



# TOWN OF HILLSBOROUGH

## PERSONNEL POLICY

POLICY 208

LAST REVISED 8/1/08

### **SUBJECT: WORKPLACE SAFETY FROM SUBSTANCE ABUSE**

#### **PURPOSE AND INTENT:**

Employees and the Town have a mutual obligation to ensure a safe and healthy work environment. This policy is instituted to assure that the workplace be free of employees whose job performance may be impaired by the abuse of drugs and/or alcohol.

The Town recognizes that drug and alcohol abuse may be considered treatable illnesses and to the extent possible the response to these illnesses may be treatment and rehabilitation. It is recognized that the consumption of alcohol or drugs to the point that employees are unable to perform their jobs safely and effectively cannot be tolerated.

It is recognized that when employees have placed themselves in a situation where their ability to perform their jobs is impaired by drugs or alcohol that it is the responsibility of the Town as the employer to remove such employees from the work environment to prevent the endangerment of the employee, fellow employees and/or the public.

#### **DRUG AND ALCOHOL TESTING**

The Town recognizes employee concerns of personal privacy and that drug or alcohol testing shall be used only in cases where questions of impaired job performance are involved. Adverse action against an employee for off duty conduct shall not be taken unless such conduct directly impairs the employee's on-the-job performance or is restricted by law. In addition to the foregoing applying, Peace Officers may also be subject to an adverse action based upon their lawful off duty, lawful conduct that conflicts with their duties as Peace Officers.

All job applicants who are offered a conditional offer of employment and whose intended position includes responsibility for the safety or security of others will be required to submit to a pre-hire drug test. The Town will not conduct pre-hire alcohol tests.

As detailed below, the Department Head or his/her designee may require current employees to submit to reasonable suspicion drug and/or alcohol tests when it appears that the employee's performance may be impaired by drugs and/or alcohol. Similarly, employees who undergo treatment for substance abuse may be required to submit to return-to-work and follow-up drug and/or alcohol testing as a condition of return to work. Testing in these circumstances will be conducted as appropriate for each individual given his or her circumstances and job duties.

## **PROHIBITED SUBSTANCES**

Drugs shall be defined as those substances whose dissemination is regulated by law, including but not limited to, narcotics, depressants, stimulants, hallucinogens, cannabis and alcohol. This definition includes certain over the counter drugs and/or drugs that require a prescription or other written approval from a licensed physician or dentist for their use. The drugs that are included in these categories are as follows:

- A. Alcohol
- B. Cannabis/marijuana
- C. Cocaine
- D. Heroin
- E. Opium or opiates
- F. Phencyclidine (PCP)
- G. Lysergic acid diethylamide (LSD)
- H. Barbiturates
- I. Amphetamines or methamphetamines
- J. Methaqualone
- K. Mescaline
- L. Glutethimide
- M. Procyclidine
- N. Other controlled substances as defined in California statutes.
- O. A prescription drug for which the employee does have or does not have a current, U.S.-issued, valid personal prescription and which is not authorized or approved for use while operating a motor vehicle or other equipment
- P. Any over the counter drug which may impair job performance and safety

Please note that the use of "medical marijuana" is not permitted by this policy, and that prescriptions obtained abroad may contain drugs that are barred from use in the United States. Employees are responsible for determining whether any medication, no matter how obtained, is lawful for the employee to use in the United States. Employees subject to state Department of Transportation regulations may be suspended from their driving duties if they must use a controlled substance that may impair their ability to drive (even if by prescription) and/or test positive for drugs or alcohol, and may be subject to pre-employment, reasonable suspicion, post-accident, and random drug testing as a matter of state regulation.

## **PROCEDURE**

### **Management Responsibilities**

In the event there is reasonable cause to believe that an employee's job performance may be impaired by drugs or alcohol, the employee's supervisor shall question the employee with regard to the behavior. The supervisor shall directly observe the employee's behavior and document the behavior. Indications of impaired behavior include but are not limited to the following:

- Staggering or irregular gait
- The odor of alcohol on the breath or marijuana about the employee's person or clothes
- Slurred speech
- Dilated or constricted pupils
- Inattentiveness
- Listlessness
- Extreme agitation or perceived inability to be still
- Performance problems
- Illogical speech and thought processes
- Poor judgment or
- Unusual or abnormal behavior

When possible, a second managerial employee shall also observe the employee to verify that there is reasonable cause to believe that drug or alcohol consumption may be involved. A determination shall be made as to whether or not the employee's behavior is impaired to the point of being unable to perform his or her duties effectively and safely. The employee shall be relieved of his or her duties and placed on a suspension with pay status until a clear determination can be made as to the abuse or non-abuse of drugs or alcohol.

