

APPENDIX B

CITY OF NEWPORT BEACH **DRUG AND ALCOHOL POLICY**

Section 1. Purpose

The City of Newport Beach (“City”) recognizes the important responsibility it shares in maintaining a safe and secure environment for those who live, work and play in the City. Further, the City is committed to providing its Employees with a safe, efficient and healthful workplace. An Employee performing his/her normal or assigned duties while under the influence of alcohol and/or any drug poses a serious risk to the health, safety, security and image of the City, its Employees and the public. This Policy establishes the rules and procedures regarding the use of drugs and/or alcohol as it pertains to employment and the procedures to be used to test Employees for drug and/or alcohol use.

Section 2. Violation of Policy

The City will not tolerate or excuse any violation of this Policy and a violation of this Policy will result in disciplinary action, up to and including termination.

Section 3. Individuals Covered

This Policy applies to all City job applicants and Employees. (For purposes of this Policy, “Employee” shall include Provisional Employees and Employees of independent contractors who perform work for the City and are required to be covered by this Policy under State or Federal law.) A copy of this Policy will be given to all Employees. Notices of this Policy will be posted on all Department bulletin boards and copies are available in the Human Resources Department.

Section 4. Confidentiality

Any information about an Employee’s use of prescription or non-prescription medication, the results of any pre-employment or for-cause drug and/or alcohol testing, and/or an Employee’s past or present participation in rehabilitation or treatment for substance abuse shall be considered confidential medical information and shall not be disclosed except as expressly provided in this Policy. Information obtained pursuant to this Policy will only be disclosed to the City Manager, Human Resources Director, the Department Director and the Supervisor designated by the Department Director to implement any action necessary or appropriate pursuant to this Policy. Except for the Department Director and Human Resources Director, the information described in this Section shall be disclosed only as necessary to initiate disciplinary action resolve legal issues or if necessary related to a medical emergency of an employee. The Employees

authorized to receive the information described in this Section shall consider all such information, including test results, to be confidential and not to be disclosed to any person or position other than as expressly provided in this Policy. Any reports or test results generated pursuant to this Policy shall be kept in a medical confidential file, accessible only by those authorized to receive the information, and separate and distinct from the Employee's personnel file.

Section 5. Sensitivity

All Employees and Supervisors shall be thoughtful and respectful when dealing with Employees suspected of inappropriate use of drugs and/or alcohol. Allegations or suspicions of drug and/or alcohol use in violation of this Policy are to be handled with the utmost objectivity, confidentiality and within the guidelines of this Policy.

Section 6. Definitions

- A. "Alcohol" shall mean the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol.
- B. "Chain of Custody" shall mean procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen at the certified laboratory.
- C. "City Equipment" shall mean all property and equipment, machinery and vehicles owned, leased, rented or used by the City.
- D. "Collection Site" shall mean a designated clinic/facility where applicants or Employees may present themselves for the purpose of providing a specimen of their blood or urine to be analyzed all as specified and defined in 49 CFR Part 40.

Collection Sites shall include the following or as otherwise designated by the Drug Program Manager:

- 1. National Safety Compliance, Inc.
61 Argonaut
Aliso Viejo, CA, 92656
(949) 472-0645
- 2. Newport Urgent Care
1000 Bristol Street North, Suite 1-B
Newport Beach, CA 92660-2906
(949) 752-6300

3. After Hours/Weekend Testing:
Hoag Hospital Emergency Department
301 Newport Boulevard
Newport Beach, CA, 92663
(949) 760-2372

The Collection Site will comply with all methods of collection and Chain of Custody and provide documentation of compliance to the City.

- E. “Drug or Drugs” shall mean any controlled substance that is not legally obtainable under State or Federal law, or a prescription drug obtained or used without benefit of a prescription by a licensed physician.
- F. “Drug Program Manager (DPM)” shall mean Human Resources Director or designee.
- G. “Medical Review Officer (MRO)” shall mean a licensed physician with knowledge of drug abuse disorders as well as appropriate training to interpret and evaluate an employee’s positive test results together with an employee’s medical history and any other biomedical information. MRO reviews all negative and positive test results and interviews individuals who tested positive to verify the laboratory report before the employer is notified. MRO recommends whether and when an Employee who refused to take or did not pass a drug and/or alcohol test may return to work and schedules follow-up unannounced testing for a period of up to thirty-six (36) months from the date Employee tested positive.
- H. “Prescription Drug” shall mean any substance that can lawfully be obtained or possessed pursuant to a prescription by a licensed physician. “Prescription Drug” does not include medicinal or prescribed marijuana obtained at a dispensary, even if recommended by a licensed physician.
- I. “Positive Test” shall mean to have the presence of a drug or a drug metabolite and/or alcohol in a person’s system that is equal to or greater than the levels allowed by this Policy in the confirmation test as determined by appropriate testing of a blood or urine specimen and which is determined by the MRO to be the result of the use of drugs and/or alcohol.
- J. “Testing Laboratory” shall mean a Substance Abuse and Mental Health Services Administration (SAMHSA) certified testing laboratory.
- K. “Substance Abuse Professional (SAP)” shall mean a licensed physician, social worker, psychologist, Employee Assistance Program (EAP) or certified National Association of Alcohol and Drug Abuse Counselors (NAADAC) with knowledge of and clinical experience in diagnosis and treatment of alcohol and controlled substance disorders.

