

## **ORDINANCE # 805**

### **SUBSTANCE ABUSE POLICY**

An Ordinance superseding and replacing Ordinance # 802, An Ordinance Adopting A Drug-Free Workplace Policy And Drug-Free Awareness Program, adopted on the 14<sup>th</sup> day of July 2003.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ROANOKE , on this 13<sup>th</sup> day of September 2004, as follows:

Adopted this 13<sup>th</sup> day of September 2004.

ATTEST:

Ellen Farmer  
Ellen Farmer, City Clerk

Betty S. Ziglar  
Mayor Betty S. Ziglar

Walter S. Sudduth  
Councilmember

Mark A. Bell  
Councilmember

Buster Johnson  
Councilmember

Phil L. ...  
Councilmember

James D. Holley  
Councilmember

# City of Roanoke

## Substance Abuse Policy

The Omnibus Transportation Employee Testing Act of 1991 mandated substance abuse testing for CDL holders and any other DOT covered safety sensitive positions. The drug and alcohol testing prohibitions and testing procedures are covered in 49 CFR Parts 382 and 40.

The **City of Roanoke** is committed to providing a safe work environment and to promoting and protecting the health, safety, and well being of our employees. This commitment is jeopardized when any employee engages in the use, possession, sale, conveyance, distribution or manufacture of illegal drug, intoxicants or controlled substances or abuses prescription drugs or alcohol. Substance abuse is a significant public health problem, which has a detrimental effect on the business community in terms of productivity, absenteeism, accidents, medical costs, theft, and workers' compensation costs.

The City of Roanoke is committed to safeguarding the health and welfare of our employees and residents, and to providing a safe working environment. Therefore, the **City of Roanoke** has established the following policy:

It shall be the **City of Roanoke** policy to prohibit all employees from possessing, selling, conveying, distributing, or manufacturing illegal drugs, intoxicants, or controlled substances, or to attempt to do the same. It is a violation of the **City of Roanoke** policy to use or be under the influence of illegal drugs or alcohol at anytime while on or using city property, conducting city business or otherwise representing the city. It is a violation of the **City of Roanoke** policy for anyone to use prescription drugs illegally. However, nothing in this policy precludes the appropriate use of legally prescribed medications. Employees are responsible for notifying his/her supervisor if the prescribed medication will affect the employee's ability to perform any function of his or her job.

It shall further be the **City of Roanoke** policy to order substance abuse testing for all covered employees. Those employees will be subject to substance abuse testing immediately before, during, and immediately after the performance of their duties. **Elected officials shall be exempted from substance abuse testing.** All testing will be performed in compliance with Part 40 guidelines.

It shall further be the **City of Roanoke** policy that no covered employee shall refuse a test covered under this policy, when directed to take such test covered under this policy.

Violations of this policy are subject to disciplinary action up to and including termination of employment. **First time offenders may, at the City of Roanoke's discretion, be extended an offer to retain their positions if the provisions of this policy are met. A second offense is an automatic termination.**

**The City of Roanoke will take no disciplinary action against any covered employee who voluntarily approaches management, before being directed to take a test, and admits to a problem with substance abuse, if the employ is willing to seek help. In this situation the**



employee will be granted an un-paid leave of absence for treatment or rehabilitation, the cost of which will be at the employee's expense. Upon successful completion of a program, acceptable to the City of Roanoke, the employee will be returned to their position.

Pursuant to the City of Roanoke policy, the following alcohol and/or drug testing of covered employees is required:

- Pre-employment (382.301) (Only for drug test). All applicants offered a job would be tested for the presence of illegal drugs or other prohibited substances prior to placement within the position. Applicants will be asked to sign a consent form to undergo drug testing should a position be offered to them prior to any interview occurring. If an applicant refuses, they will be considered disqualified, and the employment process will be terminated. There will be no Pre-employment Breath Alcohol Test performed for new applicants.
- Random (382.305) - Covered employees will be randomly chosen by recognized scientific methods at an annual rate of 50% for drug and 10% for alcohol test.
- Post-accident (382.303) - Covered employees involved in an accident or injury should be tested for alcohol and drugs within 2 hours if possible. If more than 2 hours elapse, a supervisor must prepare documentation as to why this was not accomplished within 2 hours. Efforts to accomplish the test should be terminated after 8 hours for alcohol, and 32 hours for drugs.
- Reasonable suspicion (382.307) - Covered employees will be tested for drugs or alcohol when a properly trained supervisor has a reasonable suspicion (as defined by 49 CFR 382.307) that said employee may be under the influence of drugs or alcohol.
- Return-To-Duty (382.309) - Covered employees who have violated this policy, but were allowed to retain their positions on the basis of successful rehabilitation, must successfully complete a Return-To-Duty test before returning to their position. This test will be at the employee's expense.
- Follow - Up (382.311) - Covered employees who have violated this policy, but were given the opportunity to retain their positions on the basis of successful rehabilitation, will be subject to unannounced testing to insure continued compliance with this policy. These tests will be at the employee's expense.

