



City of Norwalk
Transportation Department

DRUG AND ALCOHOL PROGRAM RULES & REGULATIONS

Amended
~~March-August~~ 2024

**CITY OF NORWALK
TRANSPORTATION DEPARTMENT**

**DRUG AND ALCOHOL PROGRAM
RULES AND REGULATIONS**

~~March~~September 2024

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Note: Additional requirements and/or disciplinary actions established under the authority of the City of Norwalk Transit System are entered in Italics.

I. POLICY STATEMENT

The City of Norwalk is committed to maintaining a safe and productive working environment. The City is also committed to providing reliable, courteous and efficient service to its bus patrons. The City recognizes the effect of substance abuse on safety and productivity and can cause a disruptive work environment. The City recognizes that safety-sensitive employees' use of illegal drugs and misuse of alcohol poses a significant risk to public safety, as well as the employee's health and well being.

In keeping with this commitment, the City has adopted the Transportation Department's Drug and Alcohol Program Rules and Regulations ("policy") that is designed to:

- A. create a work environment free from the adverse effects of drug abuse and alcohol misuse;
- B. deter and detect employee's use of illegal drugs and misuse of alcohol;
- C. prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and
- D. encourage employees to seek professional assistance when personal problems, including drug and/or alcohol dependency, adversely affect his or her ability to safely perform duties assigned.

II. PURPOSE

The purpose of this policy is to ensure fitness for duty and to protect employees, passengers and the general public from the safety and health risks posed by the misuse of alcohol and the use of prohibited drugs. This policy is intended to comply with all applicable State and Federal laws and regulations governing workplace anti-drug use and alcohol misuse programs in the transportation industry. They include DOT 49 CFR Part 40, as amended (Procedures for Transportation Workplace Drug and Alcohol Testing Programs); 49 CFR Part 655, as amended (Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations); "Drug-Free Workplace Act of 1988" (see Appendix C); and CA Govt. Code Section 8350, "Drug-Free Workplace Act of 1990". This policy incorporates the requirements of the above regulations for safety-sensitive employees.

III. CONTACT PERSON

The Designated Employer Representative (DER) authorized to receive test results and answer questions regarding the Transportation Department's Drug and Alcohol Rules and Regulations is listed in appendix H.

In case of DER's absence, the Director of Transportation, will assign a designee, to receive test results and answer questions regarding this policy.

Under the City's Authority, the DER will be either a management classification or confidential personnel.

IV. APPLICABILITY

This policy applies to all City of Norwalk Transportation Department safety-sensitive employees, as defined in Section VIII of this policy. It applies to off-site lunch periods and breaks when an employee is scheduled to return to work or is on-call.

All other City of Norwalk Transportation Department employees are covered by the City of Norwalk Drug and Alcohol-Free Work Environment Policy.

Further, this policy applies to any contractor who performs safety-sensitive functions and who "stands in the shoes" of the safety-sensitive employees of the City of Norwalk Transit System, unless the contractor has its own company policy that is FTA compliant with all applicable State and Federal regulations governing workplace anti-drug use and alcohol misuse programs in the transportation industry, in which case, their company policy will apply.

V. PRE-EMPTION OF STATE AND LOCAL LAWS

If any conflict occurs between State and local laws and regulation and any requirement of the above-mentioned Federal laws and regulations, the Federal laws and regulations prevail. However, Federal laws and regulations do not preempt provisions of State criminal laws that impose sanctions for reckless conduct attributed to prohibited drug use or alcohol misuse, whether the provisions apply specifically to transportation employees, employers, or the public in general.

VI. DEFINITIONS

A. Adulterated Specimen

~~A urine specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine. Physical characteristics are outside normal range~~A specimen that has been altered, as evidenced by test results showing either a

substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

B. Alcohol

The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.

C. Alcohol Use

The drinking or swallowing of any beverage, liquid mixture or preparation (including medication) that contains alcohol. For purposes of this policy, alcohol is alcohol regardless of source.

D. Breath Alcohol Technician (BAT)

An individual who instructs and assists employees, applicants or transferees in the alcohol testing process and operates an Evidential Breath Testing (EBT) device.

E. Canceled Test

A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which Part 40 requires to be canceled. A canceled test is neither a positive nor a negative result.

F. Collector

A person who instructs and assists individuals at a collection site, who receives and makes an initial inspection of the specimen provided by the individual, and who initiates and completes the Custody and Control Form (CCF).

G. Controlled Substance

Any drug classified by the U. S. Drug Enforcement Agency (DEA) into the five schedules or classes on the basis of their potential for abuse, accepted medical use, and accepted safety for use under medical supervision.

H. Designated Employer Representative (DER)

An employee or employees authorized by City of Norwalk Transit to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from such duties, following a positive test, test refusal, or other policy violations.

I. Disabling Damage

Damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs, including damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

"Disabling damage" does not include:

1. Damage which can be remedied temporarily at the scene of the accident without special tools or parts;
2. Tire disablement without other damage even if no spare tire is available;
3. Headlamp or taillight damage; or
4. Damage to turn signals, horn, or windshield wipers, which makes them inoperative.

J. DHHS

Department of Health and Human Services

K. DOT

Department of Transportation

L. Drug(s)

The drugs for which tests are required under DOT and FTA regulations. They are marijuana, cocaine, amphetamines, phencyclidine (PCP) and opioids. This group of drugs is also referred to as the National Institute on Drug Abuse (NIDA) panel.

M. Drug Abuse

Use of any illegal drug or controlled substance without a valid prescription, misuse of legally prescribed drugs, or use of illegally obtained prescription drugs. This includes use of prescription drugs legally prescribed to another individual.

N. Evidential Breath Testing (EBT) Device

A device that is approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the .02 and .04 alcohol concentrations and appears on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" because it conforms with the model specifications available from NHTSA.

O. Alcohol Screening Device (ASD)

A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and appears on ODAPC's web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids" because it conforms to the model specifications from NHTSA.

P. FTA

Federal Transit Administration

Q. Invalid ResultDrug Test

The result reported by an HHS-certified laboratory in accordance with the criteria established by HHS when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test. The result of a urine drug test that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

R. Public Transportation

Vehicles used to transport the public, whether in revenue service or not, or those used for ancillary services.

S. Medical Review Officer (MRO)

A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory drug test results, who has knowledge of substance abuse disorders, and has the appropriate medical training to interpret and evaluate an individual's confirmed drug and/or validity test results together with the individual's medical history and any other relevant biomedical information. (See Appendix A for a detailed discussion of the MRO's roles and responsibilities).

T. Negative Dilute Specimen

A specimen which contains no prohibited drug or the concentration of the drug is less than the cut off level, but the creatinine and specific gravity values are lower than expected for human urine. (See Section XV DRUG & ALCOHOL TESTING PROCEDURES for more information concerning re-tests).

U. Alcohol Violation

The presence of alcohol in the body at a concentration of 0.04 or greater as measured by an EBT device.

