	POLICY AND PROCEDURE
	SUBJECT: ZERO TOLERANCE DRUG FREE WORKPLACE POLICY

DATE: MAY 20, 2024

POLICY NUMBER: HR-24-001

1.0 POLICY STATEMENT

Employees should report to work fit for duty and free of any adverse effects of illegal drugs or alcohol. Employees are not prohibited from the lawful use and possession of prescribed medications. Employees must, however, consult with their doctors about the medications' effect on their fitness for duty and ability to work safely, and they must promptly disclose any work restrictions to their immediate supervisor.

Florida Statute § 440.101 provides in part that an employee who is injured in the course and scope of his employment and tests positive on a drug or alcohol test may be terminated and shall forfeit his eligibility for medical and indemnity benefits under Florida’s Workers’ Compensation Law.

2.0 PURPOSE OF THE POLICY


To continue the City of Riviera Beach’s (“City”) commitment to safeguard the health of its employees, to provide a safe place for its employees to work, and to promote a drug-free working environment. This policy is established in part to prevent the use and/or presence of these substances in the workplace, and to assist employees in overcoming any dependence on drugs and/or alcohol in accordance with the following guidelines.

This policy is intended to conform to the requirements of the Drug-Free Workplace Program under Florida’s Workers’ Compensation Law, Fla. Stat. § 440.101-.102, and rules promulgated pursuant thereto. Substance abuse, while at work or otherwise, seriously endangers the safety of employees, as well as the general public, and creates a variety of workplace problems including increased injuries on the job, increased absenteeism, increased health care and benefit costs, increased theft, decreased morale, decreased productivity, and a decline in the quality of products and services the City offers. The City prohibits the use of drugs and/or alcohol in the workplace.

3.0 DEFINITIONS

The following definitions are provided for in Florida Statute Section 440.102(1) and 49 C.F.R. § 40.

Drug means alcohol, including a distilled spirit, wine, a malt beverage, an intoxicating liquor, the intoxicating agent in ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol; 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 above.

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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.

Employee means an individual who works for the City of Riviera Beach, Riviera Beach Community Redevelopment Agency, or the Utility Special District on a full-time or part-time basis and receives salary, wages, or other remuneration.

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.


Job Applicant means a person who has applied for a Special-Risk or Mandatory Testing position with the City and has been offered employment conditioned upon successfully passing a drug test.

Mandatory Testing Position means a job assignment that requires the employee to carry a firearm, work closely with an employee who carries a firearm, perform life-threatening procedures, work with heavy or dangerous machinery, work as a safety inspector, work with children, work with confidential information or documents pertaining to criminal investigations, work with controlled substances; or a job assignment that requires an employee security background check pursuant to Florida Statute Section 110.1127; or a job assignment in which a momentary lapse in attention could result in injury or death to another person.

Medical Review Officer (MRO) means a licensed physician, employed with or contracted with the City, 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.

Prescription or Nonprescription Medication means a drug or medication obtained pursuant to a prescription as defined by Florida Statute Section 893.02 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.

Special-Risk Position means a job position that is required to be filled by a person who is certified under Chapters 633 or 943, Florida Statutes, as amended.

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Specimen means tissue, hair, or product of the human body capable of revealing the presence of drugs or their metabolites as approved the FDA or the AHCA.

4.0 APPLICABILITY

This policy applies to all employees of the City of Riviera Beach, Riviera Beach Community Redevelopment Agency (“CRA”), and Utility Special District (“USD”), (*collectively*, employees). All employees are covered by this policy and, as a condition of employment, are required to abide by the terms of this policy.

6.0 PROCEDURE

6.1 TYPES OF TEST

Job Applicant Testing. All final candidates for Special-Risk and Mandatory Testing positions (persons to whom the City have offered employment) must be tested.

Follow-up Testing. If the City requires an employee to enter an employee assistance program, or a drug rehabilitation program, as a condition of continued employment after a confirmed, positive drug test, the City must require the employee to submit to a random drug test, at least once per year for a two-year period after completion of the program. Advance notice of the testing date must not be given to the employee being tested. If the employee voluntarily enters the program, the City has the option to not require follow-up testing.

