

# City of Fort Myers



*City of Palms*

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*City of Fort Myers*  
Human Resources Department  
2200 Second Street  
Fort Myers, Florida 33901  
Phone: (239)321-7073  
Fax: (239)226-0355

## Introduction

The purpose of this policy is to establish a drug and alcohol testing program for employees of the City of Fort Myers.

The City of Fort Myer's drug-free workplace policy is aimed at ensuring zero tolerance to illegal drugs at all times and its alcohol-free policy to zero tolerance under circumstances that affect or might affect the safety and well-being of employees, citizens and others, or that adversely affect or might affect the effective operation of the City. This policy has been implemented in accordance with sections 440.101 and 440.102 of the Florida Statutes or as Florida Statutes may be amended.

The City of Fort Myers is dedicated to assuring fair and equitable application of the procedures for the Drug and Alcohol Testing Program for employee drivers of commercial motor vehicles. Therefore, supervisors/managers are required to use and apply all aspects of this federally mandated program in an unbiased and impartial manner. The specified section has been implemented in accordance with Federal Motor Carrier Safety Administration 49 CFR Parts 300-399, State and Local requirements, titled D.O.T. Drug and Alcohol.

This policy shall be issued to each new employee as part of their employee orientation. Current employees will receive the policy and must sign an acknowledgement of receipt form, which will be filed in his/her personnel file.

The City shall include notice of drug testing on all job postings for positions requiring drug testing. Notice of the City's drug testing policy shall be available in Human Resources and is available for inspection by all employees and job applicants during regular business hours.

This policy applies to all employees, at a minimum, during all "on duty time" - "on duty times" means all time from the moment an employee begins to work or is required to be in readiness to work until the time the employee is relieved from work and all responsibility for performing work. For purposes of this policy, on duty time includes lunch and break periods.



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## CITY OF FORT MYERS

### EMPLOYEE ACKNOWLEDGMENT OF RECEIPT OF DRUG-FREE WORKPLACE POLICY

I, \_\_\_\_\_ (print employee's name), hereby acknowledge that I received the City of Fort Myers' Drug-Free Workplace policy. I acknowledge that I have read and understood the Drug-Free Workplace policy. I acknowledge the Drug-Free Workplace policy is available on the City's intranet (under the Policies & Procedures tab). I also acknowledge that I may request a paper copy of the complete policy from Human Resources.

I agree to abide by the terms of the City's Drug-Free Workplace policy. I understand that it is a condition of my employment to refrain from reporting to work or working with the presence of drugs or alcohol in my body.

I agree that I will notify Human Resources of any drug or alcohol related criminal charge or arrest within five (5) days after such charge or arrest or on the next workday after the charge or arrest if I hold a position that requires driving either a City vehicle or personal vehicle while on City business. I further agree, as a condition of my employment, that I will notify Human Resources of any criminal drug conviction no later than five (5) days after I receive notice of the conviction.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
DATE

Is CDL required for your current position? \_\_\_ YES \_\_\_ NO

If yes, please read and acknowledge: \_\_\_\_\_ Initial

In addition to the DFWP Policy, by initial above, I hereby acknowledge that I received training on the D.O.T. Drug & Alcohol Section. I agree to abide by the terms of all federal, state and local laws.



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## CITY OF FORT MYERS

### CERTIFICATE OF AGREEMENT AND RELEASE FOR DRUG TESTING

I hereby certify that I have received and read the City of Fort Myers' Drug-Free Workplace policy. I hereby consent to submit to drug and alcohol testing at any time requested by the City pursuant to the City's Drug-Free Workplace policy. I hereby authorize and give full permission to have the City's contracted medical provider, their staff, and/or their associates send a specimen of my urine to a laboratory for screening tests for the presence of drugs. I authorize the release of the results of such tests, positive or negative, to a Medical Review Officer selected by the City and to Human Resources.

I understand that failure to comply with a request to submit to a drug and/or alcohol test by an authorized City representative, or that a positive confirmed result from a drug and/or alcohol test may lead to termination of employment.

It is expressly understood that any information given is to be used for the purpose of determining my continued employment. A photocopy of this authorization shall be deemed as effective as the original.

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
APPLICANT'S SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
WITNESSED BY

\_\_\_\_\_  
DATE



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## GENERAL CONTACT INFORMATION

### Contact Information of City Representative:

Human Resources Director  
1820 Hendry Street  
Fort Myers, FL 33901  
Office: (239) 321-7064  
Cell: (239) 672-7175

Safety Officer  
1820 Hendry Street  
Fort Myers, FL 33901  
Office: (239) 321-7074  
Cell: (239) 318-5093

### Contact Information of the City's Employee Assistance Program:

EAP – Synergy EAP Solutions  
1-800-226-7930  
Synergieap.org

### Contact Information of the City's Testing Facilities and Medical Review Officer:

#### PRE-EMPLOYMENT DRUG TESTING

Special Risk & Mandatory Testing  
Monday: Friday 7:30am – 5:30pm  
Saturday: 8:00am - Noon