V. Positive ResultDrug Test

~~Any urine that is chemically tested (screened and confirmed), shows the presence of controlled substances, and is verified by the MRO. The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.~~

W. Refusal to Test

Includes, but is not limited to, circumstances or behaviors such as:

1. Failure to appear at the collection site for any test ~~in the time (except allotted. This excludes pre-employment tests) within a reasonable time as determined by the employer, ing for employment candidates, but includes safety-sensitive employees returning from a 90-day leave of absence;~~
2. Leaving the collection site before the testing process is completed, except in pre-employment situations where leaving the site before the testing process begins is not deemed to be a test refusal;
3. Failure or refusal to provide a specimen for a drug or alcohol ~~test urine or breath specimen~~ as required by DOT Part 40;
4. Failure to permit the observation or monitoring of specimen collection when it is required;
5. Failure to provide a sufficient amount of specimen for a drug or alcohol test ~~urine or breath specimen~~ without a valid medical explanation;
6. Failure or refusal to take a second test when required;
7. Failure to undergo a medical evaluation when required. (In the case of a pre-employment test, the individual is deemed to have refused to test only if the test is conducted following a contingent offer of employment.);
8. Failure to cooperate with any part of the testing process (e.g., refusing to wash hands or empty pockets after being directed to do so by the collector, or behaving in a confrontational manner that disrupts the collection process);
9. Leaving the scene of the accident without just cause prior to submitting to a test;
10. If the MRO reports a verified adulterated or substituted test result;
11. Refuse to sign Step 2 of the Alcohol Testing Form;

12. An employee admits to the collector or MRO that he or she adulterated or substituted their specimen;
13. The employee fails to follow the observer's instructions to raise and lower their clothing and to turn around to permit the observer to determine if the employee has a prosthetic or other device that could be used to interfere with the collection process; or
14. The employee possesses or wears a prosthetic or other device that could be used to interfere with the collection process.

Note: A refusal to test carries the same consequences and disciplinary actions as a positive test result.

X. Safety-Sensitive Employee

As defined by the FTA, safety-sensitive employees include those who perform, are ready to perform, or may be called upon to perform, the following safety-sensitive functions:

- Operating a revenue service vehicle, even when it is not in revenue service.
- Operating a non-revenue service vehicle when required to be operated by a Commercial Driver's License (CDL) holder;
- Controlling dispatch or movement of a revenue service vehicle;
- Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service.

Y. Screening Test Technician (STT)

A person who instructs and assists employees in the alcohol testing process and operates an Alcohol Screening Device (ASD).~~A person who instructs and assists employees in the alcohol testing process and operates an alcohol screening device, such as a breath or saliva device other than an EBT.~~

Z. Split Specimen

In drug testing, a part of the ~~urine~~ specimen that is sent to a first laboratory and ~~retained unopened~~stored with its original seal intact, and which is transported to a second ~~DHHS-certified~~ laboratory for ~~retesting upon at the employee's request following a verified positive or a verified adulterated or substituted test result from the primary specimen~~MRO verification of the primary specimen as positive, adulterated or substituted.

AA. Substance Abuse Professional (SAP)

A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. (See Appendix C for a detailed discussion of the SAP's roles and responsibilities.)

BB. Substituted Specimen

A employee's specimen not consistent with a normal human specimen, as determined by HHS (e.g., a urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine).~~A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.~~

VII. EDUCATION AND TRAINING

The education and ongoing awareness component of this policy will include displaying posters, "Helpline Phone Numbers", distributing the drug and alcohol policy and other informational materials to all employees, and periodic informational seminars.

As required by FTA regulation, City of Norwalk Transportation Department will provide all safety-sensitive employees a minimum of 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, the work environment, and on the signs and symptoms that may indicate prohibited drug use. See Appendix A for detailed information on the signs, symptoms, health effects and consequences of alcohol misuse.

Supervisors or company officials who may make reasonable suspicion referrals shall receive a minimum of 60 minutes of training on the physical, behavioral and performance indicators of probable drug use, and at least 60 minutes of probable alcohol misuse.

VIII. COVERED EMPLOYEES

As a condition of employment, all covered employees are required to submit to drug and alcohol testing administered in accordance with 49 CFR Part 40 and 49 CFR Part 655. A refusal to submit to a test as directed will be considered to be a positive test result and the employee will be subject to all the consequences stated in this policy. (See Section VI. DEFINITIONS for specific circumstances or behaviors that are considered refusal to test.)

Covered employees include all safety-sensitive employees, as defined in Section VI of this policy. Using this definition, safety-sensitive employees include the following employee classifications:

- Fleet Maintenance Supervisor
- Lead Equipment Mechanic

- Equipment Mechanic
- Mechanic Trainee
- Equipment Service Worker
- Equipment Service Helper
- Transit Safety & Training Coordinator
- Senior Transit Operations Supervisor
- Transportation Operations Supervisor
- Transportation Operations Supervisor II
- Dispatcher
- Bus Operator (full-time & hourly/part-time)
- Bus Operator Trainee

IX. DRUGS TESTED AND CONFIRMATORY CUT-OFF LEVELS

The type of drugs that will be tested for include:

- Marijuana metabolites¹
- Cocaine metabolites
- Opioids
 - Codeine
 - Morphine
 - Heroin
 - Hydrocodone
 - Hydromorphone
 - Oxycodone
 - Oxymorphone
- Phencyclidine
- Amphetamines
 - Amphetamine
 - Methamphetamine
 - MDMA (Ecstasy)
 - MDA (methylenedioxyamphetamine)

The test will be considered positive if the amounts of the drug(s) and/or its metabolites are above the minimum threshold established in 49 CFR Part 40 as amended.

X. ILLEGAL DRUGS

¹ Although Assembly Bill 2188, effective January 1, 2024, amended California's Fair Employment and Housing Act, to prohibit employers from engaging in any adverse employment action against employees for off duty and away from the worksite use of marijuana, this law does not apply to employees covered under this Policy. Federal Law Requires applicants or employees to be tested for controlled substances (including marijuana¹) and does not authorize the use of marijuana for any reason. (<https://www.transportation.gov/odapc/dot-recreational-marijuana-notice>.)

The prohibited drugs (and drug metabolites) listed in Section IX are always illegal and employees are prohibited from consuming any of them at all times. Employees may be tested for illegal drugs anytime they are on duty ~~or subject to duty~~. Illegal use includes the use of any illegally obtained prescription drugs or the misuse of legally prescribed drugs.

XI. ALCOHOL

Safety-sensitive employees are prohibited from consuming alcohol in any form:

1. While performing safety-sensitive functions;
2. Within four (4) hours prior to performing safety-sensitive functions;
3. While they are on call; or
4. Within eight (8) hours following an accident requiring a post-accident alcohol test, unless the test was completed within eight (8) hours.

Random, ~~and~~ reasonable suspicion ~~and follow-up~~ alcohol tests are conducted only just before the employee is to perform safety-sensitive functions, during while the employee is performing safety sensitive functions and/or just after ~~the employee's performance of the employee has ceased a performing~~ safety-sensitive functions. Under DOT and FTA, an alcohol test with a BAC of 0.04 or greater is considered a violation of the federal rules. An employee is prohibited from performing safety-sensitive duties while having a blood alcohol concentration of 0.04 or greater.

If a safety-sensitive employee tests for alcohol at a concentration equal to or greater than 0.02 but less than 0.04, he or she cannot continue to perform any safety-sensitive function until eight (8) hours have passed, or the employee was re-tested and the result was less than 0.02.

XII. PRESCRIPTION OR OVER-THE-COUNTER MEDICATION

The City prohibits the use or possession of any prescription drug by a safety-sensitive employee other than the employee for whom the drug is prescribed by a licensed medical practitioner. A prescription is valid only if it is in writing and indicates the employee's name, date, the name of the substance, quantity or amount to be taken, the period of authorization, and the prescribing physician's name and signature. It is a violation of this policy to use any prescription drug in a manner that is inconsistent with the prescription.

Safety-sensitive employees must advise their supervisor of the use or influence of any prescription or over-the-counter medication or drug, prior to beginning work, when taking the medication or drug could interfere with the safe and effective performance of duties or the operation of City equipment. An employee's failure to provide this notice in a timely manner is considered a violation of this policy and subject to progressive disciplinary action in keeping

with the City of Norwalk Rules & Regulations Section 12 Reprimand, Suspension, Demotion and Discharge.

