

*Superseded
w/ # 805*

ORDINANCE NO. 802

CITY OF ROANOKE

AN ORDINANCE ADOPTING A DRUG-FREE WORKPLACE POLICY
AND DRUG-FREE AWARENESS PROGRAM

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ROANOKE , as follows:

The City Council of the City of Roanoke, does hereby ascertain and declare that Drug abuse and use at the workplace are subjects of immediate concern in our society. These problems are extremely complex and ones for which there are no easy solutions. From a safety perspective, the user of drugs may impair the well-being of all employees, the public at large and result in damage to city property.

The following policy statement was adopted by the Mayor and City Council of the City of Roanoke, Alabama, on July 14, 2003 This policy statement is posted in the workplace and distributed to all City employees. As a condition of employment, all City personnel must abide by the terms of this policy.

DRUG-FREE WORKPLACE POLICY

NOTICE TO EMPLOYEES

YOU ARE HEREBY NOTIFIED that it is a violation of the Policy of the City for any employee to unlawfully manufacture, cultivate, distribute, dispense, possess, or use on or in the controlled substance as defined in schedules I through V of Section 202 of the controlled substance Act (21 U.S.C. 812).

YOU ARE FURTHER NOTIFIED that it is a condition of your continued employment that you will comply with the above policy of the City and will notify your supervisor and /or foreman of your conviction of any criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction. Supervisors shall notify the Mayor of any and all notices of conviction within 24 hours.

Any employee who violates the terms of the City's drug-free workplace policy may be non-renewed, suspended, or terminated from employment at the discretion of the City. As an alternative, the City may require, in its discretion, any employee who violates the terms of the City's drug-free workplace policy to satisfactorily participate in a drug abuse assistance or rehabilitation program approved by the City. If the employee fails to satisfactorily participate in such program, the employee shall be non-renewed, suspended, or terminated from employment at the discretion of the City.

DRUG TESTING OF DESIGNATED EMPLOYEES

In accordance with the Federal Transportation Employee Testing Act of 1993, certain employees involved in the operating of vehicles on a regular basis are required to submit to drug and alcohol testing. The City, in compliance with the Act, has adopted the following provisions:

1. All employees of the City, including substitutes, who are required to hold a Commercial Drivers License (CDL) as a precondition to employment or to continued employment, will be subject to drug and alcohol testing, such employees will be prohibited from performing assigned duties while under the influence of any prohibited drug or alcohol. While employees are prohibited from having any alcohol present in their systems while on duty, a Blood Alcohol Count (BAC) of .04 will be accepted as presumptive evidence of intoxication. An employee who tests between .02 and .039 BAC will be removed from job related functions until they test below .02 or until their next duty period, which must be at least 24 hours.
2. The proper use of medication prescribed by a physician is not prohibited; however, the City prohibits the misuse of prescribed (or over-the-counter) medications and requires all employees using drugs at the direction of a physician (or- over-the-counter drugs) to notify the City's Medical Review Officer (MRO), or their supervisor where these drugs may affect their job performance, such as causing drowsiness.
3. Employees who are required to hold CDL as a precondition to employment or to continued employment who refuse or do not pass a drug or alcohol test must pass a "Return to Duty Drug Test" before resuming duties.
4. Employees testing positive on an urinalysis or alcohol/breathalyzer or requesting treatment may be referred to the Mental Health Substance Abuse Counselor for an assessment of needs and possible referral for treatment. All such treatment shall be at the individual employee's expense.
5. Drug and alcohol testing will include the following categories:
 - a. Pre-employment: Post-Offer (This is to be interpreted as a conditional offer of employment.) Each person, after a conditional offer of employment has been made, will have to undergo a drug test and must pass such test before being employed in a position that requires the employee to hold the CDL.
 - b. Reasonable Cause Testing: Each employee that is required to hold the CDL as a precondition to employment or to continued employment will be subject to drug and alcohol testing based on reasonable cause as established by two supervisors through the use of objective evidence.
 - c. Post Accident: Any employee who is required to hold the CDL as a precondition to employment or to continued employment that is involved in an accident will undergo drug and alcohol testing within thirty two hours following any accident.