Arcpoint Labs  
4350 Fowler Street, Suite #2  
Fort Myers, FL 33901  
Office: (239) 931-1036  
Cell: (239) 910-5000

#### RANDOM DRUG TESTING

Special Risk & Mandatory Testing  
Monday – Friday 7:30am – 5:30pm  
Saturday: 8:00am - Noon

Arcpoint Labs  
4350 Fowler Street, Suite #2  
Fort Myers, FL 33901  
Office: (239) 931-1036  
Cell: (239) 910-5000

#### ALCOHOL TESTING

Mandatory Testing (CDL Random)  
Any Reasonable Suspicion Testing

Arcpoint Labs  
4350 Fowler Street, Suite #2  
Fort Myers, FL 33901  
(239) 931-1036  
Cell: (239) 910-5000

**AFTER HOURS DRUG AND ALCOHOL  
TESTING (2:00PM – 9:30AM)**

Any Reasonable Suspicion Testing  
Post Accident

Arcpoint Labs  
4350 Fowler Street, Suite #2  
Fort Myers, FL 33901  
Office: (239) 931-1036  
Cell: (239) 910-5000

**MEDICAL REVIEW OFFICER (MRO)**

All Drug Testing

I3Screen  
David Nahin, MD  
9501 Northfield Blvd.  
Denver, CO 80238  
Office: (877) 585-7366  
Fax: (855) 253-5666

**Substance Abuse Professional (SAP)**

Synergy, EAP Solutions  
Julia Corbett, LCSW, CEAP  
3949 Evans Avenue, Suite 202  
Fort Myers, FL 33901  
Email: [julia@synergieap.org](mailto:julia@synergieap.org)  
Office: (239) 278-7435  
Fax: (239) 278-7439





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## Section 1 – Definitions

- 1.1 “Chain of custody” refers to the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results.
- 1.2 “Confirmation test,” “confirmed test,” or “confirmed drug test” means a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity, and quantitative accuracy.
- 1.3 “Drug” means alcohol, including a distilled spirit, wine, a malt beverage, or an intoxicating liquor; an amphetamine; a cannabinoid; cocaine; phencyclidine (PCP); a hallucinogen; methaqualone; an opiate; a barbiturate; a benzodiazepine; a synthetic narcotic; a designer drug; or a metabolite of any of the substances listed in this paragraph. An employer may test an individual for any or all of such drugs.
- 1.4 “Drug rehabilitation program” means a service provider, established pursuant to section 397.311(33) of the Florida Statutes, that provides confidential, timely, and expert identification, assessment, and resolution of employee drug abuse.
- 1.5 “Drug test” or “test” means any chemical, biological, or physical instrumental analysis administered, by a laboratory certified by the United States Department of Health and Human Services or licensed by the Agency for Health Care Administration, for the purpose of determining the presence or absence of a drug or its metabolites.
- 1.6 “Employee” means any person who works for salary, wages, or other remuneration for an employer, which for the purposes of this policy is the City of Fort Myers.
- 1.7 “Employee assistance program” means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and follow up services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance

program provides diagnostic and treatment services, these services shall in all cases be provided by service providers pursuant to section 397.311(33) of the Florida Statutes.

- 1.8 “Employer” means a person or entity that employs a person and that is covered by the Workers’ Compensation Law, which for the purposes of this policy is the City of Fort Myers.
- 1.9 “Initial drug test” means a sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens, using an immunoassay procedure or an equivalent, or a more accurate scientifically accepted method approved by the United States Food and Drug Administration or the Agency for Health Care Administration as such more accurate technology becomes available in a cost-effective form.
- 1.10 “Job applicant” means a person who has applied for a position with an employer and has been offered employment conditioned upon successfully passing a drug test, and may have begun work pending the results of the drug test. For a public employer, “job applicant” means only a person who has applied for a special-risk or mandatory-testing position.
- 1.11 “Medical review officer” or “MRO” means a licensed physician, employed with or contracted with an employer, who has knowledge of substance abuse disorders, laboratory testing procedures, and chain of custody collection procedures; who verifies positive, confirmed test results; and who has the necessary medical training to interpret and evaluate an employee’s positive test result in relation to the employee’s medical history or any other relevant biomedical information.
- 1.12 “Prescription or nonprescription medication” means a drug or medication obtained pursuant to a prescription as defined by section 893.02 of the Florida Statutes or a medication that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries.
- 1.13 “Public employer” means any agency within state, county, or municipal government that employs individuals for a salary, wages, or other remuneration.
- 1.14 “Reasonable-suspicion drug testing” means drug testing based on a belief that an employee is using or has used drugs in violation of the employer’s policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon:
  - 1.14.1 Observable phenomena while at work, such as direct observation of drug use or of the physical symptoms or manifestations of being under the influence of a drug.
  - 1.14.2 Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
  - 1.14.3 A report of drug use, provided by a reliable and credible source.
  - 1.14.4 Evidence that an individual has tampered with a drug test during his or her employment with the current employer.