It is the employee's responsibility to determine from an appropriate medical professional, at the time medication is prescribed or when an employee intends to take a potentially impairing over-the-counter medication, whether it might significantly impair the employee's ability to perform safety-sensitive duties. In the event there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, the City may require clearance from a qualified physician.

XIII. PROHIBITED BEHAVIOR

1. Performing safety-sensitive duties following verification that the employee has failed a test authorized by the FTA rules.
2. Refusing to submit immediately to any alcohol or drug test, as defined in Section VI. W. of this policy.
- ~~3.~~ 3. An employee is prohibited from leaving the scene of an accident prior to being transported for testing when Post Accident testing has been determined or submitting to a test without notifying the employer of his/her location.
- ~~4.~~ 4. A covered employee is prohibited from using alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.
- ~~5.~~ 5. Employer shall prohibit a covered employee from using alcohol within four (4) hours prior to performing safety-sensitive functions. No employer having actual knowledge that a covered employee has used alcohol within four (4) hours of performing a safety-sensitive function shall permit the employee to perform or continue to perform safety-sensitive functions. Employer shall prohibit the consumption of alcohol for the specified on-call hours of each covered employee who is on-call. The procedure shall include: (1) The opportunity for the covered employee to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function. (2) The requirement that the covered employee take an alcohol test, if the covered employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function.

Under the City's authority, an employee is prohibited from doing the following:

4. *Being under the influence of, possessing or consuming any amount of alcoholic beverage while at work, while off work but on standby time, on City property or in a City vehicle.*
5. *Consuming any amount of alcoholic beverage or entering establishments where the sale of alcohol is the primary business while in City issued work uniform, even when off duty.*
6. *Absence or tardiness as a result of having been under the influence of alcohol, drugs, or controlled substances during non-work time.*
7. *Ingesting, injecting, or otherwise using alcohol, drugs, or controlled substances while performing job duties, except in accordance with Section XII of this policy.*
8. *Performing safety-sensitive duties following verification that the employee has failed a test under the authority of the City.*
9. *Manufacturing, possessing, distributing, dispensing, purchasing, or selling alcohol and or illegal drugs or drug paraphernalia to any person, including another employee, either directly or indirectly through another party, on City premises, in City vehicles or while on City business.*
10. *Consuming alcohol, drugs, or controlled substances during the eight hours immediately following an accident in which the employee was involved, or until the employee undergoes a post-accident alcohol or drug test, whichever comes first.*
11. *Refusing to submit to a search of personal properties when directed by the City, upon reasonable suspicion.*

If an employee violates any of these prohibitions, that employee, at a minimum, will be removed from safety-sensitive duty and placed on administrative leave, pending an investigation. Additionally, the employee, if found to be in violation will be subject to disciplinary action, up to and including termination.

XIV. TYPES OF TESTING

A. Pre-Employment Testing

An applicant candidate being considered for a safety-sensitive position or employees transferring from a non-safety-sensitive to a safety-sensitive position will be required to take a pre-employment drug test. The candidate or transferee will not be allowed to perform a safety-sensitive function unless the drug test result is a verified negative.

Any new hire or employee who has not performed safety-sensitive functions for 90 consecutive calendar days, regardless of the reason,

and has not been in the random pool during that time, shall be required to pass a pre-employment drug test, with a verified negative test result, before being allowed to perform safety-sensitive functions.

The City of Norwalk Transportation Department does not conduct pre-employment alcohol testing.

If a pre-employment drug test is canceled, the individual will be required to take another pre-employment drug test with a verified negative result.

As required by the DOT regulations, the City will request all applicants and employees being considered for the first time for a safety-sensitive position to provide written consent for release of drug and alcohol testing records from prior DOT-regulated employers for the two-year period prior to the date of application or transfer. If the applicant or employee refuses to give this written consent, he or she will not be hired into the safety-sensitive position. These records will include:

- Alcohol tests with a result of .04 or higher alcohol concentration;
- Verified positive drug tests;
- Refusals to be tested (including verified adulterated or substituted drug test results);
- Other violations of DOT agency drug and alcohol testing regulations; and
- With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests).

The City will request and obtain this information before the applicant or employee first performs safety-sensitive functions, if feasible, or as soon as possible.

The City will also request the applicant or employee provide information regarding whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years.

If the applicant or employee had a positive test or a refusal to test in the past two years, proof of having successfully completed a referral, evaluation and treatment plan, including proof of completing the Return to Duty process must be presented before being considered for a safety sensitive position, or before being allowed to continue to perform safety-

sensitive duties beyond 30 days, unless the City has documented a good faith effort to obtain this documentation.

The City of Norwalk requires a post offer employment drug screen on all persons offered employment to comply with the Drug Free Workplace policy.

B. Reasonable Suspicion Testing

When a supervisor, or other company official, has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse, a drug and/or alcohol test will be conducted.

The referral will be made by a Supervisor and/or company official who has been trained in detecting the indicators of drug use and alcohol misuse, based on the specific, contemporaneous, and articulable observations. These include but are not limited to the following appearance or physical and behavioral indicators:

- Slurred speech;
- Glassy or bloodshot eyes;
- Distinctive body odor; including odor of alcohol
- Unsteady walking and movement;
- A near accident or other safety violation;
- Physical or verbal altercation;
- Possession of alcohol, drugs, controlled substances, or drug paraphernalia;
- Sleeping on the job;
- Abnormal or erratic behavior;
- Information provided either by reliable and credible sources that can be corroborated through direct observation by a trained supervisor or company official;

The Supervisor's observations will be documented and such documentation will be kept in the employee's confidential drug and/or alcohol testing file. (See Appendix E).

A reasonable suspicion alcohol test will be conducted only if the reasonable suspicion observation is made just before, during or just after the employee has ceased performing a safety-sensitive function.

Reasonable suspicion drug tests must be conducted any time a covered employee is on duty. "On-Duty" time is defined as on the clock.

*Once a Supervisor and/or company official has made a reasonable suspicion determination, he or she **must** remove the employee from performing any safety-sensitive functions and arrange to have the employee accompanied to the testing site immediately. Following testing, the Transportation Department will arrange to have the employee transported home, either by staff or through contractual agreement with a taxi service provider.*

Documentation must be maintained if an alcohol test is not administered within two hours following the reasonable suspicion determination. After eight (8) hours, all attempts to administer an alcohol test must cease and the reason shall be documented.

C. Post Accident Testing

For purpose of this policy, "accident" is defined as an occurrence involving a public transportation vehicle where the result is:

1. An individual dies;
2. An individual suffers a bodily injury and immediately receives medical treatment away from the scene;
3. The public transportation vehicle involved is a bus, van, or automobile and any of the vehicles involved in the accident suffers a disabling damage as a result of the accident and is transported away from the scene by a tow truck or other vehicle.
4. Under the City's authority:
 - *An accident involving City property, employee or client which does not meet the FTA post-accident testing thresholds.*

Any covered employee operating a public transportation vehicle, or other covered employee whose performance could have contributed to the accident, as determined by the supervisor, using the best information available at the time of an accident, shall be subject to drug and alcohol testing. The operation of a vehicle includes operation of its lift.

The supervisor who determines that the employee's performance could not have contributed to the accident and makes a decision not to administer post-accident drug and/or alcohol testing, must document this decision in detail including the decision making process used to reach this decision. (See Appendix F).

Employees are prohibited from using alcohol for eight (8) hours following an accident or until the post accident alcohol testing is completed. The

City will attempt to complete the Post accident alcohol test within two (2) hours of the accident. If the alcohol test is not administered within two hours following the accident, the City shall prepare and maintain on file a record stating the reasons why the alcohol test was not administered within two hours and continue attempts to administer an alcohol test up to eight (8) hours. After eight hours have elapsed, attempts to administer an alcohol test will cease and the report will be updated to reflect the reason(s) for the inability to test..

