

# CITY OF BETHEL

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## CITY OF BETHEL CDL DRUG AND ALCOHOL POLICY

Introduced: January 2, 2013  
Revised:

**PURPOSE:** The objective of this policy is to develop a drug and alcohol-free work place which will help ensure a safe and productive working environment, safe streets, and follows federal CDL laws. In order to further this objective, the following rules regarding alcohol and illegal drugs on City premises has been established.

**APPLIES TO:** All employees of the City who hold or should be holding a valid Commercial Driver's License (CDL) as part of their position, and includes exempt and non-exempt as well as full-time, part-time and temporary employees.

**POLICY:** The City has a commitment to maintain the highest standards for employee safety and health. The use of controlled substances and the misuse of alcohol are contrary to these high standards. The use or possession of illegal controlled substances or alcoholic beverages while on Company property, or in any Company vehicle, or on Company time, including breaks or lunch, paid or unpaid, on any shift, is strictly prohibited.

### **DEFINITIONS:**

- **Alcohol:** The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.
- **Alcohol Concentration:** The alcohol in volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under this part.
- **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 placed on a conforming products list (CPL) for such devices.
- **Breath Alcohol Technician:** A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.
- **City Premises:** All City property including, but not limited to, buildings, parking lots, vehicles, lockers, empty lots, dock spaces, and all internal and external storage spaces.
- **City Property:** All City-Owned or leased property used by employees such as, but not limited to, vehicles, lockers, desks, closets, etc. There is no expectation of employee privacy in any City property.
- **Confirmed Drug Test:** Those substances identified in Part 40 and this plan as "Drugs"

- **Controlled Substance:** Any substance listed in Schedules I-V of Section 202 of the Controlled Substance Act (21 USC §812) as amended.
- **Designated Employer Representative (DER):** An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these safety-sensitive duties, and to make required decisions in the testing and evaluation process. The DER also receives test results and other communications for the employer, consistent with the requirements of Part 40.
- **Dilute Specimen:** A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.
- **Driver:** Any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.
- **Drug:** A drug is any chemical substance that produces physical, mental, emotional, or behavioral change in the user.
- **Drug Paraphernalia:** Equipment, a product or material that is used or intended for use in concealing an illegal drug, or for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal drug or controlled substance.
- **Evidential Breath Testing Device (EBT):** A device approved by NHTSA for the evidential testing of breath at .02 and .04 alcohol concentrations, placed on NHTSA's Conforming Products List (CPL) for "Evidential Breath Measurement Devices" and identified on the CPL as conforming with the model specifications available from NHTSA's Traffic Safety Program.
- **Fitness for Duty:** To work in a manner suitable for the job. To determine "fitness" a medical evaluation may include drug and/or alcohol testing.
- **Illegal Drug:** Any drug, or derivative thereof, which the use, possession, sale, transfer, attempted sale, or transfer, manufacture, or storage of, is illegal or regulated under any Federal, State, or local law, regulation, ordinance or policy and any other drug including, but not limited to, a prescription drug used for any reason other than a legitimate medical reason, and inhalants used illegally.
- **Initial Drug Test:** The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.
- **Medical Review Officer (MRO):** A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.
- **Negative Test Results:** "Negative Test Results" are those that indicate no alcohol or drugs in the employee's system other than properly used prescription medication or over-the-counter medication that will affect the employee's ability to perform safety-sensitive functions.
- **Performing (a safety sensitive function):** A driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.
- **Positive Result:** The result by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.
- **Reasonable Cause / Reasonable Suspicion:** Supported by factual evidence strong enough to establish that a Policy has occurred.
- **Refusal to submit, Refuse, or Refuse to Take:** Behavior consistent with CFR Part 40 concerning refusal to take a drug test or refusal to take an alcohol test.
- **Safety Sensitive Functions:** Employee waiting to be dispatched; inspecting, servicing, or conditioning a commercial motor vehicle; loading, or unloading a

commercial motor vehicle; or obtaining assistance for a disabled commercial motor vehicle. Any and all functions applicable to motor vehicles that require a CDL to operate or maintain.