- d. **Random Testing:** All employees required to hold a CDL as a precondition to employment or to continued employment will undergo testing on a random basis. Random testing will be administered in a number equal to or greater than 50 percent (drug screening) and 25 percent (alcohol screening) of the CDL work force, without advanced notice, in the first 12 months of testing. There will be no maximum number of samples that any one employee will be required to provide during the testing period. Employees refusing to be tested may be suspended without pay.
- e. **Return to Duty Testing:** Any employee who is required to hold a CDL as a precondition to employment or to continued employment and tests positive or refuses testing must pass a "Return to Duty Drug Test" In such instance, the Medical Review officer must determine when and under what conditions the employee may return to duty. Any employee subject to "Return to Duty Drug Testing" will be subject to random and/or unannounced drug testing for sixty (60) months after return to duty.
- f. **Follow-up tests for alcohol** are unannounced and at least six (6) test must be conducted in the first 12 months after an employee returns to duty.
- g. All urine samples will be tested by Southern Family Practice & Occupational Medicine, 700 Quintard Avenue Anniston, Alabama 36201
- h. All alcohol testing and reading results will be conducted on-site and in the presence of the employee by a certified Intoxilyzer/Breathalyzer technician.
- i. The name of Medical Review Officer is: Donald W. Casey, MD , DO, & Thomas A. Page, MD. 700 Quintard Avenue Anniston, Alabama 36201
- j. Test results will not be released by the City beyond the MRO and City's management without the individuals written authorization.

D.O.T. DRUG TESTING REQUIREMENTS

In order to be employed by the City in a position that requires a C.D.L. as a prerequisite to employment that applicant will have to pass a urinalysis and a breathalyzer alcohol test. These test will be conducted for:

1. Marijuana
2. Cocaine
3. Opiates
4. P.C.P.
5. Amphetamines
6. Alcohol

PRE-EMPLOYMENT TESTING

(Post-offer Testing- This is to be interpreted as a conditional offer of employment.)

1. An applicant may not be hired for a position that requires a C.D.L. as a condition to employment unless he/she passes a drug and alcohol test.
2. The applicant will be informed in writing of the six (6) drugs tested for, marijuana, cocaine, opiates, phencyclidine-PCP, amphetamines, and alcohol. The applicant will be notified at each testing of the drugs for which they are to be tested.
3. The applicant will be notified of test requirements as part of the hiring process.

PROCEDURE STEPS IN REASONABLE CAUSE TESTING

Referrals are usually the result of some suspicious, overt behavior or observable evidence of drug or alcohol use. The decision to test must be based upon objective facts and observations. The following steps will apply in a reasonable cause situation:

Guide to Successful Reasonable Cause Testing Outcomes:

1. Focus on Safety
2. Verify Reasonable Cause
3. Isolate and Inform
4. Inquire and Observe
5. Review Findings
6. Transport the Employee
7. Document Events

The primary issue is safety-alcohol is an under the influence of a prohibited drug or immediate hazard to himself/herself, City property and others. Whether the work-site supervisor obtains proof of reasonable suspicion of drugs or alcohol use is secondary to assuring safety.

Verify the reasonable cause decision- Anonymous tips must be taken seriously, but should not be the sole reason to initiate a request for a specimen. Hearsay is not an acceptable basis for reasonable cause referral. If witnesses saw a specific event of behavior, ask them to describe what they saw. How far away were they? How long did they observe the person? What, if anything caused them to believe it was drug or alcohol abuse related? On what basis did they reach their conclusion? Talk to the affected employees- what can you observe and objectively document as it related to physical signs and symptoms, emotional state, physical evidence, and related facts?

Isolate and inform the employee- Remove the employee from the vehicle or workplace. Explain that you have reasonable cause to believe his/her performance is being affected by drug or alcohol use and you are requesting him/her to accompany you to the specimen collection site to provide a urine specimen or submit to a Breathalyzer test. Inform the employee of the consequences of refusal. It is important to interview the employee in a private setting.