A covered employee required to be drug tested following an accident must be drug tested as soon as practical but within 32 hours of the accident. If unable to test within 32 hours, the City will document the reason for the delay.

The employee must remain readily available for drug and alcohol testing and notify their supervisor or DER of his or her location if testing does not take place immediately following the accident. Failure to do this will be deemed by the City to be a refusal to submit to testing on the part of the employee. The required post-accident drug and alcohol testing will not delay the necessary medical attention for injured persons following the accident.

If unable to conduct FTA post-accident tests because of time limitations, test results of a blood, urine, or breath test for the use of prohibited drugs or alcohol misuse, conducted by Federal, State or local officials and obtained by City of Norwalk Transit will be used, if the test conforms to the applicable agency's testing requirements.

Fatal Accidents:

When there is a loss of human life, each surviving safety-sensitive employee operating a City of Norwalk Transit System public transportation vehicle involved at the time of the accident shall be tested for drugs and alcohol. Any safety-sensitive employee not in the vehicle, but whose performance could have contributed to the accident shall also be tested.

Non-Fatal Accidents:

Following a non-fatal accident (see TYPES OF TESTING XIV, C, Post Accident Testing) in which a public transportation vehicle is involved, each covered employee shall be tested, unless the employee's performance can be completely discounted as having contributed to the accident. Any other covered employee whose performance could have contributed to the accident shall be tested.

Transportation Department personnel will transport the employee to the collection site for testing. If necessary, the Transportation Department will arrange to have the employee transported home. The employee will

be placed on Administrative Leave, with pay, pending a verified negative drug and alcohol test result.

D. Random Testing

The FTA regulation requires safety-sensitive employees to undergo random drug and alcohol tests to deter the use of prohibited drugs and the misuse of alcohol.

The selection of safety-sensitive employees for random drug and alcohol testing will be made using a scientifically-valid method that ensures covered employees that they will have an equal chance of being selected each time the selections are made.

Employees selected for random testing must proceed immediately to the collection site once notified, per section 49 CFR Part 655, §655.45(h).

Norwalk Transit System will make every effort to spread random testing reasonably throughout the calendar year, all days of the week and all hours when safety-sensitive functions are performed. Testing dates and times are unannounced and employees will be transported to the collection site upon notification.

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Random Testing may occur anytime an employee is on duty so long as the employee is notified prior to the end of the shift.

A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

Employees who provide advance, written notice of verifiable scheduled medical or childcare commitments will be randomly drug tested no later than three hours before the end of their shift and randomly alcohol tested no later than 30 minutes before the end of their shift.

Verifiable documentation of a previously scheduled medical or childcare commitments, for the period immediately following an employee's shift, must be provided at least five hours before the end of the employee's shift. If a work shift is less than five hours, then notification is required upon reporting for work and prior to beginning their work shift.

Commented [BT2]: Italicize

The total number of safety-sensitive employees subject to random drug and /or alcohol tests will meet the Federal Transit Administration's (FTA) annual minimum random testing rates as set in the Federal Register as per 49 CFR Part 655, §655.45b .

City of Norwalk Transit System contracts with a Third Party Administrator (TPA) to make the monthly random selection. (See Appendix G).

E. Return to Duty Testing

An employee who has refused to submit to a test, or otherwise violated the regulation, or has a verified positive drug test result and/or has a confirmed alcohol test result of 0.04 or greater, shall not be allowed to perform a safety-sensitive function until he or she has completed the return-to-duty process. This includes evaluation by a SAP and the successful completion of the recommended rehabilitation, treatment or education program and a verified negative result on a Return to Duty drug test and/or alcohol test less than 0.02.

The SAP can recommend drug follow-up testing and alcohol follow-up testing for a single drug violation or a single alcohol violation if the SAP determines that is necessary.~~An employee must be tested for the substance that resulted in the positive result and may be tested for both drug and alcohol.~~

A test that has been determined "cancelled" must be repeated. There must be negative result on a Return to Duty test.

A "Return to Duty" test is required to be conducted under direct observation.~~when an employee has had prior positives and refusals to test.~~

F. Follow-up Testing

A SAP will prescribe follow-up testing for each employee who returns to duty following a positive drug and/or alcohol test or a test refusal. There must be a negative result on all prescribed follow-up testing. The testing period is for a minimum of 12 months and a maximum of five years. During the first 12 months the employee returns to work, the minimum number of tests is six. These tests are random and announced and separate from the random testing.

A "Follow-Up" test is required to be conducted under direct observation.~~when an employee has had a prior positive test result or refusal to test.~~

A test that has been determined "cancelled" must be repeated. There must be a negative result on a Follow-up test.

G. Retest for BAC Test result of 0.02 or greater, but less than 0.04.

The employee will be removed from safety-sensitive duties for at least eight (8) hours or unless a re-test shows a result of less than 0.02.

XV. DRUG & ALCOHOL TESTING PROCEDURES

All DOT drug and alcohol tests required under this policy will be administered in accordance with 49 CFR Part 40, as amended (Procedures for Transportation

Workplace Drug and Alcohol Testing Programs). A copy of 49 CFR Part 40 is available in the Transportation Administration Office.

Throughout the testing process, the privacy of the employee will be protected and the integrity and validity of the process will be maintained. The drug testing procedure will include a split specimen collection method and a Federal Drug Testing Custody and Control Form with a unique identification number to ensure that the correct test result is attributed to the correct employee. An initial screening test using an immunoassay technique will be performed. If the specimen is positive for one or more of the drugs tested, then a confirmation test will be performed in accordance with Part 40 procedures, as amended. If the test is confirmed positive, the MRO shall conduct a verification process, which includes giving the employee an opportunity to provide a valid medical explanation for the positive test result. The laboratory is required to keep positive, adulterated, substituted or invalid specimens for one year, or longer if requested.

Additionally, the laboratory will conduct analyses to determine if a urine specimen has been adulterated, tampered with or diluted. Safety-sensitive employees will be required to take a second test with no advance notice if the MRO reports a "negative-dilute" test result. Depending on the creatinine level reported by the laboratory, the MRO may order the second test to be directly observed. Should this second test result in another negative-dilute, the test will be considered a negative and no additional testing will be required unless the City is directed to do so by the MRO. The result of the second test becomes the test of record.

Dilute Positive tests are treated as a verified positive test result.

If the laboratory reports to the MRO an "Invalid Result" or "Rejected for Testing" (because of a fatal or uncorrectable flaw), a recollection may be required and depending on the circumstances, the MRO may require a directly observed collection.

Tests for alcohol concentration will be conducted using an alcohol screening device or an evidential breath testing (EBT) device. If the screen test result is at 0.02 BAC or greater, only an EBT can be used to confirm the alcohol test result. A DOT Alcohol Testing Form will be used and a sequential number will be assigned to each test.

XVI. DRUG TESTING SPLIT SAMPLE (DOT TESTS ONLY)

During collection, the urine specimen will be split and poured into two specimen bottles. This provides the employee or applicant with the option of having an analysis of the split sample performed at a separate DHHS certified laboratory should the primary specimen test result be confirmed positive or the test be considered a refusal because of adulteration or substitution. Primary and Split specimens that are reported as positive, adulterated, substituted or invalid must be retained for a minimum of one year.

The employee or applicant has 72 hours, after being informed by the MRO of a verified positive test or a test refusal, to request a test of the split sample, verbally or in writing. The results of a split specimen are reported to both the employer and employee, regardless of who pays for the test. The process of split testing cannot be stopped on a positive test result or adulterated specimen result if the employee is unwilling or unable to pay.

It is the City of Norwalk Transit System's policy that the cost of testing the split sample will be the responsibility of the employee or applicant. Should the result of the second test be negative, the City will reimburse the employee. Applicants will be required to bear the expense of the second test.