Post-Accident / Incident. Employees involved in any work-related accident or incident involving the violation of any safety or security procedures or any work-related accident or incident that affects the safety of the employee or others may be required to submit to drug and alcohol testing.

Reasonable Suspicion Testing. Drug tests must be conducted following any observed behavior creating "reasonable suspicion." Some examples of observed behaviors creating reasonable suspicion include:

- a. Direct observation of drug/alcohol use, or the symptoms of being under the influence of a drug or alcohol.
- b. Abnormal behavior while at work or a significant deterioration in work performance.
- c. A report of drug use, provided by a reliable and credible source.



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- d. Evidence that an individual has tampered with a drug test while working.
- e. Information that an employee has caused, contributed to, or been involved in, an accident while at work.
- f. Evidence that an employee has used, possessed, sold, or solicited drugs while working or while on the City's premises or while operating a City vehicle, machinery or equipment.

Reasonable suspicion observations will be documented. A copy of this confidential documentation will be provided to the employee on request. The original, confidential documentation will be kept for a period of at least one (1) year and will be kept confidential.

Random Testing of Mandatory Testing and Special Risk Positions. The City conducts random drug testing on employees with job assignments designated as mandatory testing and employees in special risk positions using an unbiased selection procedure.


Routine Fitness-For-Duty Testing. The City ordinarily requires annual physical fitness for duty examinations for certain positions. Routine Fitness-For-Duty tests will include drug testing.

6.2 DRUG TESTING PROCEDURES

The City uses a licensed clinical laboratory approved by the Florida Agency for Health Care Administration. All specimens collected and tested for drugs shall be collected with the privacy interests of the individual in mind and shall be documented according to those procedures prescribed in Florida Statutes § 440.102(5). Moreover, collection and testing will be accomplished by a licensed clinical laboratory and according to those procedures provided by Florida Statutes § 440.102(9). In accordance with Florida Statutes § 440.102(5)(g), the laboratory is required to preserve the specimen that produces a positive confirmed test result for a period of at least 210 days after the results of the positive confirmation are mailed or otherwise delivered to the MRO. Within 180 days after written notification of a positive test result, the employee or job applicant may have a portion of the specimen retested at the employee's or job applicant's expense at another laboratory.

The second laboratory test must be of equal or greater sensitivity as the first laboratory test, licensed and approved by the Agency for Health Care Administration. The first laboratory shall be responsible for the transfer of a portion of the specimen to be retested to the second laboratory and for the integrity of the chain of custody doing the transfer.

Employees or job applicants will receive a form for the employee or job applicant to provide any information he or she considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information. A list of

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the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test will be provided.

The information provided by the employee or job applicant shall not preclude the administration of the drug test, but shall be considered in interpreting any positive confirmed test result.

The City shall provide to the employee or job applicant, upon request, a copy of the test results.

Confirmation Testing

If an initial drug test is negative, the City may in its sole discretion seek a confirmation test.

The licensed clinical laboratory used by the City is required to confirm all positive initial tests using gas chromatography/mass spectrometry (GC/MS) or an equivalent or more accurate scientifically accepted method approved by the Agency for Health Care Administration or the United States Food and Drug Administration as such technology becomes available in a cost-effective form.

If an initial drug test of an employee or job applicant is confirmed as positive the MRO shall contact the employee or job applicant regarding a confirmed positive test result and make such inquiry as to enable the MRO to determine whether prescription or over-the-counter medication could have caused the positive test result. If the employee or job applicant has a plausible explanation for the test result showing positive (i.e., legal use of prescription or nonprescription medication), as determined by the MRO, the MRO will report the test result as negative to the City.

The City shall pay the cost of all drug tests, initial and confirmation, which the City requires of employees or job applicants. An employee or job applicant shall pay the costs of any additional drug tests not required by the City.