- 1.14.5 Information that an employee has caused, contributed to, or been involved in an accident while at work.
  - 1.14.6 Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.
- 1.15 "Mandatory-testing position" means, with respect to a public employer, a job assignment that requires the employee to:
- 1.51.1 Carry a firearm;
  - 1.15.2 Work closely with an employee who carries a firearm;
  - 1.15.3 Perform life-threatening procedures;
  - 1.15.4 Work with heavy or dangerous machinery;
  - 1.15.5 Work as a safety inspector;
  - 1.15.6 Work with children;
  - 1.15.7 Work with detainees in the correctional system;
  - 1.15.8 Work with confidential information or documents pertaining to criminal investigations;
  - 1.15.9 Work with controlled substances;
  - 1.15.10 Undergo an employee security background check pursuant to section 110.1127 of the Florida Statutes;
  - 1.15.11 Perform job assignments in which a momentary lapse in attention could result in injury or death to another person.
- 1.16 "Special-risk position" means, a position that is required to be filled by a person who is certified under:
- 1.16.11 Chapter 633 of the Florida Statutes (Fire Prevention and Control); or,
  - 1.16.12 Chapter 943 of the Florida Statutes (Law Enforcement).
- 1.17 "Specimen" means tissue, hair, or a product of the human body capable of revealing the presence of drugs or their metabolites, as approved by the United States Food and Drug Administration or the Agency for Health Care Administration.

## Section 2 – Procedure

### 2.1 Alcohol Policy

- 2.1.1 Off-duty use of alcohol which adversely affects an employee’s job performance or adversely affects or threatens to adversely affect other interests of the City including, but not limited to, the employee’s relationship to his/her job, fellow workers, or the City’s reputation, is prohibited and may result in disciplinary action, up to and including termination.
- 2.1.2 Employees are prohibited from reporting to work or working under the influence of alcohol.
- 2.1.3 Any employee suspected by a person in a supervisory position of being under the influence of alcohol will be removed immediately from the workplace and will be tested and evaluated by authorized personnel as provided herein.
- 2.1.4 Any employee who refuses to submit to an alcohol test will be subject to disciplinary action, up to and including termination. “Refusal” is defined as failure to provide adequate breath or blood for testing without a valid explanation after being ordered to submit to a test or engaging in conduct that clearly obstructs the testing process.

### 2.2 Drug Policy

- 2.2.1 Reporting to work, or working under the influence of illegal drugs is prohibited and will result in disciplinary action up to and including termination.
- 2.2.2 Legal, over-the-counter medications or prescription drugs may also affect the safety of the employee, fellow employees, or members of the public. Therefore, any employee who is taking any over-the-counter medications or prescription drugs which might impair the safety, performance, or any motor functions shall advise their immediate supervisor of the possible impairment before reporting to work under the influence of such medication or drug. Failure to do so may result in disciplinary action. If the immediate supervisor determines that the impairment does not pose a safety risk, the employee will be permitted to work. Otherwise, the immediate supervisor may offer a change in work schedule, temporarily reassign the employee, or place the employee in an appropriate leave status the period of impairment.
- 2.2.3 Improper use of prescription drugs includes, but not limited to, use of multiple prescriptions of identical or interchangeable drugs, and/or consumption of excessive quantities of an individual or therapeutically interchangeable drug, and/or inappropriate prolonged duration of consumption of drugs, and/or consumption of drugs, prohibited

for other than valid medical purposes. For purposes of this section, consumption of any drug by an employee for more than the manufacturer's maximum recommended daily dosage, or for longer period of time than recommended (unless otherwise prescribed by the employee's physician), or of any prohibited drug prescribed for or intended for another individual, or for other than valid medical purposes shall be presumed to constitute as improper use. Prescription medication shall be kept in its original container.

2.2.4 Refusal to submit to, or efforts to tamper with, a drug test will subject the employee to termination. "Refusal" is defined as follows:

2.2.4.1 Failure to provide adequate specimen or blood for testing without a valid medical explanation after the employee has received notice of the requirement for drug testing; or

2.2.4.2 Failure to provide adequate urine for controlled substances without a valid medical explanation after employee has received notice of requirement for urine testing; or

2.2.4.3 Engaging in conduct that clearly obstructs the testing process; or

2.2.4.4 Refusing or failing to execute the consent of testing form(s).

2.2.4.5 Except as may be otherwise provided herein, failure to pass a confirmation drug test will result in disciplinary action, up to and including termination.

## Section 3 – Prohibitions

### 3.1 Illegal Controlled Substances

The City prohibits the use, distribution, possession, manufacture, cultivation, sale or attempt to manufacture, sell or distribute illegal controlled substances at any time whether on or off duty or whether on or off City property. Illegal controlled substances are defined by applicable state and federal laws in accordance with section 893.03 of the Florida Statutes.