XVII. DIRECTLY OBSERVED URINE SPECIMEN COLLECTION

The direct observation procedure requires the observer to check for prosthetic devices that are designed to tamper with specimens or bring "clean" urine into collections so specimens will test negative. The direct observation procedures require the observer to check for these devices when an employee is subject to an observed collection.

The guidelines require the observer to instruct the employee having an observed collection to raise clothing above the navel; lower clothing to mid-thigh; then turn around to show the same gender observer that they do not have prosthetic devices for "beating" the tests. If no device is detected, the employee is permitted to return clothing to its proper observed-collection position. Then the observed collection will take place.

The observer need not be the collector, but must be of the same gender as the donor. The observer is responsible for ensuring that the specimen goes from the employee's body into the collection container. If the employee declines to allow a directly observed collection when required under this policy, it is considered a refusal to test.

1. Under the following circumstances, the employer will direct the employee to undergo an immediate urine specimen collection under direct observation with no advance notice to the employee. The employee will receive an explanation of the reason for an observed collection.
 - (a) If the laboratory reported to the MRO that a specimen is invalid; and the MRO reported to City of Norwalk Transit that there was not an adequate medical explanation;
 - (b) If the MRO reported to City of Norwalk Transportation Department that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed; or
 - (c) The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL

but less than or equal to 5 mg/dL and the MRO reported the specimen to City of Norwalk Transportation Department as a negative-dilute and that a second collection must take place under direct observation.

2. An employer must direct a collection under direct observation of an employee if the drug test is a Return-to-Duty or a Follow-up test.
3. The collector will immediately conduct a collection under direct observation and explain to the employee the reason for a directly observed collection, if:
 - (a) Directed by the Employer Designated Representative (DER) to do so; or
 - (b) If the collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen; or
 - (c) If the temperature on the original specimen is out of range (below 90.0 deg. and above 100.0 deg. F); or
 - (d) If the original specimen appeared to have been tampered with.

XVIII. MONITORED URINE SPECIMEN COLLECTION

Under those circumstances when a multi-stall restroom cannot be adequately secured for urine specimen collection, the collector will conduct a monitored collection to ensure the collection is performed in a secured environment. A monitor must be of the same gender as the donor, unless the monitor is a medical professional. A monitored collection must take place in a secure room that does not permit access to anyone except the employee and the monitor, who does not have to be a qualified collector. The monitor will not directly observe the collection, however, if there is indication of tampering with the specimen, an additional collection can be ordered under direct observation. If the employee declines to permit a collection to be monitored, the employee is considered to have refused a test.

XIX. CONSEQUENCES

FTA regulations require that a person covered by this policy who has a verified positive drug test result, or has a confirmed alcohol test result of 0.04 or greater, or refuses to submit to a drug or alcohol test (including adulteration or substitution) shall be:

- A. immediately removed from performing safety-sensitive functions; and
- B. referred to at least two SAPs for evaluation and shall meet the requirements for returning to duty, including taking a return to duty drug and/or alcohol test.

In the event of a positive test result of an applicant or an employee being considered for a safety-sensitive position, it is the City's policy, that beyond a referral to a SAP, the City has no other obligations and the individual will not be hired or transferred to the safety-sensitive position. In the event, the applicant is an existing employee, the employee may be subject to disciplinary action, up to and including termination.

If an employee has an alcohol concentration of 0.02 or greater but less than 0.04, the employee will not be permitted to perform a safety-sensitive function within 8 hours of the alcohol test or until a re-test shows an alcohol result below 0.02.

XX. REFERRAL, EVALUATION AND TREATMENT

If an employee, including an applicant tests positive for drug(s) or alcohol or refuses to submit to a test when required, City of Norwalk Transit Transportation Department shall make a referral to at least two DOT- qualified SAPs acceptable to City of Norwalk.

XXI. CONFIDENTIALITY AND ACCESS TO FACILITIES AND RECORDS

The City shall maintain records pertaining to each covered employee's use of prohibited drugs or misuse of alcohol, including records pertaining to alcohol and drug tests for a period of five years. All such records will be maintained in a confidential folder that is separate from the employee's general personnel folder. Access to records in the folder will be limited to the Designated Employer Representatives or limited authorized personnel on a strictly need-to-know basis and to the tested employee upon written request.

Except as required by law, or expressly authorized in the FTA regulations, an employee must give written consent for release of information pertaining to information maintained by these regulations to an identified person.

Employees drug and alcohol test records shall be disclosed when requested by the National Transportation Safety Board as they relate to the accident under investigation.

The Secretary of Transportation or any DOT agency is allowed access to all facilities and records compiled in compliance with the requirements of these regulations.

Data regarding drug and alcohol testing programs and other information pertaining to the employer's anti-drug and alcohol misuse programs shall be disclosed to the Secretary of Transportation or any DOT agency with regulatory authority over the employer.

Records shall be made available to a subsequent employer upon receipt of a written request from the covered employee. Subsequent disclosure is permitted only as expressly authorized by the covered employee's request.

Disclosures, without employee consent, may also occur under the following circumstances:

- When the information is compelled by law or by judicial or administrative process;
- When the information has been placed at issue by the employee in a formal dispute between the employer and the employee;
- *When the information is to be used in administering an employee benefit plan;*
- *When the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure; or*
- When requested by the Department of Transportation or any state or local official with regulatory authority over the City or any of its safety-sensitive employees.

XXII DISCIPLINARY ACTION TO BE TAKEN:

Under the authority of the City of Norwalk, any violation of these rules and regulations may result in disciplinary action, up to and including termination. The disciplinary action taken will depend upon the severity of the infraction and the employee's previous drug and/or alcohol testing record.

Disciplinary action taken pursuant to this policy will comply with the City's applicable discipline rules and procedures, as well as applicable requirements under state and federal law.

The following procedures shall be followed for a positive drug test result and/or alcohol violation at 0.04 BAC or greater:

POST ACCIDENT, REASONABLE SUSPICION AND RANDOM TEST

First positive drug test result or alcohol violation at 0.04 or greater:

- 1) Removal from Safety Sensitive duties
- 2) Referral to at least two Substance Abuse Professionals (SAPs)

If not terminated, as a condition of continued employment, the employee must:

- 3) *Participate in a City approved substance abuse program*
- 4) *Test negative for drug and/or alcohol on a Return to Duty test*
- 5) *Sign a "Return to Work Agreement"*

In Post Accident cases involving fatality, severe injury or property damage, the steps listed for the first positive drug test result or an alcohol violation at 0.04 or

greater may be bypassed and those described for the second positive/alcohol violation at 0.04 or greater Post Accident test result may be applied.

In Reasonable Suspicion cases, disciplinary action may be taken, up to and including termination.

Second positive drug test result and/or alcohol violation at 0.04 or greater:

- 1) Removal from Safety Sensitive duties
- 2) Referral to at least two Substance Abuse Professionals (SAPs)
- 3) *Termination from employment.*

RETURN TO DUTY TEST

Positive drug test result and/or alcohol violation at 0.04 or greater:

- 1) Removal from Safety Sensitive duties
- 2) Referral to at least two Substance Abuse Professionals (SAPs)
- 3) *Termination from employment*

FOLLOW UP TEST

First positive drug test result and/or alcohol violation at 0.04 or greater:

- 1) Removal from Safety Sensitive Duties
- 2) Referral to at least two Substance Abuse Professionals (SAPs)
- 3) *Termination from employment.*

XXIII. MANDATORY REFERRAL TO A SUBSTANCE ABUSE REHABILITATION PROGRAM (DOT violation referral will be to a Substance Abuse Professional (SAP) / non-DOT violation referral will be to a Substance Abuse Counselor under City authority.