The City's Licensed Clinical Laboratory

Concentra Urgent Care
4455 Medical Center Way
West Palm Beach, FL 33407
(561) 881-0066



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City's Certified Medical Review Officer (MRO)

Dr. Neil Dash
546 Franklin Avenue
Massapequa, NY 11758
(800) 526-9341

**6.3 TYPE OF DRUGS FOR WHICH EMPLOYEES AND JOB APPLICANTS WILL
BE TESTED**

<u>CHEMICAL NAME</u>	<u>BRAND NAME</u>	<u>COMMON NAME</u>	<u>CUT OFF NG/ML</u>
Alcohol (ETOH)		Liquor, Booze, Wine, Beer, Distilled Spirits	.04
Amphetamines	Obetrol, Biphedamine, Desoxyn, Dexedrine, Didrex, Ionamine, Fastin	Uppers, Speed, Bennies, Crystal, Black Beauties	1000
Barbiturates	Phenobarbital, Tuinal, Amytal, Nembutal, Seconal, Lotusate, Fiorinal, Fioricet, Esgic, Butisol, Mebaral, Butabarbital, Butalbital, Phrenilin, Triad	Barbs, Goofballs, Reds, Rainbows, Downers, Yellows, Blues	300
Benzodiazepines	Ativan, Azene, Clonopin, Dalmane, Diazepam, Librium, Xanax, Serax, Tranxene, Valium, Verstran, Halcion, Paxipam, Restoril	Downers	300
Cannabinoids (THC) (Tetrahydrocannabinol)	Marinol (Dronabinol, THC)	Pot, Marijuana, Weed, Grass, Joint, Hashish, Maryjane	50
Cocaine (Benzoylcegonine)	Cocaine HCl topical solution (Roxanne)	Freebase, Crack, Blow, Snow, Nose Candy, Coke	300
Opiates	Paregoric, Parepectolin, Donnagel PG, Morphine, Tylenol with Codeine, Empirin with Codeine,	Downers, Smack, Heroin	2000



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	APAP with Codeine, Aspirin with Codeine, Robitussin AC, Guaiacuss AC, Novahistine DH, Novahistine Expectorant, Dilaudid, M-S Contin and Roxanol (morphine sulfate), Percodan, Vicodin		
Methadone	Dolophine, Mathadose	Junk, Jungle Juice	300
Methaqualone	Quaaludes	Ludes	300
Phencyclidine (PCP)		PCP, Angel Dust, THC	25
Propoxyphene	Darvocet, Dolene, Darvon N		300

The above-referenced list is non-exhaustive and the City reserves the right to amend the list of drugs tested.

6.3.1 Medical Marijuana


Florida has legalized the use or possession of marijuana for limited medical uses, but it remains an illegal drug under federal law. The medical marijuana amendment to Florida's law still preserves employers' rights to enforce drug-free workplace policies and the City will enforce its policy accordingly. Florida law does not make it mandatory for the City to accommodate employees receiving medical marijuana or working under the influence of marijuana.

Employees who test positive for medical marijuana will be terminated according to this policy. Employees who work while under the influence of medical marijuana pose a safety risk to themselves and others and will be terminated according to this policy. Zero tolerance means zero tolerance.

6.4 CONFIDENTIALITY

The City shall keep all information, interviews, reports, statements, memoranda, drug test results, written or otherwise, received or produced as a result of a drug-testing program as confidential and exempt from Florida's public records laws. This confidential information may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except by waiver of the employee, in accordance with Florida's Drug Free Workplace Act or in determining compensability under the workers' compensation or unemployment benefits laws.

Notwithstanding the foregoing, the City may use such information and documents when consulting with legal counsel in connection with actions brought under the Florida Statute Section 440.102 or where the information is relevant to its defense in a civil or administrative matter.

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The City, the licensed clinical laboratories, medical review officers, employee assistance programs, drug rehabilitation programs and their agents shall not release any information concerning drug test results obtained under this policy without first obtaining a release from the affected employee or job applicant in accordance with Florida’s Drug Free Workplace Act and other applicable laws or regulations.

6.5 OVER-THE-COUNTER MEDICATION WHICH MAY ALTER OR AFFECT DRUG TEST RESULTS

Over-the-counter 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 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.