- **Safety Sensitive Times:** All time from when a City employee holding a Commercial Drivers License (CDL) begins work, or is required to be in readiness to work, until the time that he/she is relieved from work and all attendant responsibilities.
- **Specific Written Consent:** A statement signed by the driver that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time.
- **Split Specimen:** In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.
- **Split Specimen Collection:** A collection in which the urine collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).
- **Substance Abuse Professional (SAP):** A person who evaluates employees who have violated a DOT drug and/or alcohol regulation and makes recommendations concerning education, treatment, follow-up testing and aftercare.
- **Testing:** Is generally defined as urine, blood, or breath test to determine drug or alcohol content.
- **Third Party:** Any person or organization to whom CFR Parts 40 or 382 do not explicitly authorize or require the transmission of information in the course of the drug and alcohol testing process.
- **Verified Test:** A drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the MRO.

**RESPONSIBILITY OF DRIVERS:** Each driver must comply with the requirements of this policy and the DOT drug and alcohol rules pertaining to CDL's in order to remain eligible to drive commercial motor vehicles. Each driver has the responsibility to read, be knowledgeable of, and comply with, the requirements of this Policy, and Parts 40 & 382 of the CFR (Code of Federal Regulation). Committing a DOT violation will result in the driver's immediate removal from the safety-sensitive function, and remain so until successfully completing the DOT return-to-duty conditions of Part 40. This Policy describes circumstances for being tested, violations, prohibited conduct, and their subsequent consequences. It is a condition of employment for all drivers to sign the Acknowledgment/Receipt Form. In doing so, the driver attests to comply with the drug and alcohol program requirements of the City and the requirements of this Policy. Failure to comply with any condition may result in disciplinary action up to and including termination.

**ALCOHOL PROHIBITIONS:** City of Bethel expects that all employees holding a CDL position will maintain proper professional conduct at all times during the workday, on and off company or customer property. Any alcohol misuse that could affect performance or safety-sensitive functions is prohibited, including:

1. Reporting for duty or remaining on duty with an alcohol concentration of 0.02 or greater.
2. Use during the four (4) hours immediately preceding the performance of safety-sensitive functions or all other job related functions.
3. Possession of alcohol, including possession of medicines containing alcohol (possession of alcohol that is manifest and is being transported as part of a shipment is excluded from these prohibitions provided the seal is unbroken).

4. Alcohol use during the thirty-two (32) hours following an accident or until the covered employee is administered a post-accident test.
5. Refusal to take a required breath/saliva alcohol screening device (ASD) and/or Evidential Breath Testing (EBTs)

**ALCOHOL TESTING RESULTS:**

An employee who tests between .02 and .039 on any given alcohol test shall be immediately removed from a safety sensitive position and sent home for the duration of their shift without pay. The employee must complete an EBT on their next regularly scheduled work day before being allowed to return to work. Only if the employee tests negative will they be allowed to resume their duties.

The first time an employee is found to have an alcohol concentration between .02 and .039 they will be given an oral reprimand and sent home without pay for the duration of their shift.

The second time an employee is found to have an alcohol concentration between .02 and .039 they will be given a written reprimand and will be sent home without pay for the duration of their shift.

The third time an employee is found to have an alcohol concentration between .02 and .039 they will be terminated from employment.

An employee who is found to have an alcohol concentration of .040 or greater will be immediately suspended from employment. The results will be reported to DOT and the employee will become subject to the consequences of a positive test result explained more fully in another section below.

**DRUG PROHIBITIONS:** City of Bethel personnel may not report to work while under the influence of illegal drugs or any medication that may adversely affect the employee's performance of safety sensitive functions, nor may such personnel report to work under the influence of legal drugs for which no prescription has been issued or where the use of legal drugs is inconsistent with a prescription. Any drug misuse that could affect performance of safety-sensitive functions as well as any other performance functions is prohibited including:

1. Use of any prescription drug, unless prescribed by a licensed medical practitioner, provided that the medical practitioner has advised the covered employee that the drug will not adversely affect the ability to perform safety-sensitive functions.
2. Verifiably testing positive for drugs;
3. Refusing to take a required drug collection test or providing an adulterated or substituted sample.

**DRIVERS SUBJECT TO DRUG & ALCOHOL TESTING:** Any driver who operates a commercial motor vehicle in commerce in any State and is subject to the commercial driver's license requirements of 49 CFR Part 383.

**TESTING:** The City will ensure that each driver will be drug and/or alcohol tested for the following reasons when called for by CFR Part 82. All drug and alcohol tests will be conducted following the procedures of CFR Part 40.