The City recognizes that assistance through a City-approved substance abuse program, rather than disciplinary action, in conjunction with some forms of discipline, may be appropriate in certain circumstances. As a condition of continued employment, mandatory enrollment and participation in a City-approved substance abuse program, along with conditions of discipline, short of termination, may be made as follows:

- A. *Upon a first offense of a violation of this Policy, not involving actual on-the-job impairment, an employee will normally be given the option of mandatory referral to a substance abuse program, as a condition of continued employment with the City. The employee will be relieved from safety-sensitive duties as required by the FTA rules, until completion of the rehabilitation program, to the satisfaction of the SAP, have a "negative" Return to Duty drug test result and/or alcohol test result below 0.02, and as*

a condition of continued employment, sign a "Return to Work Agreement", as discussed further below;

- B. An employee subject to mandatory referral must agree to participate and successfully complete a City approved substance abuse program—~~as determined by the SAP~~. An employee who refuses to comply with a mandatory referral is subject to discipline, up to and including termination;
- C. If an employee fails to conform to the requirements of the substance abuse program and/or fails to complete the program and/or fails to remain drug and/or alcohol free, the employee may be terminated. ~~As part of the terms of the mandatory referral, the employee must agree that the SAP will report to the City any failure to cooperate in the substance abuse program or to progress through the program to the satisfaction of the SAP;~~
- D. The City will allow the employee to take one leave of thirty (30) days or less and to use accumulated sick leave or other leave credits while the employee participates in the substance abuse program. If no leave credits are available, the employee may be placed on a leave of absence without pay, subject to management approval, throughout the duration of the rehabilitation or treatment program.


XXIV. RE-ENTRY TO WORK FOLLOWING MANDATORY REFERRAL

An employee wishing to return to work after a mandatory referral must agree to the terms of a Return to Work Agreement, the terms of which shall be established by the City of Norwalk in its sole discretion. That Agreement may include, but is not limited, to the following:

- A. *Release to Work:* Submission of a release to work statement which is satisfactory to the City of Norwalk, from a SAP;
- B. *Follow-up Care:* Submission of an after care and follow-up treatment procedures with a counselor or specialist which would last a minimum of twelve weeks, or longer as specified by the City-approved SAP.
- C. A negative "Return to Duty" test result, in accordance with established testing procedures.
- D. *Periodic and Unannounced Testing:* The employee must submit to continued periodic and unannounced drug and alcohol testing for at least twelve (12) and up to sixty (60) months after successful completion of the substance abuse program. The frequency and duration of the follow-up testing will be recommended by the SAP with a minimum of six (6) tests performed during the first 12 months after the employee has returned to duty.
- E. Submission of a "Return to Work Agreement" signed by the employee.

Grounds for Termination: The employee may be terminated if: (a) the employee fails to successfully complete a treatment program, (b) the employee fails to comply with the "Return to Work Agreement", (c) the employee violates this policy while enrolled in a treatment/rehabilitation program, and/or (d) the employee violates this policy after re-entry to work or tests positive after re-entry.

XXV. CITY COUNCIL APPROVAL AND POLICY ADOPTION



Margarita L. Rios, Mayor
Tony Ayala, Vice Mayor
Jennifer Perez, Councilmember
Rick Ramirez, Councilmember
Ana Valencia, Councilmember

Jesus M. Gomez, City Manager

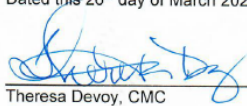
**EXCERPT OF MINUTES
NORWALK CITY COUNCIL MEETING**

I, **Theresa Devoy**, City Clerk of the City of Norwalk, California and ex-officio Clerk of the City Council, **DO HEREBY CERTIFY**, under penalty of perjury under the laws of the State of California, that the following is an excerpt of the minute action of the Norwalk City Council at its regular meeting held on March 19, 2024, at which meeting the Norwalk City Council was present in its entirety with Councilmembers Perez, Ramirez, and Valencia, Vice Mayor Ayala, and Mayor Rios responding to roll call.

Councilmember Perez moved and Councilmember Valencia seconded to adopt the "City of Norwalk Transportation Department Drug and Alcohol Program Rules and Regulations," as amended March 19, 2024. **MOTION CARRIED BY THE FOLLOWING ROLL CALL VOTE:**

AYES: Councilmembers Perez, Ramirez, and Valencia, Vice Mayor Ayala, and Mayor Rios
NOES: None
ABSENT: None

Dated this 26th day of March 2024.


Theresa Devoy, CMC
City Clerk

12700 Norwalk Boulevard, P.O. Box 1030, Norwalk, Ca 90651 • Phone: 562-929-5700 • Norwalk.org

Appendix A

MEDICAL REVIEW OFFICER AND THE VERIFICATION PROCESS

Dr. Mark A. Peacock performs the services of Medical Review Officer for City of Norwalk Transportation Department's drug testing program. He is a licensed physician and has knowledge of controlled substance abuse disorders and has the appropriate training to interpret and evaluate an employee's confirmed positive, adulterated, substituted and invalid test results from the laboratory, or a legitimate medical explanation for the test result. The MRO acts as "gatekeeper" and advocate for the accuracy and integrity of the drug testing procedures in accordance with DOT CFR Part 40.

The MRO's responsibilities include the following:

- A. Receives and reviews the Chain of Custody Form (CCF) and the laboratory test results for accuracy and determines if there are correctable errors or problems that could deem a test to be cancelled. Following an investigation, the MRO will notify the appropriate parties where possible.
- B. Ensure the timely flow of test results and related information to the Designated Employer Representative (DER).
- C. Protects the employee's privacy in reporting results in a confidential manner.
- D. Conduct a telephone or direct verification interview with the employee to discuss a non-negative test result, while maintaining confidentiality. In the telephone interview, explain to the employee that if he or she declines to discuss the result, he will verify the test as positive or if applicable, as a refusal to test because of adulteration or substitution.

At a minimum, three attempts, spaced over a 24-hour period will be made to reach the employee at the day and evening phone numbers listed on the CCF. (The MRO will allow the employee to present information within 60 days of any serious illness, injury or circumstances that precluded contact with the MRO.)

- E. If unable to contact the employee, contact the DER with instructions to have the employee contact the MRO within 72 hours.
- F. Verify the test result as either negative, positive, test cancelled, or refusal to test because of adulteration or substitution.
- G. Inform the employee of the right to request a split-specimen test within 72 hours of notification.
- H. Upon written request from an employee, provide copies of any records pertaining to the employee's DOT-mandated drug test.

Appendix B

SUBSTANCE ABUSE PROFESSIONAL (SAP)

A SAP must have one of the following credentials:

- 1) Licensed physician (Doctor of Medicine or Osteopathy);
- 2) Licensed or certified social worker;
- 3) Licensed or certified psychologist;
- 4) Licensed or certified employee assistance professional;
- 5) State-licensed or certified marriage and family therapist; or
- 6) Drug and alcohol counselor certified by an organization listed at <https://www.transportation.gov/odapc/sap> is defined as a licensed physician or a licensed or certified social worker or psychologist, employee assistance professional or a drug and alcohol counselor with knowledge of and clinical experience in diagnosis and treatment of drug and/or alcohol-related disorders.

The SAP's primary functions are:

A. Making a clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use. At the SAP's discretion, this assessment or evaluation may be performed face-to-face in-person or remotely. If a SAP is not prohibited from using technology within the parameters of the SAP's State-issued license or other credential(s), a remote evaluation must be conducted in accordance with the following criteria:

- (i) The technology must permit real-time audio and visual interaction between the SAP and the employee; and
- (ii) The quality of the technology (e.g., speed of the internet connection and clarity of the video display) must be sufficient to allow the SAP to gather all the visual and audible information the SAP would otherwise gather in an in-person face-to-face interaction, while providing security to protect the confidentiality of the communications at the level expected by industry standards for remote substance abuse evaluations.