A failure to do so may result in disciplinary action. If the City determines that the impairment does not pose a safety risk, the employee will be permitted to work. Otherwise, the City may temporarily reassign the employee or place the employee in an appropriate leave status during the period of impairment. Improper use of “prescription drugs” is prohibited and may result in disciplinary action, up to and including termination.

6.6 PROHIBITED USE

Improper use of prescription drugs includes, but is not limited to, use of multiple prescriptions of identical or interchangeable drugs, and/or consumption of excessive quantities of and individual or therapeutically interchangeable drugs, and/or inappropriately prolonged duration of consumption of drugs, and/or consumption of prohibited drugs for other than valid medical purposes. For the purpose of this policy, consumption of any drug by the employee of more than the manufacturer’s maximum recommended daily dosage, or for a longer period of time than recommended, or of any prohibited drug prescribed for or intended for another individual, or for other than a valid medical purpose shall be construed to constitute improper use. Excessive or inappropriate prescribing by the prescriber or prescribers shall NOT constitute a defense for the employee. Prescription medication shall be kept in its original container if such medication is taken during working hours or on City property.

6.7 CONSEQUENCES OF REFUSING TO SUBMIT TO DRUG TESTING

Employees who refuse to submit to a drug test or refuse to disclose the results to the City may be terminated from employment. Tampering of samples will be considered a positive test result, and those employees who tamper with their drug test sample will be immediately discharged. Injured employees who refuse to submit to a drug test or have a positive confirmation test, in addition to the above, forfeits eligibility for all workers' compensation medical and indemnity benefits.

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Refuse to submit (to an alcohol or controlled substances test) means that an employee:

- a. Failed to appear for any test on the same day of being directed to report by the City. This includes the failure of an employee to appear for a test when called by a consortium or third-party administrator;
- b. Failed to remain at the testing site until the testing process is complete;
- c. Failed to provide a urine specimen for any drug test, or failed to provide a blood specimen for alcohol testing;
- d. In the case of a directly observed or monitored collection in a drug test, failed to permit the observation or monitoring of the employee's provision of a specimen;
- e. Failed or declined to take a second test that the City or collector has directed the employee to take;
- f. Failed to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the City;
- g. Refused to allow collection of specimens for drug and/or alcohol testing by a treating medical facility during course of treatment following an accident, or refused to allow the City access to medical records containing the results of such tests, or any attempt by an employee to block the release of such specimens or medical records;
- h. Failed to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process);
or
- i. Is reported by the MRO as having a submitted or attempted to submit a verified adulterated, diluted, or otherwise altered or substituted specimen.

6.8 CHALLENGING POSITIVE TEST RESULTS

The City may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by an MRO.

Within five (5) working days after receiving notice of a positive confirmed test result, an employee or job applicant may contest or explain the result to the MRO who shall report a positive result to the City if the explanation or challenge to the MRO is unsatisfactory.



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Within five (5) working days after the City receives notice of the positive confirmed test result, the City shall notify the employee in writing the results, the consequences of the results, and any options available to the employee or job applicant. The employee may request a copy of the test result at this time.

Within five (5) working days after the employee receives notice from the City of the positive test result, the employee may submit information to the City explaining or contesting the test result and explaining why the result should not constitute a violation of this policy. If the employee's or job applicant's explanation or challenge is unsatisfactory to the City, the employee will be notified by the City in writing within fifteen (15) working days of the date the challenge was received and will be subject to discipline under this policy. At that time, the employee will be provided with a copy of the confirmed positive test result and the name and address of the laboratory.

This positive test result is confidential information and will be kept by the City for at least one (1) year.

6.9 CONSEQUENCES OF CONVICTION FOR VIOLATION OF CRIMINAL DRUG STATUTE OCCURRING IN THE WORKPLACE

All employees shall report any conviction for a violation of a criminal drug statute occurring in the workplace to the immediate supervisor in writing, no later than five calendar days after such conviction. Within 30 calendar days of receiving such notice from a convicted employee, the City shall take one of the following actions:

- Take appropriate disciplinary action against the employee, up to and including termination; or
- Require the employee to participate satisfactorily in an approved drug abuse or assistance or rehabilitation program.