Section 7. Restrictions on the use of Alcohol

Employees may not use or possess alcohol while on City property, while performing their duties (whether or not on City property) or at any time when use of alcohol would impair, to any extent, the Employee's ability to perform his/her duties or operate any City Equipment.

Section 8. Prohibition Against the use of Drugs

No Employee shall possess, use, sell, transfer, manufacture, purchase or transport drugs or attempt to do so or report to work with drugs in his or her system. No Employee shall possess, use, sell, transfer, manufacture, purchase or transport prescription drugs, or attempt to do so, or report to work with prescription drugs in his or her system, unless the prescription drug has been lawfully prescribed to the Employee.

Section 9. Criminal Drug Statute Convictions

To fulfill its obligations under the Federal Drug-Free Workplace Act of 1988, the City requires any Employee who is convicted of any criminal drug statute, for a violation occurring in the workplace, to provide written notice of the conviction to the Department Director no later than five (5) days after the conviction. The City is also required, and will fulfill its obligations to, educate Employees on the harmful effects of using and abusing drugs and/or alcohol.

As required by law, the City will notify federal contracting agencies within ten (10) days after receiving notice that an Employee, directly engaged in performance of work on a federal contract, has been convicted of a criminal drug statute violation resulting from conduct occurring in the workplace.

Whenever the City has reason to believe that Federal, State or local drug laws are being violated, the City may refer the matter to the appropriate law enforcement agencies for investigation and possible criminal prosecution.

Independent contractors, or employees of independent contractors, working on City projects are required by law or contract to notify the City, Human Resources Director or Department Director of a drug and/or alcohol related conviction or positive test for drugs and/or alcohol will not be permitted to work on City projects.

Section 10. Medication Reporting Requirements

Employees shall, in the case of prescription drugs, ask the prescribing physician and/or, in the case of medication available over-the-counter, review product packaging, to determine whether the use of a prescription drug or over-the-counter medication may impair his/her ability to perform his/her normal job duties or to safely operate City Equipment. Any Employee taking any over-the-counter medication or prescription drug marked "do not drive," "do not operate heavy equipment" or similarly labeled, shall inform the appropriate

Supervisor of the use of the medication or drug prior to reporting for duty. In the case of prescription drugs, the Supervisor shall determine whether the employee may work full duty or light duty based on the written opinion of the employee's medical provider that the use of the medication may impair the employee's ability to perform specific duties. The Supervisor may, upon a determination that the employee is unable to safely perform his or her normal duties, or a modified work assignment is not available, direct the employee not to work and to return home on paid leave or industrial leave if appropriate. In the event the employee's personal medical provider provides a written opinion that the use of the drug or medication will not impair the employee's ability to perform his/her normal duties, the Supervisor shall allow the employee to perform those duties. Notices or communications required by this Section shall be confidential and disclosed only to the Supervisor and the other Employees specifically authorized to receive information pursuant to this Policy. Nothing in this section shall constitute, or be construed as, a waiver of the employee's rights under State or Federal law.

Section 11. Indications for Alcohol and Drug Testing

- A. Job Applicants – Job applicants for job classifications that meet the “special need” requirement for drug and alcohol testing, must take and pass a mandatory drug and alcohol test as soon as practical following their acceptance of a conditional offer of employment and prior to the first day of employment with the City. Job applicants who test positive for drugs and/or alcohol or unauthorized prescription drug use shall not be hired and may not re-apply for a position with the City for one (1) year from the applicant's last positive test. A job applicant's refusal to submit to testing, or attempt to tamper with or adulterate a test sample, will be considered a refusal to participate in the testing process, and any conditional offer of employment will be rescinded. In such event the applicant may not apply for a position with the City for one (1) year from the applicant's refusal to participate in the testing process.
- B. Employees – The City may require an Employee to submit to a drug and/or alcohol screen test under the following circumstances:
1. Following a work-related accident, incident or mishap that resulted in death, or injury requiring medical treatment or property damage, where drug and/or alcohol use by Employee cannot be ruled out as a contributing factor. Exhibit C.
 2. When a trained Supervisor (for purposes of this Section the term trained Supervisor means a Supervisor who has received the training in this policy has reasonable suspicion to believe, based upon specific and articulable facts and observations that the Employee may be under the influence of drugs and/or alcohol. Exhibit C.
 3. When a trained Supervisor has reasonable suspicion to believe, based upon specific and articulable facts and observations, that the Employee