B. Referring the employee to an appropriate education and/or treatment program;

C. Conducting a follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations. This assessment or evaluation may be performed face-to-face in-person or remotely. A face-to-face remote evaluation must meet the criteria in paragraphs (a)(1)(i) and (ii) of this section.

D. Providing the DER with a follow-up drug and/or alcohol testing plan for the employee; and

(5) Providing the employee and employer with recommendations for continuing education and/or treatment.

- A. ~~Provide initial face-to-face clinical assessment and evaluation of an employee following an employer referral for a violation of the DOT drug and alcohol regulations, [including a verified positive DOT drug test result, a DOT alcohol test with a result of 0.04 or greater, a refusal to test (including by adulterating or substituting a urine specimen)];~~
- B. ~~Recommend a treatment or rehabilitation program and monitor the individual's progress through the education and/or treatment program;~~
- C. ~~Conduct a face-to-face follow-up evaluation to gauge if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the assessment and evaluation recommendations;~~
- D. ~~Provide the DER with a written follow-up drug and/or alcohol testing plan for the employee, and~~
- E. ~~Provide the employee with appropriate education/treatment, and determine the frequency and duration of follow-up tests beyond the minimum required in the regulations and present a written follow-up testing plan to the employer. The minimum testing plan is six (6) unannounced follow-up tests in the first 12 months of safety-sensitive duty following the employee's return to safety-sensitive functions.~~

***Note: The City of Norwalk Employee Assistance Program is provided by:
Aetna Resources for Living 1-800-221-0945.***

Appendix C

DRUG-FREE WORKPLACE ACT OF 1988

Under the Drug-Free Workplace Act (DFWA) of 1988, not covered under 49 CFR Part 655, the City of Norwalk is required to certify to the granting agency that it will provide a drug-free workplace.

City of Norwalk employees are prohibited from the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the workplace and will be subject to disciplinary action up to and including termination for violations of these prohibitions. As a condition of employment, a City employee will abide by the terms of the DFWA adopted by the City in 1992.

The employee is further obligated to report any criminal drug statute conviction for a violation occurring in the workplace to a supervisor no later than five (5) days after such conviction. It also requires that the City notify the grant-funding agency within ten (10) days of learning of any conviction for a violation occurring in the workplace. Within thirty (30) days after receiving notice of such a drug conviction, the City must take appropriate personnel action, up to and including termination, or require satisfactory participation in a drug abuse assistance or rehabilitation program by the employee.

Appendix D

EMPLOYEE ASSISTANCE PROGRAM (EAP)

Employees requiring professional assistance with drug and/or alcohol problems are encouraged to use City-approved substance abuse/deterrence programs or use health insurance plans, as appropriate. Conscientious efforts to seek such help will not jeopardize any employee's job and will not be noted in his or her personnel file. However, employees receiving help from such a program are not insulated from the rules and requirements of this policy.

Contractor/vendor employees are expected to be free from the effects of drug abuse and alcohol misuse. Contractor/vendor employees found to be violating this policy will not be allowed to continue to operate or maintain Transportation Department revenue or revenue support vehicles.

Federal regulations do not require an Employee Assistance Program (EAP), beyond the provision of a Substance Abuse Professional (SAP) to evaluate employees, who have tested positive for drugs and/or alcohol or refused a required test under this regulation.

In the event of a positive test result of an applicant, it is the City's policy, that beyond a referral to a SAP, the City has no other obligations and the individual will not be hired for the safety-sensitive position.

A. Voluntary Self-Referral to a Substance Abuse Rehabilitation Program

The City of Norwalk recognizes its commitment and responsibility to its employees by assisting employees in obtaining information relative to City-approved rehabilitation programs.

1. Prior to employer knowledge of a violation of this Policy, any employee who believes that he or she has a substance abuse problem requiring treatment may voluntarily request assistance in obtaining information relative to available City-approved rehabilitation programs. The City of Norwalk will assist the employee in dealing with his/her substance abuse problem. When an employee informs a supervisor of a substance abuse problem, the supervisor may refer the employee to a City-approved abuse program or a program provided by his/her insurance provider.
2. Any employee, who voluntarily requests assistance with a substance abuse problem, may do so in complete confidence and without the risk of adverse employment consequences solely as a result of their request for assistance. The request will not jeopardize an employee's position with the City. No reference of the request will be placed in the employee's personnel file.

3. An employee referred to a rehabilitation program, through the EAP, will be responsible in conjunction with any provider of available health and welfare benefits, for the cost of the rehabilitation program.
4. Regardless of voluntary participation in a rehabilitation program, any employee found to be performing safety sensitive duties while impaired by a drug(s) and/or alcohol, as prohibited by this Policy, shall be subject to disciplinary action, up to and including termination.

Employees are, therefore, encouraged to request to be relieved from duty and be placed on a leave of absence during participation in a City approved rehabilitation program, if there are concerns about refraining from substance abuse or alcohol misuse.

5. The City will allow the employee to take one leave of 30 days, or less, and to charge accumulated leave or other leave credits while the employee participates in the rehabilitation or treatment program during participation in a treatment program.
6. If an employee is experiencing work related performance problems or when disciplinary action is contemplated or pending against the employee at the time a request for assistance is made, the request will be treated as a separate but possibly related issue. In no case will a request for assistance provide amnesty to an employee in a contemplated or pending disciplinary action. A request for assistance may, at the discretion of management, defer related, pending or contemplated disciplinary action until completion of the treatment process.

***Note: The City of Norwalk Employee Assistance Program is provided by:
Aetna Resources For Living 1-800-221-0945***

Appendix E

**CITY OF NORWALK
TRANSPORTATION DEPARTMENT**

REASONABLE SUSPICION TESTING REFERRAL FORM

Note to Supervisor/Company Official: This form is to be used to substantiate and document the objective facts and observations leading to a reasonable suspicion testing determination. After a direct observation of the employee's appearance, behavior, speech, body odors, and/or performance, please check ALL the indicators that raised your suspicion that the employee may have engaged in conduct which violates the Drug and Alcohol Program policy. **Read further instructions on back page.**

Employee Name _____ Job Title _____
Supervisor/Co. Official _____ Job Title _____
Date/Time of Determination: _____
Name(s) of Witness(es), if any: _____

A. APPEARANCE OR PHYSICAL INDICATORS

- ☐ Flushed or very pale complexion
- ☐ Excessive sweating or skin clamminess
- ☐ Bloodshot or watery eyes
- ☐ Dilated or constricted pupils
- ☐ Nystagmus (jerky eye movement)
- ☐ Unfocused, blank stare
- ☐ Runny/bleeding nose
- ☐ Disheveled clothing
- ☐ Unkempt grooming
- ☐ Possible puncture marks on arms
- ☐ Dry mouth, wetting lips frequently

C. SPEECH OR BODY ODORS

- ☐ Slurred, thick, slowed
- ☐ Incoherent, nonsensical, silly
- ☐ Loud, boisterous
- ☐ Repetitious, rambling
- ☐ Cursing, inappropriate language
- ☐ Rapid, pressured
- ☐ Excessive talkativeness
- ☐ Exaggerated enunciation
- ☐ Odor of alcohol
- ☐ Distinctive pungent aroma

B. BEHAVIORAL INDICATORS

- ☐ Stumbling, unsteady gait
- ☐ Poor coordination
- ☐ Hyperactivity, fidgety, agitated
- ☐ Nervous, disorderly
- ☐ Irritable, moody, belligerent
- ☐ Shaking, tremors, twitches
- ☐ Dizziness or fainting
- ☐ Nausea or vomiting
- ☐ Breathing irregularly or with difficulty
- ☐ Extreme fatigue or sleeping on the job
- ☐ Depressed, withdrawn
- ☐ Lackadaisical, apathetic attitude
- ☐ Suspicious, paranoid, falsely accuses others