## **DRUG AND ALCOHOL USE, POSSESSION, IMPAIRMENT**

Covered employees are prohibited from performing assigned duties:

1. While having breath alcohol concentration of .02% or greater as indicated by an alcohol breath test. Employees having a breath alcohol reading of .02 or greater will be removed from their position for a minimum of 24 hours, and will face disciplinary action up to and including termination. If the breath alcohol reading is .04 or greater the employee will also be required to comply with 49 CFR Part 40 Subpart O, if an offer to

retain their position is extended. For CDL holders, compliance with Subpart O is mandatory, regardless of the status of future employment with the City of Roanoke.

2. While using alcohol.
3. Within 4 hours of using alcohol.
4. Refusing to submit to an alcohol test
5. Using alcohol within 8 hours after an accident, or until tested.
6. When using any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in 49 CFR Part 382.107, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle. Employees shall report any medical use of the above to his/her immediate supervisor.

In the event of a confirmed positive substance abuse test, the employee will be removed from their position and, if an offer to retain their position is extended, will be required to follow the DOT Part 40, Subpart O guidelines to be restored to their position. If the employee is a CDL holder, compliance with Subpart O is mandatory, regardless of employment status with the **City of Roanoke**.

7. After having refused, (as defined in 49CFR Part 40.191 or Part 40.261) any drug or alcohol test mandated by 49 CFR Part 382, or the **City of Roanoke Substance Abuse Policy**.

(a) As an employee, you have refused to take a **drug** test if you:

(a)(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, after being directed to do so by the employer.

(a)(2) *Fail to remain at the testing site until the testing process is complete; Provided,* That an employee who leaves the testing site before the testing process commences (see §40.63 (c)) for a pre-employment test is not deemed to have refused to test;

(a)(3) Fail to provide a urine specimen for any drug test required by this policy or DOT agency regulations; *Provided,* That an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see §40.63 (c)) for a pre-employment test is not deemed to have refused to test;

(a)(4) In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen (see §§40.67(l) and 40.69(g));

(a)(5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.193(d)(2));

(a)(6) Fail or decline to take a second test the employer or collector has directed you to take (see, for instance, §40.197(b));

(a)(7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under §40.193(d). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment; or

(a)(8) Fail 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)

(b) As an employee, you are considered to have refused to take an **alcohol** test if you:

(b)(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, after being directed to do so by the employer

(b)(2) Fail to remain at the testing site until the testing process is complete; *Provided*, That an employee who leaves the testing site before the testing process commences (see §40.243(a)) for a pre-employment test is not deemed to have refused to test;

(b)(3) Fail to provide an adequate amount of breath for any alcohol test required by this policy or DOT agency regulations; *Provided*, That an employee who does not provide an adequate amount of breath or saliva because he or she has left the testing site before the testing process commences (see §40.243(a)) for a pre-employment test is not deemed to have refused to test;

(b)(4) Fail to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.265(c));

(b)(5) Fail to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined at §40.265(c);

(b)(6) Fail to sign the certification at Step 2 of the ATF (see §§40.241(g) and 40.251(d));  
or

(b)(7) Fail to cooperate with any part of the testing process.

As an employee, if you refuse to take an alcohol or drug test, you incur the same consequences as if your test were positive. You must be immediately removed from your assigned duties. If the **City of Roanoke** permits you to remain employed, you will be required to see a Substance Abuse Professional (as defined in 49 CFR Part 40 Subpart O), comply with their directions, successfully complete a Return-To-Duty test, and be subjected to any required Follow-Up testing. (CDL drivers must comply with Subpart O

regardless of the employment status). In this instance, all SAP, treatment, and testing will be at the expense of the employee.

**Substance Testing Assurances:**

All substance abuse testing will follow 49CFR Part 40 Guidelines for Drug and Alcohol Testing in the Workplace. All drug tests will be split specimen collections. Any employee, who requests a second test be performed on bottle B, will reimburse The City of Roanoke for the cost of that test.

Only DHHS certified laboratories would be used to test urine specimens.

A strict chain-of-custody procedure will be used to ensure the integrity of each specimen.

The process will ensure individual privacy during the collection process and the confidentiality of test results.

All drug screens from the lab will be reviewed by a professional Medical Review Officer. This will include the opportunity for employees to explain anything that shows up in the drug screen. The MRO will determine the results of the test and notify the City of Roanoke's designated representative of the results.

All information, interviews, reports, statements and drug test results, written or otherwise are confidential communications, unless authorized by state or federal laws, rules, or regulations. :

The goal of this policy is to balance our respect for individuals with the need to maintain a safe, productive, and drug-free environment. Any questions concerning The City of Roanoke's Substance Abuse Policy should be directed to Ellen Farmer, City Clerk.

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Employee's Signature