### 3.2 Alcohol Abuse

Employees of the City are prohibited from using or possessing alcohol on City property or while on duty; operating a City vehicle or operating City equipment; or while being transported in City vehicles at any time. In addition, employees are prohibited from reporting to work under the influence of alcohol and from otherwise using alcohol in a manner at any time, which adversely affects or might adversely affect the interest or operations of the City.

### 3.3 Medical Marijuana

The possession and use of any amount of marijuana is illegal under federal law because marijuana is classified as a Schedule I drug under the Controlled Substances Act.

As a condition of employment with the City, any use of Marijuana for personal or medical purposes is prohibited.

## **Section 4 – Legal Use of Prescription and Non-Prescription Drugs**

- 4.1 The legal use of prescription and non-prescription drugs can be necessary. Unless used in accordance with a valid prescription from a medical professional or in accordance with accepted over the counter uses, the City prohibits the use, distribution, possession, manufacture, cultivation, sale or attempt to sell or distribute prescription drugs. Employees are required to advise his/her supervisor if he/she is taking prescription or non-prescription drugs which have the potential to adversely impact the employee's job performance or the employee's ability to work in a safe and efficient manner (e.g., including but not limited to drowsiness).

## Section 5 – Drug and Alcohol Testing

In order to maintain a drug and alcohol free work environment and in accordance with Florida's Drug-Free Workplace program, Section 440.101, et seq, Florida Statutes as amended, the City will test for the presence of drugs and/or alcohol in the following circumstances:

### 5.1 Job Applicant Testing

Applicants offered a mandatory-testing or special-risk position must submit to a drug and/or alcohol test as a prerequisite to employment with the City.

Any applicant who refuses to submit to drug and/or alcohol testing, refuses to sign the consent form, fails to appear for testing, tampers with the test, or fails to pass the pre-employment confirmatory drug test will not be hired and will be ineligible to apply for employment for a period of not less than two (2) years.

### 5.2 Routine Fitness-for-Duty Testing

Employees in a mandatory-testing or special-risk position may be required to submit to drug and/or alcohol testing as part of any routinely scheduled fitness-for-duty medical examinations.

### 5.3 Follow-up Testing

During the course of employment if an employee enters into an employee assistance program for a drug and/or alcohol related problem(s) or a rehabilitation program, follow-up testing will be conducted without advanced notice and at least once per year for a period of no less than two (2) years, unless the employee voluntarily entered the program.

### 5.4 Reasonable Suspicion Testing

An employee will be subject to drug and/or alcohol testing whenever reasonable suspicion exists to believe the employee is using drugs and/or alcohol or otherwise engaging in conduct in violation of this policy. Reasonable suspicion shall be based on specific, objective and articulable facts and reasonable inferences drawn from those facts in light of experience.

In making this determination, relevant factors may include, but are not limited to:

- 5.4.1 Observable phenomena, such as direct observation of drug use or of physical symptoms or manifestation of being under the influence of a drug or alcohol.
- 5.4.2 Abnormal conduct, erratic behavior or a significant unexplained deterioration in work performance.
- 5.4.3 A report of drug use, provided by a reliable source.
- 5.4.4 Evidence that an individual has tampered with a drug test during his/her employment.



- 5.4.5 Information that an employee has caused or contributed to an accident or injury while at work.
- 5.4.6 Evidence that an employee has negligently or recklessly operated a vehicle, equipment or machinery while at work.
- 5.4.7 Evidence that an employee has used, possessed, manufactured, cultivated, sold, solicited, or transferred drugs.

Supervisors who determine that reasonable suspicion exists to require an employee to submit to a drug and/or alcohol test are required to promptly document in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing.

## 5.5 Random Testing

Employees who hold mandatory-testing positions that are required by their job description to maintain a CDL endorsement or special-risk positions are subject to drug and/or alcohol testing on a random basis.

## 5.6 Post-accident testing

- 5.6.1 Employees in an accident involving a fatality.
- 5.6.2 Employees in an accident involving bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident.
- 5.6.3 Employees in an accident involving a motor vehicle accident where one or more of the motor vehicles receive damage requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
- 5.6.4 Employees who receive a citation for a moving traffic violation involved in a motor vehicle accident.
- 5.6.5 Employees in an accident or injury under circumstances that suggest possible use or influence of drugs or alcohol in the accident or injury shall submit to an alcohol and/or drug test.
- 5.6.6 It is the responsibility of the supervisor to contact the Safety Officer to arrange testing within two (2) hours of the accident. If the alcohol and/or drug tests are not administered within two (2) hours following the accident, the supervisor shall document the reasons the tests were not administered within that time. If the alcohol test is not administered within eight (8) hours of the accident or the drug test is not administered within thirty-two (32) hours of the accident; no such test will be conducted. The supervisor shall document the reasons why the tests were not conducted within the required time frame.
- 5.6.7 Employees who are subject to post-accident testing shall remain readily available for testing, otherwise they may be deemed to have refused the tests. Employees shall not

be prohibited from leaving the scene of the accident to obtain emergency medical care or to obtain assistance in responding to the accident.