Inquire and Observe- Ask the employee to explain the suspected behavior and to describe the events that took place from his/her perspective. Ask if there is any medication or physical condition that could explain the behavior. A persuasive explanation may not prevent you from asking for a urine sample or a breathalyzer test, if you still have reasonable belief that drugs or alcohol are a factor in the incident, a request for testing should be made.

Denial should be an expected reaction- If employees know they will test positive, they will give many explanations and protestations, wanting to avoid drug or alcohol testing. If they are not under the influence or affected by a prohibited drug or alcohol, vehement denial also would be expected. As a result a reasonable cause decision must be based on objective observations. Remember, a request for a urine specimen or a Breathalyzer test is not an accusation; it is simply a request for additional objective data. To the employee it may feel like an accusation, so it is important to stress that this is simply a request for additional data. Also, explain that the incident and the test results will be handled with strict confidentiality.

If the employee challenges you, saying that the request for testing is an accusation you should explain that you neither believe or disbelieve. State simply that the circumstances require objective data and an examination of a urine specimen or Breathalyzer test will put any ill-founded suspicion to rest.

Review you findings- During the conversation, observe physical and mental symptoms. Be sure to document any characteristics that either support or contradict initial information. In most cases, a reasonable cause decision must be made by two (2) supervisors. This creates greater objectivity, provides additional observation, and generally strengthens the defensibility of the reasonable cause determination.

Transport the employee- Do not allow a potentially intoxicated employee to proceed alone to the collection site. He/she could have a medical crisis as a result of the intoxication or a medical crisis could appear as drug or alcohol intoxication. The employee could turn violent and be a danger to self and others. In addition the employer's exposure to liability if damage or injury occurs is greater. No driver or collection facility representative wants to deal with an unattended, impaired person who is facing a urine specimen collection for drug testing or a Breathalyzer test for alcohol tasting. Accompanying the employee also assures that there is no opportunity en route to the collection site for the employee to ingest anything that could affect the test results or to acquire "clean" urine from another person. After the specimen has been collected, you may wish to take the employee home. Allowing an employee who is reasonably believed to be under the influence of drugs or alcohol to drive home is irresponsible and, may create unnecessary liability exposure.

Document the events- Record the behavioral signs and symptoms that support the determination to conduct a reasonable cause test. A sample form for recording your observation and employee data is provided.

Much of the previous discussion has focused on reasonable cause testing as a result of a specific incident that includes evidence of drug or alcohol intoxication and/or other unusual behaviors or events. However, you should remember that drug/alcohol-affected employees often will not be intoxicated or under the influence of prohibited substances at work. However, they may reveal the fact that they are drug or alcohol affected (and may even be heavily dependent or addicted) through long or short term changes in behavior patterns.

POST-ACCIDENT TESTING

Post-accident testing is required unless employee performance can be thoroughly eliminated as a causative or contributing factor in the accident.

Steps in post-Accident Testing

The steps to follow in a post-accident situation are summarized and discussed below:

1. Treat any injury first. The employable physical health is always a higher priority than the collection of a urine or Breathalyzer sample. You may wish to consider including an examination by a physician as a part of a post-accident investigation. The physician may observe other signs, symptoms, or organic clues that will help identify the cause of the accident.
2. Cooperate with law enforcement- Allow local law enforcement to conduct their investigation. The police may require a breath-alcohol test or blood specimen to be drawn for a legal determination of blood alcohol.
3. Explain- Tell the employee that a urine or Breathalyzer test is as much to protect him/her as it is to determine facts for the City of Roanoke.
4. Notify the hospital of the need for a specimen- if the employee is injured and unable to consent to a urine or breath sample, wait until the treating physician determines the employee is able to understand a request, sign the necessary forms, and provide a sample. If the employee is unconscious, ask the treating physician to collect a specimen. Without a medical release from the employee or a family member, the hospital may refuse to obtain the sample. If the hospital takes a sample but refuses to release the specimen, ask them to retain it in their custody, and freeze it with proper chain of custody procedures. You may wish to obtain a blood sample as a more acceptable alternative procedure than obtaining a urine specimen from a comatose or deceased employee because it may be considered less intrusive.
5. Collect specimens promptly- Urine specimens should be collected as soon as possible after an accident.