1. **Pre-Employment:** A pre-employment drug test will be conducted before an individual is hired or used to perform safety-sensitive functions. Pre-employment tests are also required of drivers returning from a leave of absence greater than thirty (30) days who

have not been participating in the City's drug and alcohol program and subsequently subject to the random selection process. A negative DOT urine drug test result is required prior to performing safety-sensitive functions.

2. **Post-Accident Testing:** The City will conduct both a drug and alcohol test after an accident. As soon as practicable following an occurrence, but no later than eight (8) hours after the accident, involving a commercial motor vehicle operating on a public road in commerce, the City shall test for drugs and alcohol for each of its surviving drivers. The City will take all reasonable steps to test the driver after an accident but any injury will be treated first. The City will not delay necessary medical attention for an injured driver following an accident.
3. **Random Drug Testing:** The City will conduct a number of random drug and alcohol tests each calendar year that meets or exceeds the current minimum annual percentage random testing rate. The minimum rate for random drug testing set by FMCSA is fifty (50%) percent of the City's drivers. The minimum rate for random alcohol testing set by FMCSA is ten (10%) percent of the City's drivers. All drivers will be immediately placed in a drug and alcohol random pool after obtaining a negative result on their pre-employment test. Drivers will remain in the pool at all times, regardless of whether or not they have previously been selected for testing. Random testing will occur on a quarterly basis.
4. **Reasonable Suspicion/Cause Testing:** The City will conduct reasonable suspicion testing, also known as reasonable cause testing, based on the City's observation of "signs and symptoms" of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The driver shall not perform a safety-sensitive function pending the receipt of the drug test results. The driver should make arrangements to be transported home. If the driver insists on driving home, local law enforcement will be notified.
5. **Return to Duty Testing:** The City will conduct a return-to-duty test prior to a driver returning to a safety-sensitive duty following a DOT violation. When a driver has a DOT violation they cannot work again in any DOT safety-sensitive function until successfully completing the Substance Abuse Professional (SAP) return-to-duty requirements. However, whether or not to re-employ the driver is a business decision of the City, not the DOT. The results of a return-to-duty must be negative for drugs and less than .02 for alcohol in order to "count" and allow the driver to return to work.
  - a. **Follow-Up Testing:** The City will conduct follow-up testing, as a series of tests that occur after a driver returns to work, following a negative test result on the return to duty drug and/or alcohol tests. Follow-up testing will run concurrently with random testing. All follow-up drug tests will be conducted using direct-observation collection procedures. A positive test or a refusal to test will be considered as a new, separate violation.

The number and frequency of the follow-up tests will be determined by the SAP but shall consist of at least six (6) tests in the first twelve (12) months following the driver's return to duty. The follow-up plan will give both the number of tests and their frequency; the City will select the actual date and time of the test and the tests will be unannounced. Follow-up testing shall not exceed sixty (60) months from the date of the driver's return to duty. The SAP may terminate the requirement for follow-up testing at any time after the first six (6) tests have been administered if the SAP determines that such testing is no longer necessary.

**HISTORY CHECK REQUIREMENT:** Prior to the first time that the City uses a driver (i.e. a new hire or an employee transferring into the safety sensitive position) the City will require a "history

check” of the driver. The history check will look back into the driver’s past three (3) years of DOT employment for DOT violations. History checks are conducted only after obtaining the driver’s written authorization to do so. Any driver refusing to provide written consent will not be permitted to perform safety-sensitive functions and may be denied employment. The City will not allow the driver to perform their functions after thirty (30) days from the date on which the driver first performed safety-sensitive functions, unless the City has obtained or made and documented a good faith effort to obtain drug testing information from previous DOT-regulated employers.

**Information Request:** The City will request the following information about the driver:

1. Alcohol tests within a result of 0.04 or higher alcohol concentration;
2. Verified positive drug tests;
3. Refusals to be tested (including verified adulterated or substituted drug test results);
4. Other violations of DOT agency drug and alcohol testing regulations; and
5. With respect to any driver who violated DOT drug and alcohol regulation, documentation of the driver’s successful completion of DOT return-to-duty and follow-up testing requirements.

The City will make at least one attempt by telephone, e-mail or fax, and maintain documentation associated with the attempt to obtain history-check information (e.g. date and time of attempt, person contacted). If the City finds evidence of past DOT violations, those violations may be used as the sole reason for not hiring the individual or for termination.