5.6.8 Employees required to have and maintain a CDL license for their position with City will adhere to the Omnibus Transportation Employee Testing Act of 1991 located in the policy titled Drug & Alcohol Testing Program for Employee Drivers of Commercial Motor Vehicle.

5.7 Other Lawful Testing.

The City reserves the right to conduct any other type of lawful drug or alcohol testing.

5.8 Promotional opportunity.

An advancement opportunity for a City employee into a mandatory-testing or special-risk position must submit to a drug and/or alcohol test as a requirement before the transfer.

## Section 6 - Drugs Tested For

- 6.1 Drugs Tested for. Employees will be subject to drug testing for the detection of the following illegal drugs/drug groups, as well as others that may from time to time be declared illegal by state or federal law:
- 6.1.1 Alcohol (including a distilled spirit, wine, malt beverage or other intoxicating liquor)
  - 6.1.2 Amphetamines
  - 6.1.3 Barbiturates
  - 6.1.4 Benzodiazepines
  - 6.1.5 Cannabinoids (marijuana)
  - 6.1.6 Cocaine
  - 6.1.7 Methadone
  - 6.1.8 Methaqualone
  - 6.1.9 Opiates (heroin, morphine, codeine)
  - 6.1.10 Phencyclidine (PCP)
  - 6.1.11 Propoxyphene
  - 6.1.12 Any other hallucinogen, synthetic narcotic, designer drug or a metabolite of any of the substances listed above
- 6.2 Common Medications Which Could Alter or Affect Test Results. Certain prescription and non-prescription medications may alter or affect a drug and/or alcohol test. Employees and applicants that are subject to testing are obligated to report any prescription or non-prescription medication, which could alter or affect test results to the independent Medical Review Officer (MRO). Employees and applicants subject to testing have the right to confidentially consult with the MRO for additional or technical information regarding medications, which may alter or affect test results.

The most common medications that may alter or affect a test include, but are not limited to:

<b>Drug</b>	<b>Medication Which May Alter or Affect Test</b>
Alcohol (common names: Booze, Liquor)	Liquid medications containing ethyl alcohol (ethanol). For example many cough syrups, Vicks Nyquil, Comtrex, Listerine contain alcohol
Cannabinoids (common names: Marijuana, Hashish, Hash, Hash Oil, Pot, Joint, Roach, Grass, Weed, Reefer)	Marinol (Dronabinol, Tetrahydrocannabinol (THC))
Amphetamines (common names: Speed, Crystal, Crank, Meth, Black Beauties, Bennies, Dexies, 357 Magnums, Uppers)	Obetrol, Biphphetamine, Desoxyn, Dexedrine, Didrex, Ionamine, astine
Cocaine (common names: Coke, Blow, Nose Candy, Snow, Flake, Crack)	Cocaine HCl topical solution (Roxanne)
Phencyclidine (common names: PCP, Angel Dust, Hog)	Not legal by prescription
Methaqualone (common name: Quaalude)	Not legal by prescription
Opiates Opium – Big O, Block, Dover’s Powder Heroin – Smack, H, Black Tar, Hell Dust, Skag, Hero, China Whitehorse Fentanyl – China Girl, White Horse, Apache, Goodfella, Tango, Cash, King Ivory, Morphine – Miss Emma, M, Monkey, White Stuff)	Paregoric, Parepectolin, Donnagel OG, Morphine, Pectoral Syrup, Tylenol with Codeine, Empirin with Codeine, APAP with Codeine, Aspirin with Codeine, Robitussin AC, Guiatuss AC, Novahistine DH, Bigagustube Expectorant Dilaudid (hydromorphone), M-S Contin and Roxanol (morphine sulfate), Percodan, Vicodin, Tussi-organidin, etc.
Barbiturates (common names: Barbs, Downers, Red Dolls, Tootsies, Yellow Jackets, Sleepers, Rainbows )	Phenobarbital, Tuinal, Amytal, Nembutal, Seconal, Lotusate, Fiorinal, Fioricet, Esgick Butison, Mebaral, Butabarbital, Butalbitalk, Phenrinin, Triad, etc.
Benzodiazepines (common names: BZD’s, Benzos, Downers, Goofballs, Heavenly Blues, Valley Girl)	Acitvan, Azene, Clonopin, Dalmane, Diazepam, Halcion, Librium, Xanax, Serax, Tranxene, Valium, Verstran, Paxipam, Restoril, Centrax
Methadone (common names: Dollies, Meth, Jungle Juice)	Dolphine, Metadose
Propoxyphene (common names: Darvo, Pain Killers)	Davocet, Darvon N, Dolene, et.

