 minutes later. If an employee's second breath alcohol concentration is at or exceeds .04, the second confirmation test will be used for determination of under the influence. The tests results will be sent to the MRO who verifies the testing process and results, and makes a final determination of the test result.

Under no circumstances should the employee be allowed to drive following a test for alcohol when the second confirmation test result is at or exceed the positive cut off limit. A member of management is expected to transport the employee or arrange for other transportation.

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c. Drug Testing

Drug testing is conducted at a City-designated location/facility and is a urine specimen of required volume. Specimens are provided in private unless they appear to be altered, adulterated, or substituted specimens.

Collected specimens will be split-sample, sent to a federally or state certified laboratory, and tested for:

Testing Authority	Tested for
Safety-sensitive Company Authority	9 Panel Opiates, cocaine, phencyclidine, amphetamines, marijuana, barbiturates, benzodiazepines, propoxyphene, methadone.
CDL Drivers DOT-required	5 Panel Opiates, cocaine, phencyclidine, amphetamines, and marijuana

The laboratory screens all specimens and confirms all positive screens. The laboratory preserves the chain of custody from the time specimens are collected through testing and storage.

The laboratory transmits all positive drug test results to a medical review officer (MRO) retained by Tooele City who offers individuals with positive results a reasonable opportunity to rebut or explain the results prior to reporting test results to Tooele City. An individual has 72 hours from notice of a positive test result to ask the MRO to perform a confirmation test at another federally or state certified laboratory, at the individual's own expense.

3. It shall be a violation of policy and a presumptive positive test if an employee:

- Fails to appear for a drug/alcohol test as requested without a reasonable or verifiable explanation.
- Refuses to submit to an authorized drug/alcohol test without a medically verifiable reason, as determined by the testing coordinator or the person responsible for administering the test.
- Refuses to contact and cooperate with the drug/alcohol testing official or sign related paperwork.
- Substitutes, alters, or tampers with a drug/alcohol test sample.
- Fails to give a sufficient drug/alcohol test sample without a verifiable medical

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condition that impacts the employee's ability to provide a sufficient sample.

- Falsifies or attempt to falsify a drug/alcohol test sample or test result.
- Refuses to report for an evaluation by a substance abuse professional.
- Fails to remain readily available for post-accident testing, if applicable, following an accident.

4. Cancelled Tests & Unique Situations

At times, a problem with a drug test may be identified that cannot or has not been corrected, or which federal regulations require it to be cancelled. In these situations, a cancelled test is reported. A cancelled test is neither positive nor negative.

Additionally, Tooele City recognizes that situations may arise which are not specifically covered by this policy. These may be addressed on a case-by-case basis.

5. Compensation for Testing & Record Keeping

An employee's time spent participating in random, reasonable suspicion, or post-accident drug or alcohol testing is considered paid work time. Individuals participating in pre-employment testing, rehabilitation testing, or return-to-duty testing, whether or not related to a disciplinary or corrective action, is not compensable work time.

All information relating to Tooele City's drug and alcohol testing shall be treated as confidential except as otherwise indicated herein or as provided by law.

H. POLICE DEPARTMENT ALCOHOL LIMITS & POLICY

The Tooele City Police Department may establish lower limits pertaining to alcohol positive tests as identified in their department policies and procedures.

Additionally, at the time this policy revision was approved, sworn law enforcement officers' use of medical cannabis is prohibited pursuant to department policy. However, the Utah State Code regarding medical cannabis was still being evaluated to determine the impact it may have on law enforcement officers. The City recognizes that the Police Department may make changes to their policies that may be more, but not less, restrictive than this City policy.

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I. CONSEQUENCES FOR POLICY VIOLATION OR POSITIVE TESTS

Applicants who refuse to participate in a required drug test or who test positive generally will not be hired.

Employees who violate any provision of this policy may be subject to disciplinary action, up to and including dismissal.

Employees may be referred to a substance abuse professional for initial evaluation at the City's discretion and the City's expense. Recommended rehabilitation, even if imposed as part of discipline, is at the employee's expense. An employee's refusal or failure to submit to an evaluation or to successfully complete the recommended rehabilitation may result in additional disciplinary action, up to and including dismissal.

J. DEFINITIONS – The following definitions are provided for general understanding.

Abuse or Misuse - The possession or use of a controlled substance obtained without a lawful prescription issued to the possessor or user; the use of a controlled substance contrary to the prescription indications; or, the use of alcohol or a controlled substance to a degree which renders the user unfit to safely operate a motor vehicle or to safely perform safety sensitive functions or other job requirements while on duty.

Alcohol - The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols in methyl and isopropyl alcohol no matter how the alcohol is packaged or in what form the alcohol is stored, utilized, or found.