6.10 EMPLOYEE ASSISTANCE PROGRAMS

The City shall not discharge, discipline, or discriminate against an employee solely upon the employee's voluntarily seeking treatment, while under the employ of the City, for a drug-related problem if the employee has not previously tested positive for drug use, entered an employee assistance program for drug-related problems, or entered a drug rehabilitation program. Unless otherwise provided by a collective bargaining agreement, a City may select the employee assistance program or drug rehabilitation program if the City pays the cost of the employee's participation in the program.

City Sponsored Employee Assistance Program

Cigna

Connie Studer MA, LMFT, CEAP

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Employee Assistant Consultant
(888) 244-6293 ext. 290507

Other Available Assistance Programs

- Narcotics Anonymous Help-line: 561-848-6262
- Drug Abuse Foundation of Palm Beach County: 561-278-0000
- Palm Beach Al-Anon/Al-a-Teen Information Service: 561-888-9732
- Alcoholics Anonymous (Palm Beach County): 561-655-5700
- Comprehensive Alcoholism Rehabilitation Program: 561-844-6400

6.11 EMPLOYEE REQUIRED NOTIFICATION

Employees who initiate any administrative or civil action brought pursuant to the City’s Zero Tolerance Drug Free Workplace Policy must notify the City’s licensed clinical laboratory of such action.

7.0 EMPLOYEES COVERED UNDER A COLLECTIVE BARGAINING AGREEMENT

Employees may challenge employment decisions made pursuant to this policy as may be authorized by City policy, their collective bargaining agreement, or the Public Employees Relations Commission.

The employment terms set out in this policy work in conjunction with, and do not replace, amend, or supplement any terms or conditions of employment stated in any collective bargaining agreement that a union has with the City. Union employees should consult the terms of their collective bargaining agreement. Wherever employment terms in this policy differ from the terms expressed in the applicable collective bargaining agreement with the City, employees should refer to the specific terms of the collective bargaining agreement, which shall control.

8.0 DISCIPLINE

Employees who disregard this policy and its standards will be subject to discipline, up to and including, termination of employment. Any questions about the requirements of this policy should be directed to the employee's immediate supervisor.

This policy is not intended to restrict communications or actions protected or required by state or federal law.

9.0 MODIFICATION

The City expressly reserves the right to change, modify, or delete the provisions of this Policy without notice.

Departmental Sponsor: Human Resources



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Policy Review Date: May 20, 2027

References: Florida Statutes §§ 440.101, 440.102; 49 C.F.R. § 40

Departments Affected: All departments, all employees



City Manager
Jonathan Evans, MPA, MBA, ICMA-CM

5-21-2024


Date



Director of Human Resources

5/20/24

Date

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Acknowledgment of Receipt Zero Tolerance Drug Free Workplace Policy

I, _____ (employee name), acknowledge that on _____ (date), I received a copy of the City’s **Zero Tolerance Drug Free Workplace Policy**. I further acknowledge that I read it, understood it, and agree to comply with it. I understand that the City has the maximum discretion permitted by law to interpret, administer, change, modify, or delete this policy at any time with or without notice. No statement or representation by a supervisor or manager or any other employee, whether oral or written, can supplement or modify this policy. Changes to this policy can only be made if approved in writing by the City Manager. I also understand that any delay or failure by the City to enforce any work policy or rule will not constitute a waiver of the City’s right to do so in the future.

I understand that neither this policy nor any other communication by an immediate supervisor, department manager, department head, or any other employee, whether oral or written, is intended in any way to create a contract of employment. I understand that, unless I have a written employment agreement signed by the City Manager or designee, I am employed at will and this policy does not modify my at-will employment status. If I have a written employment agreement signed by the City Manager or designee and this policy conflicts with the terms of my employment agreement, I understand that the terms of my employment agreement will control.

Printed, Employee

Signature, Employee

Date