D. PERFORMANCE INDICATORS

- ☐ Delayed or faulty decision-making
- ☐ Impulsive, unusual risk-taking
- ☐ Inability to concentrate
- ☐ Lack of motivation
- ☐ Impaired mental functioning
- ☐ Decreased alertness
- ☐ Significant increase in errors
- ☐ Reduced quality/quantity of work
- ☐ Inappropriate response to instructions
- ☐ Excessive absences or use of sick time
- ☐ Ignores safety rules/procedures
- ☐ Frequent or extended absences from meetings or work assignments

Other observations not noted above:

Date/Time of Test: _____ Test Refused: ☐ No ☐ Yes

Supervisor/Company Official Signature _____

Instructions to Supervisor/Company Official:

1. Conduct the employee interview in a private setting, mindful of the dignity and confidentiality rights of the employee.
2. Give the employee an opportunity to explain the reason(s) for the indicators you have observed from his or her perspective. Expect denial. Note explanation given by the employee (if any) in the space below.

3. Once a reasonable suspicion testing determination has been made, immediately remove the employee from performing any safety-sensitive functions. Notify the employee that he or she will remain out of service until the test results are known. The employee will remain on paid status while awaiting test results, unless the employee is suspended for any additional purposes concurrent with the waiting of the test results. If all test results are negative, the employee will be immediately returned to work. If either the alcohol or drug test result is non-negative (positive or test refusal as a result of adulteration or substitution), the employee will be placed on unpaid status pending disciplinary action.
4. Arrange to have the employee accompanied to the collection site for testing without delay.
5. FTA regulation requires that reasonable suspicion testing for alcohol be administered within two (2) hours following the determination to refer the employee for testing. If alcohol testing is not conducted within two (2) hours, document the reason for the delay. *If the test is not administered within eight (8) hours, cease all attempts to test and document the reason for the inability to test.* Please use the space below to document any delays or inability to test.
6. Following the test(s), arrange to have the employee transported home.

IMPORTANT: DO NOT TRY TO DIAGNOSE ABUSE OR ADDICTION OR IDENTIFY THE SPECIFIC DRUG ASSOCIATED WITH THE EMPLOYEE'S BEHAVIOR OR APPEARANCE.

Appendix F

CITY OF NORWALK
TRANSPORTATION DEPARTMENT

POST-ACCIDENT DRUG AND ALCOHOL TESTING
DECISION MAKER FORM

The City of Norwalk Transportation Department and the Federal Transit Administration (FTA) drug and alcohol testing regulation (49 CFR Part 655.44) require that employees involved in a vehicle accident (as defined in the policy submit to tests for alcohol and prohibited drugs as soon as possible following the accident). The Policy also requires the testing of any other safety-sensitive employee whose performance could have contributed to the accident, as determined by the manager or supervisor at the scene using the best information available at the time of the decision.

Accident Information:

Date of Accident: _____ Time of Accident: _____ AM/PM

Employee Name: _____ ~~Social Security No~~ Employee ID/SSN: _____

Decision Questions:

- Was there a human fatality? Yes _____ No _____ **If Yes, Post-Accident tests are required.**
- If there was **no** fatality, ask the following questions:
 1. Has any individual suffered a bodily injury and immediately received medical treatment away from the scene of the accident? Yes _____ No _____
 2. Was there disabling damage to the company vehicle or any other vehicle as a result of the occurrence and the vehicle was transported away from the scene by a tow truck or other vehicle? Yes _____ No _____

If you checked YES for questions 1 or 2 above, a Post-Accident test is required under FTA rules unless you determine, using the best information available at the time of the decision, that the employee's performance can be completely discounted as a contributing factor to the accident. Any reason for NOT conducting a Post-Accident test after you've answered YES to any of the above questions MUST be documented on the reverse side of this form.

Employee taken to _____ (collection site)
By _____ Title _____ at _____ AM/PM

Instructions to Supervisor:

1. **Determine if employee requires medical attention. Emergency medical treatment takes priority over drug and alcohol testing.**
2. Bring employee into a private setting if possible and inform him/her that (s)he will be transported to the collection site for a Federal drug and alcohol test in accordance with FTA regulations.
3. If the employee refuses to submit to testing, inform employee that refusal to comply or cooperate will be treated as a positive test, and will result in disciplinary action based on the policy.

4. Escort the employee (or arrange to have him/her transported) to the collection site and then to home.
5. Inform the employee that he or she will remain "out of service" on paid status while awaiting test results, unless the employee is suspended for any additional purposes concurrent with the waiting of the test results. If all test results are negative, the employee will be immediately returned to work. If either the alcohol or drug test result is non-negative (positive or test refusal as a result of adulteration or substitution), the employee will be placed on unpaid status pending disciplinary action.
6. A covered employee who is subject to post-accident testing and leaves the scene of the accident prior to submission to such test or fails to remain readily available including notifying the employer or employer representative of his or her location, may be deemed to have refused to submit to testing.

Additional required documentation of test delays or inability to test for either alcohol or drugs.

49 CFR Part 655 §655.44 (ii)

If an alcohol test required by this section is not administered within two (2) hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight (8) hours following the accident, the employer shall cease attempts to administer an alcohol test and maintain the record. Records shall be submitted to FTA upon request of the Administrator.

(b) An employer shall ensure that a covered employee required to be drug tested under this section is tested as soon as practicable but within thirty-two (32) hours of the accident.

Supervisor Documentation
<p>Was the alcohol test administered within two (2) hours of the time of the accident? Yes___ No___</p> <p>If the response to above question is "No", document the reason for delay:</p> <p>_____</p> <p>_____</p>
<p>Was the alcohol test administered within eight (8) hours of the time of the accident? Yes ___ No ___</p> <p>If the response is "No", document the reason for the additional delay:</p> <p>_____</p> <p>_____</p>
<p>If the alcohol test was not administered within eight (8) hours, cease attempts to have the alcohol test administered and note reason below:</p> <p>_____</p> <p>_____</p>
<p>Was the drug test administered within thirty-two (32) hours of the time of the accident? Yes___ No___ If not, state the reason:</p> <p>_____</p> <p>_____</p>
Review
<p>Name: _____ Date: _____</p> <p>Title: _____</p>

Appendix G

THIRD PARTY ADMINISTRATOR

Name	Drug Free Business
Address	18912 North Creek Parkway, Ste. 202 Bothell WA 98011 USA www.drugfreebusiness.org
Phone Number	(800) 598-3437

Appendix H

Designated Employer Representative (DER)

Designated Employee Representative

Cecilia Hernandez

Title: Personnel Payroll Technician
Norwalk Transit System
12650 Imperial Hwy, 3RD Floor
Norwalk, CA 90650
(562) 929-5533
(562) 929-5572 – FAX

Alternate

Derek Donnell

Manager of Transit Operations
Norwalk Transit System
12650 Imperial Hwy, 1ST Floor
Norwalk, CA 90650
(562) 929-5554
(562) 929-5572 - FAX



CITY OF NORWALK TRANSPORTATION DEPARTMENT
DRUG AND ALCOHOL PROGRAM
RULES AND REGULATIONS

VERIFICATION OF EMPLOYEE NOTICE

I have received a copy of the ~~March-August~~ 2024 City of Norwalk Transportation Department Drug and Alcohol Program Rules and Regulations which outlines the rights, duties, and responsibilities of the City of Norwalk Transportation Department and all Safety-sensitive employees of the City of Norwalk Transportation Department.

Employee Name – Print

Title

Employee Signature

Date

Division

City of Norwalk
Transit System Representative

Date