If it is concluded that there is reasonable cause to believe that drug or alcohol consumption is involved, the supervisor or appropriate manager shall request that the employee submit to a drug or alcohol test. Failure of an employee to agree to the test(s) may result in disciplinary action. The test(s) must be conducted within a reasonable time period after the observation of the problem behavior as prescribed by law.

If the test is negative, the employee shall be returned to work unless there are other factors that would make a return to work inappropriate. There shall be no loss of pay or benefits. Where appropriate, a signed physician's release may be required by the Town before the employee returns to work.

If the test is positive, the employee may be terminated from employment depending upon the circumstances of the situation. For example, the circumstances that would warrant an immediate termination would include incidents where the employee's impairment resulted in loss of life, serious injury to self or others or the serious loss or

damage of property.

In cases where immediate termination is not warranted, the employee may opt to be placed on unpaid leave. The employee shall be evaluated by a medical examiner and a recommended appropriate treatment shall then be arranged. Where appropriate, the employee shall be referred to a treatment program agreed upon by the recognized employee organization and the Town. Once the inpatient part of the program has been completed, the employee may be re-employed but only with a written release from a physician and a negative return-to-work test. Follow-up testing will be required following the return to work for a period of up to two years (five for commercial drivers) as recommended by the individual's treatment professional.

### **Test Methods**

Persons being tested will be asked to provide a test sample by the collection site person or medical personnel. Procedures for the collection of specimens will allow for reasonable individual privacy. Urine specimens will be tested for temperature, and may be subject to other validation procedures as appropriate. The collection site person and the person being tested will maintain chain-of-custody procedures for specimens at all times.

All drug test samples will be screened using an immunoassay technique and all presumptive positive drug tests will be confirmed using gas chromatography/mass spectrometry (GC/MS). All drug tests will be conducted and confirmed by a laboratory certified by the State of California. Alcohol tests may be conducted using breath or blood and will ordinarily be conducted and confirmed immediately at the collection location. Tests will seek only information about the presence of drugs and alcohol (or their metabolites) in an individual's body and will not test for any medical condition. Alcohol tests will typically be conducted and confirmed at the testing facility and the results provided to the individual immediately. A test showing the presence of .04 percent or more alcohol in an individual's system will be considered a violation of this policy.

Any individual who tests positive for drugs will be so notified by a Medical Review Officer ("MRO") (a health care professional with an expertise in toxicology), and given an opportunity to provide any legitimate reasons he or she may have that would explain the positive drug test. If the individual provides an explanation acceptable to the MRO that the positive drug-test result is due to factors other than the consumption of illegal drugs, the MRO will order the positive test result to be disregarded and will report the test as negative. Otherwise, the MRO will verify the test as positive. The MRO will also review chain-of-custody documents and may review test results reported as diluted, substituted or adulterated, and verify those test results as well. Individuals will be provided with a copy of the notice of their own test results unless they elect otherwise.

An individual who tests positive for drugs may request that his or her original urine sample be sent to an independent certified laboratory for a second confirmatory test, at the individual's expense, although the Town may suspend, transfer or take other appropriate action against the employee pending the results of any such re-test. If the re-test is negative, the original test result will be discarded and the individual reinstated with pay for the time missed (unless a suspension without pay is appropriate under any other Town policy). The Town shall pay for the costs of all tests and medical examinations carried out under this procedure.

An individual's refusal to submit to drug and/or alcohol testing will be considered equivalent to a positive test result as well as insubordination and will be grounds for disciplinary action. Attempts to tamper with, substitute, adulterate, dilute, evade or otherwise falsify a test sample are considered refusals to submit to a test, as is a failure to appear at the testing location promptly after being asked to submit to a test.

The Town shall maintain confidentiality of test results to the extent possible. All records relating to positive test results, drug and alcohol dependencies and employee medical information shall be kept confidential and disseminated to and within Town management only on a need-to-know basis. Such records will be kept in secure files separate from personnel files. Test results will not be released without the written consent of the tested individual, except in a legal or administrative proceeding brought by the individual against the Town or as otherwise may be required by law.

### **Class B License Holders**

Employees subject to Department of Transportation regulations may be relieved of their driving duties if tests yield a positive result. If the employee is prevented from performing an essential duty of his or her position (i.e. driving) for an extended period over 60 work days as a result of a positive test(s) the employee may be subject to termination.

### **Employee Assistance Program**

Any employee may use the confidential services of the Town's employee assistance program in order to obtain assistance with a drug or alcohol program.