either possesses, uses, sells, transfers, manufactures, purchases or illegally transports alcohol, drugs and/or drug related paraphernalia or attempts to do so. Exhibit C.

4. Follow-up testing for Employees who have returned to work following a positive test and their participation in a drug and/or alcohol rehabilitation program.
5. When an on duty Employee is contacted by a Police Officer who has reasonable suspicion to believe the Employee is under the influence of alcohol or drugs has been involved in an on-duty vehicle-related incident and the officer suspects the Employee is under the influence of drugs and/or alcohol.

Section 12. Drug and Alcohol Testing

A. Administration

1. The Human Resources Director or his/her designee is the DPM and shall be responsible for overseeing implementation of this Policy and the testing procedures in Exhibit C. The Human Resources Director will be responsible for reviewing all disciplinary actions resulting from violations of this Policy to ensure that the action proposed or taken is consistent with this Policy and the Manual.
2. The DPM shall be responsible for the following:
 - i. Communications directly with the MRO and/or SAP and SAMHSA regarding any drug and/or alcohol tests;
 - ii. Overseeing testing programs;
 - iii. Providing training to Supervisors and Employees;

B. Procedures

1. Mandatory Reporting – Any Employee who has reason to believe that another Employee may be in violation of this Policy shall immediately notify his or her immediate Supervisor. The Supervisor should take whatever immediate action is deemed prudent to ensure the safety of the public and Employees. Should the Supervisor have reasonable suspicion to believe, based upon specific and articulable facts and observations, that the Employee may be under the influence of drugs and/or alcohol, the Employee should immediately be removed from the workplace and placed on leave with pay until such time as testing results confirm or refute the presence of drugs and/or alcohol. The Supervisor shall use the Reasonable Suspicion Evaluation Form (Exhibit A) to assist in making this determination. Should an Employee be found in violation of this Policy

and after appropriate notice and a final decision after any hearing on appeal, leave with pay may be discontinued.

2. Acknowledgement - No drug and/or alcohol test may be administered, sample obtained, or drug and/or alcohol test be conducted on any sample without the written acknowledgment of the person being tested. (Exhibit B.) Refusal to submit to testing, or attempt to adulterate or evade the testing process, will be viewed as insubordination and will subject the person to disciplinary action up to and including discharge. The City will pay the cost of all drug and/or alcohol tests required by this Policy used to determine test results. Should an Employee test positive, the costs of any tests needed to return to work or tests required as part of follow-up testing will be paid by the Employee.
3. Collection, Integrity and Identification
 - A. After the employee has been advised about the reason for the test by the Supervisor, the employee will be properly identified and Collection Site personnel will explain the mechanics of the collection process.
 - B. Procedures for urine collection will allow for individual privacy unless there is reason to believe the individual may alter or substitute the specimen to be provided. Samples will be tested for temperature and subject to other validation procedures as appropriate.
4. Chain of Custody
 - A. Procedures for the storage and transportation of test specimens shall conform to the Mandatory Guidelines for Federal Workplace Drug Testing Programs promulgated by the Department of Health and Human Services as amended from time to time. These guidelines currently require that:
 - i. Specimen bottles shall be under the direct control of collection site personnel.
 - ii. Specimen bottles shall be identified only by the Specimen Identification Number.
 - iii. The City shall prepare no writings about the contents of the specimen bottles or the employee identities.
 - B. The test laboratory shall maintain custody of the specimens.
5. Testing Methods – All tests will be screened using an immunoassay technique and all presumptive positive tests will be confirmed at an independent laboratory using gas chromatography/mass spectrometry (GC/MS). The City will test for cannabinoids (marijuana), cocaine,

amphetamines, opiates, barbiturates, benzodiazepines, and phencyclidine (PCP) as well as alcohol. Tests will seek only information about the presence of drugs and/or alcohol in an individual's system and will not test for any medical condition.