You should strive to collect the specimen as soon as possible after the accident, since, in some instances, drugs or alcohol may not be detectable as soon as twenty four (24) to forty-eight (48) hours after they are ingested. There may be occasions when injuries from accidents are not reported immediately and specimen collection is delayed.

Even Though the probability of drug or alcohol detection decreases with time the employee should know that a delay in reporting accident injuries does not preclude testing. You should still consider whether belated testing is appropriate given all the facts and circumstances surrounding the accident.

6. Work with the coroner in a fatality accident- If the accident results in an employee's death, and autopsy most likely will be performed. As soon after he accident as possible, request in writing in person that the medical examiner, coroner, or pathologist obtain a urine specimen of at least one-hundred (100) millimeters to be placed into a specimen bottle and sealed according to direction. The testing contractor can provide mailer kits, and several should be kept on hand.
7. Collect accident documentation promptly. You should collect and document as many facts and observations as possible immediately following the accident, police reports, eyewitness accounts, photographs, ect. You should note the time and date of both the occurrences of the accident and specimen collection.

RANDOM TESTING

The primary purpose of random testing is to deter prohibited drug and alcohol use and to detect drug and alcohol use for the purpose of removing identified users from employment positions requiring vehicular usage. Such persons may be returned to such employment duties only after they have passed a "Return to Duty Drug or Alcohol Test" and the Medical Review Officer (MRO) has determined that they may return to duty.

Each person shall be assigned a color/number and a call time. When this color/number comes up, that employee will report to Roanoke City Hall, 809 Main Street, the designated center to give urine specimen. The giving of the specimen will not be observed but must be of sufficient volume to allow proper testing (60 millimeters). Temperature of the urine will be taken immediately. Urine must be between 32.5 degrees C. and 37.7 degrees C, which is 90.5 degrees F. to 99.8 degrees F.

Any sample not meeting the above requirements will meet reasonable suspicion of adulteration or substitution. A second specimen will be collected under the direct observation by a person of the same gender based on the following requirements:

1. A supervisor will be notified of the problem.
2. The giving of the urine will be directly observed.
3. Both samples will be submitted for testing.
4. A Breathalyzer test will be administered by a trained BAT technician.

Any failure to cooperate with the collection process will be reported to the Superintendent.

Donald W. Casey, MD, & Thomas Page, MD, will follow all required DOT chain of custody requirements.

RETURN TO DUTY TESTING

Steps for Return to Duty Testing:

1. Any employee testing positive or refusing testing must pass a "Return to Duty Drug or Alcohol Test" and the Medical Review Officer must determine when and under what conditions the employee may return to duty.
2. Any employee returning from inpatient treatment must pass a "Return to Duty Drug and Alcohol Test".
3. Any employee subject to a "Return to Duty Drug and Alcohol Test" will be subject to random and/or unannounced drug or alcohol testing for sixty (60) months after return to duty.

EMPLOYEE ASSISTANCE PROGRAM (EAP)

The City EAP shall include the following components: (a) education and training for employees regarding drugs and alcohol; (b) education and training for supervisors regarding drug and alcohol, including (1) effects and consequences of substance use and personal health, safety, and work; (2) manifestations and behavioral causes that may indicate substance use and (3) documentation of training provided.

IT IS FURTHER ORDAINED that a copy of this Ordinance be posted by the City of Roanoke and a copy of some be delivered to all current and future employees.

ADOPTED and APPROVED this 14th day of July, 2003.

ATTEST:


Ellen Farmer

Ellen Farmer, City Clerk

Betty S. Ziegler
Mayor

I, Ellen Farmer, City Clerk of the City of Roanoke, certify that the foregoing Ordinance No. 802 is a true and correct copy of that certain Ordinance adopted by the City of Roanoke, on this 14th day of July, 2003.

WITNESS, my hand this 14th day of July 2003.


City Clerk