## Section 7 – Test Results

7.1 The following procedures will be followed if an employee or applicant has a confirmed positive test result:

7.1.1 Any employee or applicant who receives a positive confirmed test result may contest or explain the result to the MRO within five working days. If the MRO determines that the employee's explanation is unsatisfactory, the MRO will report the positive test to the City. The employee or applicant may contest a positive confirmed test result pursuant to this policy, section 440.102 of the Florida Statutes, or other applicable law. If an employee or applicant seeks to contest the laboratory result, it is his/her responsibility to contact the laboratory to advise of any administrative or civil proceeding challenging the results and to request that the test sample be preserved.

7.1.2 Within 180 days of receiving written notification of a positive test result, an employee or applicant may, at his/her expense, have the positive sample retested at a different laboratory licensed and approved by the Agency for Health Care Administration.

7.1.3 Within five (5) working days after receipt of a positive confirmed test result from the MRO, the City will inform the employee or applicant in writing of the test result, the consequences of the test result and any options that the City may elect to afford the employee or applicant in accordance with this policy. Within five working days after receiving notice of a positive confirmed test result from the City, the employee or job applicant may submit information to the City explaining or contesting the test result and explaining why the test result does not constitute a violation of the policy. If the City determines that the explanation is unsatisfactory, the City will provide a copy of the test result to the employee or applicant along with a written reason as to why the explanation was deemed unsatisfactory.

7.2 Consequences of a positive confirmed test, refusal to submit to testing or tampering with a test.

An employee who has a positive confirmed test, who refuses to submit to a test or who tampers with a test is subject to disciplinary action up to and including termination, may forfeit eligibility for workers compensation medical and indemnity benefits and may forfeit entitlement to unemployment compensation. A job applicant who has a positive confirmed test, who refuses to submit to a test or who tampers with a test will be ineligible for employment for a period of not less than two (2) years.

7.3 Confidentiality

Without written consent, all information, interview reports, statements, memoranda, and drug test results, written or otherwise, received or produced as a result of the City's drug testing program are confidential and exempt from the provisions of Chapter 119 of the Florida Statutes (public Records Law) and may not be used or disclosed except as otherwise provided by section 440.102 of the Florida Statutes or other applicable law.

7.4 Job Assignment

Employee may be reassigned to other job duties pending the results of any drug test.

## Section 8 – Employee Assistance Program

- 8.1 Employee Assistance Program (EAP) is available to assist employees who voluntarily self-report, prior to being requested to test, drug or alcohol related problems which have not yet adversely affected their job or City operations. Employees who voluntarily seek help, who have not had a positive drug test and who are not participating in EAP at the time or at any previous time, will not be subject to discipline.

Employees who violate this Policy will ordinarily not be eligible to elect participation in EAP in lieu of disciplinary action.

Employees employed in a mandatory testing or special-risk positions, who enter into the EAP, whether voluntarily or involuntarily, will be removed from the mandatory testing or special-risk position and temporarily assigned to another position or placed on leave until the successful completion of the EAP. An employee placed on leave may utilize his/her accrued leave, if any; otherwise the leave shall be unpaid.

## **Section 9 – Reporting Violation on the Policy**

- 9.1 It is the obligation of every employee to report violations of this Policy to the Human Resources Department. Failure to report may subject employees to discipline up to and including termination of employment.

## **Section 10 –Coordination with Human Resources Department**

- 10.1 All action taken under this policy must be coordinated through the Human Resources Department to ensure compliance with all applicable laws.



## **Section 11 – Reporting and Conviction of Arrests and/or Alleged Crimes including Drugs or Alcohol**

- 11.1 Employees must notify Human Resources of any drug or alcohol related criminal charge or arrest within five days after such charge or arrest or on the next workday after the charge or arrest if the employee holds a position that requires driving with a City vehicle or personal vehicle while on City property or on City business. Employees must notify Human Resources of any criminal drug conviction no later than five days after they receive notice of the conviction. Failure to report may result in immediate termination.

Upon conviction of a crime involving illegal drugs under section 893.03 of the Florida Statutes, the employee will be immediately terminated.

Without regard to prosecution or conviction by appropriate governmental entities, the City may, at its option, conduct its own independent investigation to determine whether this policy has been violated. If, in the opinion of the City, it believes a violation has occurred, it will take whatever disciplinary action it deems appropriate regardless of the ultimate outcome of any criminal case that may be brought against the employee. The City shall not be obligated to await the outcome of any pending criminal or legal action prior to taking disciplinary action.

## Section 12 – D.O.T. DRUG AND ALCOHOL POLICY

This section applies to all employee drivers of commercial motor vehicles as defined below, who are required to drive such vehicles in the course of their employment with the City. This policy applies, at a minimum, during all “on duty time” - “on duty times” means all time from the moment a driver begins to work or is required to be in readiness to work until the time the employee is relieved from work and all responsibility for performing work. For purposes of this policy, on duty time includes lunch and break periods.

Any supervisor/manager who knowingly disregards the requirements of this procedure, or who is found to deliberately misuse the procedure in regard to employees subject to the procedures, shall be subject to disciplinary action, up to and including termination.