6. Notification – Any Employee who tests positive will be notified by the MRO and will be given an opportunity to provide the MRO any reasons he or she may have that would explain the positive drug and/or alcohol test, other than the presence of alcohol or the illegal use of drugs. If the Employee provides an explanation acceptable to the MRO that the positive drug or alcohol test result is due to factors other than the presence of drugs and/or alcohol in the test specimen, the positive test result will be disregarded and reported to the City as negative. Otherwise, the MRO will report the positive test result to the DPM or Human Resources Director. The explanation of the use of prescription medical marijuana is not an acceptable explanation and the MRO will report the test as a positive test result. Test results will be disclosed only to the extent expressly authorized by this Policy.

7. Split Sample Testing – An Employee who has been subjected to drug and/or alcohol screening may request a split sample test be conducted at a certified laboratory chosen by the Employee. All costs associated with an Employee's decision to pursue split sample testing will be the full responsibility of the Employee. The Employee must adhere to the following procedures to maintain strict Chain of Custody of the sample and validity of the split sample test results:
 - i. The Employee must submit a written request, in person, to the testing laboratory that conducted the drug and/or alcohol screening on behalf of the City. The request must be made on a form provided by the City's testing laboratory.
 - ii. The request will be forwarded to the testing laboratory used by the City facility. They will release the split sample to the certified lab chosen by the Employee provided they have received the properly executed Chain of Custody release form.
 - iii. The laboratory selected by the Employee must be a certified laboratory per State regulations and authority and be able to conduct GC/MS method of testing for validation of testing results. Any method of testing performed on the split sample that is not the GC/MS method will be considered invalid.
 - iv. The split sample test results will not be released to the City without the Employee's written consent.

Section 13. Rehabilitation

- A. Voluntary Disclosure – The City encourages any Employee with a drug and/or alcohol problem to voluntarily disclose the problem to the DPM who shall refer the employee to the Employee Assistance Program (EAP). An Employee requesting this assistance will not be disciplined solely due to the request but may, with the Employee's consent, be transferred, given work restrictions, or placed on leave while receiving treatment and until the Employee is drug and/or alcohol free. An employee's voluntary disclosure of a substance or alcohol abuse problem will not terminate any investigation, criminal or administrative, initiated prior to the disclosure. An employee subject to this Policy and making a voluntary disclosure shall receive immunity one time only during his/her employment with the City.

Each Employee is responsible for seeking assistance before the Employee's drug and/or alcohol problem leads to a violation of this Policy, or before the Employee is asked to submit to a drug and/or alcohol screen test.

- B. Leave Time – Employees must use available sick time, vacation accrual, flex leave or request personal leave of absence without pay if time off from work is necessary for any treatment or rehabilitation program. The costs of long-term rehabilitation or treatment services, whether or not covered by the Employee's medical plan, are the ultimate responsibility of the Employee.

Section 14. Exceptions

This Policy shall not prevent a Safety Employee of the Newport Beach Police Department from using or possessing drugs or alcohol as part of his/her official duties and when in furtherance of the mission of the Police Department.

Supervisor's Comments: _____

Supervisors Name: _____

Signature: _____ Date: _____

Supervisors Name: _____

Signature: _____ Date: _____

Witness(es) Name: _____ Date: _____

Signature: _____ Date: _____

**EXHIBIT B
DRUG AND ALCOHOL POLICY
ACKNOWLEDGEMENT OF SUBMISSION TO DRUG AND/OR ALCOHOL TESTING
BY THE CITY OF NEWPORT BEACH (“CITY”)**

I, _____ [PRINT NAME], understand and acknowledge that I have reviewed a copy of the City’s Drug and Alcohol Policy (Policy). I hereby acknowledge that I am required to submit to drug and/or alcohol testing pursuant to the Policy.

I understand and acknowledge that information regarding the test results will be released to the City and that such information may be used as grounds for disciplinary action, up to and including discharge.

I further understand and acknowledge that:

1. The City will pay the cost of all drug and/or alcohol tests required or requested by the City, except those costs associated with return work and follow-up testing associated with a positive test result;
2. I may request in writing a copy of the results of any such test;
3. I may request that a split sample test be sent to a certified Testing Laboratory of my choice, consistent with the procedures outlined in the City’s Drug and Alcohol Policy, and that I will bear all of the costs associated with the split sample testing;
4. By signing this form, I hereby acknowledge that the test results will be released to the City; and
5. I have the right to refuse to submit to such testing; however, refusal by me to submit to or cooperate at any stage of the testing shall be considered equivalent to a confirmed “positive” test for purposes of disciplinary action, up to and including discharge from my employment with the City.
6. I may also be required to execute forms at the Collection Site of Testing Laboratory.

With full understanding and knowledge of the foregoing, I hereby acknowledge my obligation to submit to drug and/or alcohol testing conducted by the clinics and/or Testing Laboratory selected by the City.