Applicant/Final Applicant/Applied for and Been Offered - An individual who has made written or oral application to become an employee of Tooele City and has been extended a conditional offer of employment; or, an employee who applies for, and is subsequently selected to fill an internal vacancy through a competitive selection process.

City Premises - Buildings, parking lots, grounds, parks, properties, equipment, and vehicles owned or leased by the City, and personal vehicles being used for City business. See workplace.

Commercial Driver License (CDL)/CDL-required Position/Employee - a position requiring the employee possess and maintain a license required by Utah Code §53-3-404, as amended, and/or the Federal Motor Carrier Safety Administration (FMCSA) to operate a commercial motor vehicle.

Confirmation Test –

- For alcohol testing, a second test that provides quantitative data of alcohol concentration in the test subject's body; and,
- For drug testing, a second analytical procedure using a split sample to identify the presence of a controlled substance or substance metabolites, analogs, homologs, or synthetic equivalents in the test subject's body, which procedure is independent of the initial screen.

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Consume/Consumption - To inhale, ingest, inject, or otherwise take into the body. See Use.

Controlled Substance - Those substances defined by the Utah Controlled Substances Act, Utah Code §58-37-4 and §58-37-4.2, as amended, and the federal Controlled Substance Act, 21 United States Code §802(6), as amended. Also referred to herein as “drug” and “drugs.”

Company Authority/Safety-sensitive - Drug and/or alcohol testing program that is established pursuant to the policies and procedures of Tooele City as opposed to DOT-regulations.

Department of Transportation/DOT – See Commercial Driver License

Drug Paraphernalia - Objects used for the consumption of controlled substances. Drug Paraphernalia is further defined to include the definitions in Utah Code §58-37a-3, as amended.

Drug/Drug Testing – See Controlled Substance.

Employee – As used herein this policy, the term employee means the entire workforce, except those identified as not employees pursuant to Section 5 herein this Manual. Within this policy, employees may be further classified as Safety Sensitive Employee/position and Commercial Driver License (CDL)/CDL-Required Employee/Position to differentiate the special and specific provisions relating to permissible drug and alcohol testing of these classes of employees. See Safety Sensitive Employee/Position/Function/Duty and Commercial Driver License (CDL)/CDL-required Position/Employee.

Impaired/Impairment – See Under the Influence

Medical Review Officer - A licensed medical provider who has knowledge of substance abuse disorders and the effects of controlled substance consumption on the human body and has the training to interpret and evaluate drug and alcohol test results.

Possess - To be located on one’s person, in one’s clothing, in one’s immediate vicinity or control (such as, wallet, purse, desk, drawer, locker, vehicle), or in one’s body as evidenced by a positive test result. Includes “constructive possession” as defined by Utah law.

Sample - Any specimen of urine or breath to be used for testing pursuant to this policy.

Safety Sensitive Employee/Position/Function/Duty – See Work Duties.

Employees performing work in which a person performing the position while under the influence may constitute a threat to health or safety of themselves, a co-worker, or the public. Safety sensitive tasks include, but are not limited to: carrying a firearm or weapon; monitoring/inspecting for life-threatening risks to ensure life safety; inspecting buildings, facilities, and equipment for safety to others; having responsibility for performing life-saving or rescue procedures, working with hazardous or flammable materials; responsibilities pertaining to the safety of the City’s water system; having access to extremely confidential information that if compromised could be life-threatening or cause serious repercussion; having access to medicine or controlled substances; and, operating, repairing, maintaining, or

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monitoring heavy equipment and machinery that if compromised could be life-threatening or cause serious harm to the employee or others.

Employees required to hold CDL are also considered safety sensitive employees and may be tested pursuant to DOT regulations and/or company authority.

Employees who are stopped from performing a safety sensitive duty, whether the duty was completed or not, will be deemed to have performed the safety sensitive duty for purposes of this policy.

Split Sample Testing - A method of testing where the tested sample is divided into two similar quantities prior to testing. The first one-half is tested while the second one-half is preserved for a limited time for confirmation or other testing purposes.

Test - The scientific analysis for the presence of drugs and/or alcohol or their metabolites in the human body. Also referred to as “alcohol test,” “drug test,” and “testing.”

Under the Influence - The impaired physical or mental condition of an employee, resulting from the consumption of alcohol or a controlled substance, that causes the employee to be unable to safely operate a motor vehicle or to safely perform safety sensitive functions, including but not limited to an alcohol test result of 0.04 or more grams of alcohol per 100 milliliters of blood or per 210 liters of breath. See Impaired/Impairment

Use – See Consume/Consumption

Work Duties/On Duty - The duties, or the performing of the duties, on behalf of Tooele City, which are contained within an employee’s job description or which are assigned to an employee. Includes being on-call.

Workplace - The workplace includes, but is not limited to, City owned buildings, grounds, and vehicles, and/or any other location where the employee conducts City work during work hours or while on duty. See City Premises.