**Violation Consequences:** The City will not use any driver who has had a past DOT violation and has not complied with DOT eligibility standards for returning to safety-sensitive work. The City will also ask the driver if they had any pre-employment test that was positive for which the previous employer did not hire them. The driver’s answer to this question will be maintained as part of the driver’s history-check information.

**NOTIFICATION OF TESTS:** Drivers will be notified directly when a test must be conducted. While the circumstances for a test will differ by its reason-for test, the City will endeavor to conduct all tests with only a limited number of City personnel having knowledge of the reason for the test.

All testing will be unannounced until the last possible moment. The timing will vary in conjunction with the reason-for-test. For example, a pre-employment test will be announced during the job application; a random test is announced within the test period, but just prior to the test to maintain the element of surprise; and, announcements of post-accident or reasonable suspicion tests are controlled by the circumstances that come to light around the time of the event (e.g. accident). All alcohol tests will be conducted just prior to, during, or just after the performance of safety-sensitive duties. Drug or alcohol tests may be conducted anytime the driver is at work.

The Executive Assistant and the City Supervisor’s will be responsible for notifications and to help maintain the element of confidentiality. When a driver is notified of a test, the driver must proceed to the collection site immediately. Immediately means that after notification, all the driver’s actions must lead to an immediate specimen collection (or test). The City considers “travel time” to the collection site of thirty (30) minutes as the maximum acceptable interval of time between notification and testing.

In test situations such as post-accident and reasonable suspicion/cause where the driver’s job performance is called into question, supervisors will use their discretion and training to minimize further confrontation. A reasonable attempt will be made by the supervisor to isolate and inform the driver of the decision to test, the steps that must be taken to accomplish the test, and the consequences of refusing the test. If possible, for post-accident and reasonable suspicion tests, the City will have the Executive Assistant or a supervisor

accompany the driver to the collection site. In post-accident test situations occurring where a supervisor is not present, the City will provide the driver with necessary post-accident information and instructions so that the driver will be able to comply with post-accident testing.

**TESTING PROCEDURES:** Testing for Alcohol concentration and Controlled Substances is conducted in compliance with 49 CFR Part 40 and 49 CFR Part 382.

The City of Bethel's designated drug testing entity utilizes urine or blood specimen collection procedures for testing. Specimens are analyzed for the following:

- Marijuana (THC metabolite)
- Cocaine
- Amphetamine
- Opiates (including heroine)
- Phencyclidine (PCP)
- Alcohol

In some instances a breath testing technician (BAT) operates a breath/saliva screening device (ASD). The testing occurs in a location affording privacy. If the results of the ASD indicate the presence of alcohol, the BAT will require the employee to submit to either an evidential breath-testing device (EBT) or to immediately go to a collection site for a blood or urine collection.

**POST-ACCIDENT TESTING:** Any time a City Employee who is required to hold a CDL is involved in a motor vehicle accident involving a City vehicle or while they are or should be on duty, the following procedures must be followed (without exception):

- Notify Bethel Police Department of the Accident immediately;
- Notify Employee's Supervisor (as soon as practicable);
- Notify Human Resources Officer (as soon as practicable);
- Once Bethel Police Department arrives they shall transport the employee to the nearest open testing facility for an immediate blood drug and alcohol test.

Drivers subject to post-accident testing shall remain available for such testing or they may be deemed to have refused to submit to testing. Drivers subject to post-accident testing must refrain from using alcohol and/or drugs for at least eight (8) hours following the accident or until completing the post-accident test, whichever comes first. Of course, medical attention to employees and others is of the highest priority and an employee may tend to injuries before submitting to testing. However, except in the case of exigent medical needs, an Employee may not refuse or interfere with the testing process. An employee who does not make themselves available or who refuses the test will be deemed to have tested positive.

The Bethel Police Department will pick-up the blood sample from the testing facility and will have it delivered to the authorized laboratory for testing. Safekeeping, proper temperature storage and a chain of custody will all be maintained on the blood sample(s) collected.

**REPORTING OF TEST PROCEDURES:** Test results shall be reported to the employer and employee in the time and manner consistent with 49 CFR Parts 40 and 382. Pursuant to the process of verification, the testing facility shall contact the employee and offer the employee an opportunity to discuss the confirmed positive result and offer a legitimate medical explanation.