I have read the above acknowledgement and certify that I have signed this document with full knowledge and understanding of its contents.

Signature: _____

Date: _____

**EXHIBIT C
DRUG AND ALCOHOL POLICY
REASONABLE SUSPICION TESTING PROCEDURES**

A. Testing Procedures

1. Reasonable suspicion testing will be conducted when a Supervisor has a reasonable suspicion that an Employee is under the influence of drugs and/or alcohol. Reasonable suspicion must be based on specific, contemporaneous, articulate observations concerning the physical symptoms or behaviors of being under the influence of drugs and/or alcohol. A Supervisor must establish reasonable suspicion of drug and/or alcohol use during or just preceding the Workday. If conditions permit, the Supervisor will request the assistance of another Supervisor to observe the actions or behavior of the employee. The Supervisor shall, prior to testing, permit the employee to attempt to contact, and consult with, a representative. The Supervisor is encouraged to make reasonable accommodations (defined as actions that would not, in the opinion of the Supervisor, unreasonably delay the test, affect the reliability of the test, or harm the safety of the employee or the public) that would allow the employee to consult with a representative prior to the test. Examples of performance indicators of probable drug and/or alcohol abuse sufficient to lead a Supervisor to suspect that an Employee is under the influence of drugs and/or alcohol, include, but are not limited to, those on the attached Reasonable Suspicion Evaluation Form, (Exhibit A).
2. The Reasonable Suspicion Evaluation Form and other documentation establishing reasonable suspicion shall be prepared and signed by the witness(es) and the Supervisor prior to testing. The Department Director or Human Resources Department should be notified as soon as possible.
3. Testing shall be comprised of breathalyzer, urine and/or blood samples only. Positive levels for prohibited drugs are as follows:

<u>Drug to be tested</u>	<u>Initial Level</u>	<u>Confirmation Level</u>
Amphetamines and/or Methamphetamines	1000 n/ml	500 n/ml
Barbituates	300 n/ml	200 n/ml
Benzodiazepines	300 n/ml	200 n/ml
Cocaine	300 n/ml	150 n/ml
Marijuana	50 n/ml	15 n/ml
Opiates (morphine and/or codeine)	2000 n/ml	2000 n/ml
Phencyclidine (PCP)	25 n/ml	25 n/ml
Alcohol	.02 percent	.02 percent

4. Employee shall be tested within two (2) hours following the determination made by a Supervisor or otherwise the Employer shall document the reasons the test was not promptly administered. If a test is not administered within eight (8) hours following the determination, the Employer shall cease attempts to administer a test and shall state in the record the reasons for not administering the test.
5. The potentially affected Employee will not be allowed to proceed alone to or from the Collection Site. In addition, to the safety concerns for the Employee, the Supervisor accompanying the Employee also assures that there is no opportunity en route to the Collection Site for the Employee to do or ingest anything that could affect the test result or to acquire "clean" urine from another person.

B. Return to Duty Testing

Before an Employee returns to duty after engaging in prohibited drug and/or alcohol use, the Employee shall undergo an evaluation of fitness for duty by the SAP and under the direction of the MRO submit to a return to duty test and receive a verified negative result for drug and/or alcohol use.

C. Follow-Up Testing

1. Following a determination by a SAP that an Employee is in need of assistance in resolving problems associated with drug and/or alcohol use the Employee shall be subject to unannounced follow-up testing as directed by the SAP of at least six (6) tests in the first twelve (12) months following the Employee's return to duty, and thereafter as determined necessary by the SAP. The SAP can terminate the requirement for the follow-up testing in excess of the minimum at any time, if the SAP determines that the testing is no longer necessary and is supported by the City.
2. Follow-up alcohol testing may also include testing for controlled substance use as directed and determined by the SAP.
3. The time period for "follow-up" testing for drug and/or alcohol use will be determined by the SAP subject to a reasonable minimum of twelve (12) months, and never to exceed thirty-six (36) months.
4. Follow-up testing may be on a daily, weekly, monthly or longer basis at the discretion of the SAP.

D. Refusal to Submit to Testing

The following are definitions of refusal:

1. Not providing the City a written consent to take the test;

2. The Employee does not supply enough quantity of either urine or blood (for alcohol or drug testing) without sufficient or valid medical explanation;
3. Tampering with a specimen or collection process;
4. Tardiness to reporting Collection Site after time allocated for Employee to report without valid explanation;
5. Leaving the accident scene without justifiable cause before tests are conducted (testing for drugs and/or alcohol after an accident is presumed);
6. Any refusal to test will be considered a violation subject to discipline up to and including termination.

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