### 12.1 Definition of Commercial Motor Vehicle

A commercial motor vehicle is defined as a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property as established by Federal and State law which:

1. Has a gross combination weight rating of 26,001 or more lbs. inclusive of a towed unit with a gross vehicle with rating of more than 10,000 lbs.; or
2. Has a gross vehicle weight rating of 26,001 or more pounds;  
or
3. Is designed to transport 16 or more passengers, including the driver;  
or
4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which requires the motor vehicle to be placard under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F).

Notwithstanding the above stated qualifications, all certified Fire and Police Personnel are exempt from the provisions of this procedure. Departmental Policy for these employees which regulates the use of controlled substances and alcohol is still applicable. This new Drug and Alcohol Testing Program is effective August 19, 2019, and continues in effect unless superseded or repealed by competent authority. Employees covered by the above criteria must participate in the Drug and Alcohol Testing Program as a condition of employment.

## 12.2 Illegally-used Controlled Substances

A controlled substance is any illegal drug or any substance identified in Section 102(6) of the Controlled Substance Act (21 U.S.C. 802 (6)), and as further defined in 21 CFR 1300. This includes, but is not limited to marijuana, amphetamines, opiates, phencyclidine, cocaine, oxycodone/oxymorphone, and hydrocodone/hydromorphone as well as any drug not approved for medical use by the Drug Enforcement Administration or the Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs.

## 12.3 Legal Drugs

The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which could adversely affect the employee's mental functioning, motor skills, or judgment must be reported to Human Resources and medical advice should be sought, as appropriate, before performing work-related duties. A legally prescribed drug means a drug for which the individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. The misuse or abuse of legal drugs while performing City business is additionally prohibited.

No covered employee shall report for duty or remain on duty when the employee uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a commercial motor vehicle.

## 12.4 CDL Covered Employees

Any covered employee who is reasonably suspected of being intoxicated, impaired, under the influence of a prohibited substance, or not fit for duty shall be removed from duty and placed on paid administrative leave, pending verification of condition. Employees found to be under the influence of a prohibited substance or who test positive for a prohibited drug or alcohol concentration shall be immediately removed from duty without pay and shall, for at least twenty-four hours from the administration of the test, be subject to immediate disciplinary action. A drug or alcohol test is considered positive if the individual is found to have a quantifiable presence of a prohibited substance in the body above the minimum threshold established in 49 CFR part 40, as amended.

All covered employees will be subject to urine drug testing and breath alcohol testing at any time while in a duty status. Any covered employee who refuses to comply with a request for testing, who provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution shall be removed from duty immediately. Refusal can include a failure to provide an adequate urine sample for controlled substance testing or an adequate breath sample for alcohol testing specimen or breath sample

without valid medical explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test. Such refusal shall be deemed a positive test result.

All covered employees shall be subject to testing prior to employment, at random, for reasonable suspicion, and following an accident. The testing program, as described in this procedure, will be independent and separate from any and all other testing performed on behalf of the City of Fort Myers and/or pursuant to prevailing federal, state, and local requirements.

The specific drugs that will be tested for are marijuana, cocaine, opiates, amphetamines, and phencyclidine. An initial drug screen using immunoassay techniques, will be conducted on each specimen. For those specimens that indicate the presence of one or more of these prohibited substances, a confirmatory gas chromatography/mass spectrometry (GC/MS) test will be performed. The test will be considered positive if the amount present is above the minimum threshold established in 49 CFR part 40, as amended.

Tests for alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA) - approved evidential breath testing (EBT) device operated by a trained breath alcohol technician. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath. If an initial test indicates an alcohol concentration of 0.02 but less than 0.04 the employee will be removed from duty, without pay, for the remainder of his or her work shift, and shall not be returned to duty for at least twenty-four (24) hours following administration of the test. An alcohol concentration greater than 0.04 will also be considered a positive alcohol test and a violation the Drug-Free Workplace Policy (except sworn fire and police personnel) and shall be grounds for immediate disciplinary action up to and including termination.

All covered employees may be subject to a fitness for duty evaluation, to include urine and/or breath testing, when there is reason to believe that drug or alcohol use is adversely affecting job performance. A reasonable suspicion referral for testing will be made on the basis of available facts or circumstances which are consistent with the longer short-term effects of substance abuse. Examples that may support reasonable suspicion include, but are not limited to the following:

1. Physical signs and symptoms consistent with prohibited substance use. Signs and Symptoms -- except for the odor, these are general signs and symptoms of any controlled substance:
  - a. Dulled mental processes; lack of coordination,
  - b. Odor of alcohol on breath; slurred speech,
  - c. Constricted pupils, and/or
  - d. Slowed reaction time; sleepy condition

2. On-the-job behavior that indicates possible substance abuse or impairment.
3. Occurrence of a serious or potentially serious accident that may have been caused by human error.

Reasonable suspicion determinations will be made by a person who reasonably concludes that an employee may be adversely affected or impaired in his or her work performance due to prohibited drug use or alcohol misuse.