**SPLIT SPECIMENS:** As an employee, whenever you have been notified by the testing facility of a positive drug test and/or refusal to test because of adulteration or substitution, you have seventy-two (72) hours from the time of notification to request a test of the split specimen. The request may be verbal or in writing.

Once a request for a split specimen has been properly made, the original laboratory that tested the primary specimen will forward the split specimen to a second certified laboratory using a chain of evidence procedure.

The City of Bethel will not interfere with an employee's right to request a split specimen and will not condition the request on payment up front. However, if the second laboratory confirms the findings of the first laboratory, the employee will be responsible for reimbursing the City of Bethel for the full costs of testing incurred for the split specimen.

**CONSEQUENCES OF POSITIVE TEST RESULTS:** Any employee who has a confirmed positive test result will be immediately removed from all safety sensitive functions. Additionally, one or all of the following may occur:

- The employee may be advised of the resources available to evaluate and resolve the problem, including names, addresses and telephone numbers of substance abuse professionals and treatment programs;
- The employee may be evaluated by a substance abuse professional (SAP) who shall determine what assistance, if any, the employee needs to resolve the problem and what course of treatment and follow-up is appropriate before return to duty can be considered;
- Before returning to duty, the employee must be cleared by a Substance abuse professional (SAP), must have a return testing plan which includes a minimum of 6 follow-up tests within the first year of return to duty and must undergo a return-to-duty test with a negative test result;

NOTWITHSTANDING THE ABOVE, the City has the right to terminate an employee on a first or any subsequent offense in order to protect the safety of other employees, the public and the City. Employees who test positive and who the City chooses not to terminate will be suspended without pay pending return to duty clearance.

**INVESTIGATION AND SEARCHES:** Where a Department Head or supervisor has reasonable suspicion that an employee has violated the substance abuse policy, the supervisor, or his designee, may inspect vehicles, lockers, work areas, desks, purses, briefcases, toolboxes, and other locations or belongings without prior notice, in order to ensure a work environment free of prohibited substances. An employee may be asked to be present and may be asked to remove a personal lock. The employee is hereby notified that locked areas or containers do not prevent a search, and thus employees should understand there is no expectation of privacy on City premises. Where the employee is not present or refuses to remove a personal lock, the City may do so for the employee without compensation for the lock. Any such searches will be coordinated with a representative of the HR Department or union. The City may use unannounced drug detection methods.

**STAND-DOWN POLICY:** Any employee who is the subject of a reasonable suspicion test shall be removed from safety-sensitive work until the test results have been received by the Employer. The employee will only be allowed to return to work if the test result is negative.

**CONFIDENTIALITY:** The confidentiality of records and information relating to investigations, searches, results of drug/alcohol testing, refusal to test, and treatment will be maintained in accordance with all local, state, and federal laws. Only those with a need to know will have access to such records and information. Those deemed to have a need to know may include management being defined as the City Manager, Department Heads, Human Resources and the City Attorney.

Employees, including management, who release confidential information to those without a need to know will be subject to disciplinary action, up to and including termination.

**RECORDKEEPING:** The City will ensure that all records required by the DOT are maintained. The City is not required to keep records related to a program requirement that does not apply to Part 40 or 382 of the CFR. The records will be kept in a locked file system that will be accessed only on a strict "need to know" basis. The City will not release a driver's drug and alcohol records to third parties without the driver's specific written consent. However, the City will release the driver's information without consent to DOT, FMCSA or other government agency having regulatory authority over the City or driver and in certain legal proceedings such as, but not limited to, lawsuits, grievances and administrative hearings. In such situations the City will notify the driver.

**REQUESTS FOR RECORDS:** All drivers have the right to request and obtain copies of any records pertaining to the driver's use of alcohol and/or drugs, including records of the driver's DOT-mandated drug and/or alcohol tests, and copies of SAP reports. Requests for records must be made in writing to the Executive Assistant. A laboratory must provide, within ten (10) business days of receiving a written request from a driver, and made through the MRO, the records relating to the driver's drug test (i.e. laboratory report and data package). Service agents providing records may charge no more than the cost of preparation and reproduction of copies of these records. SAPs must redact follow-up testing information from the report before providing it to the driver.

**QUESTIONS:** All questions regarding this policy should be directed to the City Manager, or the Human Resources / Executive Assistant's Office.