As soon as is practicable following an accident involving a Commercial Motor Vehicle, each surviving, covered employee who was performing safety sensitive functions and who could have contributed to the accident shall be tested for alcohol and controlled substances if:

1. The accident involved the loss of human life; or
2. The covered employee receives a citation under state or local law for a moving traffic violation arising from the accident.

If an alcohol test is required, it should be performed within two (2) hours following the accident but shall not be performed more than eight hours after the accident. If a controlled substance test is required, it must be performed as soon as possible but no later than within thirty-two (32) hours after the accident. A covered employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the City to have refused to submit to such testing. Any covered employee who is subject to post accident testing must refrain from alcohol use until completion of a post-accident alcohol test. Any covered employee who leaves the scene of an accident without justifiable explanation prior to submission to drug and alcohol testing or who fails to report to the designated collection facility within a reasonable time frame will be considered to have refused the test.

Testing shall be conducted in a manner to assure the highest degree of accuracy and reliability by using techniques, equipment, and laboratory facilities that have been certified by the U.S. Department of Health and Human Services (DHHS). All testing will be conducted consistent with the procedures set forth in 49/CFR Part 40, as amended.

All testing results for prohibited drugs must be verified by the Medical Review Officer (MRO). The MRO is a licensed physician functioning independent of the city whose qualifications include a demonstrated knowledge of substance abuse disorders and who has appropriate medical training to interpret and evaluate an individual's confirmed positive drug result together with his or her medical history and any other relevant biomedical information. All testing results for alcohol must be verified by a qualified Breath Alcohol Technician (BAT).

Any covered employee may request that the employee's representative be present in activities related to the collection of specimens and during administrative review and/or counseling sessions.

Federal regulations impose strict procedural controls and accounting mechanisms upon the collection site, processing laboratory, the MRO, and the City with respect to testing for prohibited drugs and alcohol. These procedures require the use of tamper-proof specimen containers for urine samples, employee certification of specimen "ownership," use of chain-of-custody documentation, regimented quality control standards, including blank air testing (for EBT devices) and blind samples (for urine testing), equipment calibration testing, and specific certification and training standards. Only confirmatory testing results will be used as evidence of prohibited drug use or alcohol misuse. Testing which does not follow these criteria must be invalidated, or "canceled," and reported as a negative result. Any employee who questions a positive result of a required drug test may request the MRO to perform a second (separate) test of the original specimen. This test must be conducted at a different DHHS-certified laboratory and must utilize a split sample that was provided at the same time as the original sample. All costs for the second test are paid by the employee unless the second test produces a negative result. The employee's request for a split sample test must be made to the MRO within seventy-two (72) hours of notice of the initial test result. Requests after seventy-two (72) hours will be accepted if the delay was beyond the control of the employee and the reason for such delay is acceptable to the MRO.

Any covered employee who tests positive under the conditions prescribed by this program must be evaluated by a Substance Abuse Professional (SAP) before returning to duty. A Substance Abuse Professional (SAP) is a licensed physician (a Medical Doctor or Doctor of Osteopathy), a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders. The SAP will evaluate the employee to determine what assistance, if any, the employee needs in resolving associated problems. Assessment by a SAP does not shield an employee from disciplinary action or guarantee employment or reinstatement with the City of Fort Myers.

If after a positive test result, a covered employee is allowed to return to duty, the employee must properly follow the rehabilitation program prescribed by the SAP, pass return-to duty drug and alcohol test, and agree to be subject to additional unannounced follow-up tests for a period of at least twelve (12) months from date of return to duty.

Irrespective of possible criminal and /or civil proceedings which may arise as a result of prohibited drug use or alcohol misuse, the City of Fort Myers reserves the right to apply administrative

penalties and sanctions against an employee who violates any approved work rules, regulations, or Collective Bargaining Agreement encompassed by this Program.

Minimum associated consequences of prohibited drug use and /or alcohol misuse are as follows:

1. Removal from duty without pay: An employee whose test results indicate an alcohol concentration of 0.02 or greater, but less than 0.04, shall be prohibited from returning to a safety sensitive position until the start of the employee's next regularly scheduled duty period, but not less than twenty-four (24) hours following the administration of the test.
2. Referral to a SAP and removal from duty: A positive drug test for a prohibited drug or a breath alcohol concentration of 0.04 or greater are considered a violation the Drug-Free Workplace Policy (except sworn fire and police personnel) and shall be grounds for immediate disciplinary action up to and including termination.
3. Discipline: A violation of this Program will be considered a violation of the City of Fort Myers' Drug-Free Workplace Policy (except sworn police and certified fire personnel) as applicable. Such violation will be considered as grounds for disciplinary action, up to and including termination of employment.

Employees who have any questions regarding this program or any other aspect of the City of Fort Myers' Drug and Alcohol Testing Procedure should contact the Safety Officer or Director of Human Resources.