

Submitted by: Chair Constant and Member  
Martinez

Prepared by: Assembly Counsel

For reading: September 26, 2023

**ANCHORAGE, ALASKA**  
**AO No. 2023-101**

1 **AN ORDINANCE OF THE ANCHORAGE ASSEMBLY REPEALING AND**  
2 **REPLACING ANCHORAGE MUNICIPAL CODE CHAPTER 3.30, PART 19, *RULE***  
3 ***19 – PERSONNEL RULES TO CONFORM THE SUBSTANCE MISUSE TESTING***  
4 **OF EMPLOYEES TO FEDERAL AND STATE REGULATIONS AND PROVIDE**  
5 **THE HUMAN RESOURCES DEPARTMENT AUTHORITY TO ESTABLISH**  
6 **POLICIES AND PROCEDURES FOR SUBSTANCE MISUSE TESTING AND, AS**  
7 **NECESSARY, TO PUBLISH INTERIM GUIDANCE TO EMPLOYEES AND**  
8 **SUPERVISORS.**

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9  
10 **WHEREAS**, in 1975, the Alaska Supreme Court unanimously held that the Alaska  
11 Constitution’s exceptionally strong right to privacy protects an adult’s ability to use  
12 and possess a small amount of marijuana in the home for personal use, leading the  
13 nation in marijuana decriminalization. And subsequently, the People of the State of  
14 Alaska legalized the use of marijuana for medical purposes in 1998 by passing ballot  
15 measure 8 and then, in 2014, legalized it for recreational purposes by passing ballot  
16 measure 2; with the colloquial message that Alaska should “regulate marijuana like  
17 alcohol”; and  
18

19 **WHEREAS**, in accordance with the will of the voters, the Municipality of Anchorage  
20 has licensed, taxed, and regulated the legal sale of marijuana since 2016, creating  
21 a substantial revenue stream for the Municipality; and  
22

23 **WHEREAS**, since its legalization the marijuana economy in Anchorage has  
24 consistently grown and created jobs annually; and  
25

26 **WHEREAS**, the federal Drug Free Workplace Act requires the Municipality establish  
27 a policy that prohibits the unlawful manufacture, distribution, dispensation,  
28 possession, or use of a controlled substance in the workplace, but does not require  
29 drug testing of all employees; and  
30

31 **WHEREAS**, the current and proposed Drug Free Workplace policy of the  
32 Municipality of Anchorage complies with the federal Drug Free Workplace Act; and  
33

34 **WHEREAS**, federal law requires drug testing for only a narrow set of personnel  
35 working specific positions as defined in the Code of Federal Regulations; and  
36

37 **WHEREAS**, unnecessary drug testing for marijuana can result in discriminatory  
38 practices against employees who use marijuana legally, particularly medical  
39 marijuana patients; and  
40

41 **WHEREAS**, drug testing for marijuana can also create unnecessary financial  
42 burdens and other stressors for employers and employees alike; and

1  
2 **WHEREAS**, the Assembly finds it is in the interest of the Municipality to tie its drug  
3 testing policy to the standards established in federal law; and  
4

5 **WHEREAS**, the Municipality of Anchorage is also a smokefree workplace and  
6 recommends all of its employees avoid smoking; and  
7

8 **WHEREAS**, much of the currently codified drug testing policy language is too  
9 detailed, complex, redundant and generally more elaborate than necessary; and  
10

11 **WHEREAS**, the Municipality of Anchorage has a strong interest in building  
12 strategies for workforce retention and recognizes the value of ensuring the personal  
13 liberty of its workforce as a key strategy to recruiting and retaining quality workers;  
14 and  
15

16 **WHEREAS**, Substance Use Disorder is a recognized medical condition, with  
17 effective treatments available; and  
18

19 **WHEREAS**, the Municipality of Anchorage has a strong interest in the wellness of  
20 its workforce and recognizes the value of allowing employees to seek substance  
21 use disorder education and treatment interventions as a means of promoting  
22 employee wellness; and  
23

24 **WHEREAS**, it is the policy of the Municipality of Anchorage to minimally infringe  
25 upon the private lives and decisions of our workforce through unnecessary  
26 intrusions into personal liberty and privacy;  
27

28 **NOW, THEREFORE, THE ANCHORAGE ASSEMBLY ORDAINS:**  
29

30 **Section 1.** Anchorage Municipal Code chapter 3.30, part 19, *Rule 19*, is hereby  
31 repealed in its entirety and replaced with the following: (*requiring no legislative*  
32 *formatting*):  
33

34 **PART 19. RULE 19, SUBSTANCE MISUSE TESTING**  
35

36 **Sections**

- 37 3.30.190 Definitions.  
38 3.30.191 Substance misuse testing policy.  
39 3.30.192 Substances tested.  
40 3.30.193 Authorized tests.  
41 3.30.194 Effects of testing results.  
42

43 **3.30.190 Definitions.**  
44

45 As used in this Rule 19, the following words and phrases shall have the  
46 meanings indicated unless the context clearly indicates otherwise:

1  
2 *Alcohol* means ethyl alcohol (ethanol) in a beverage or medication.

3  
4 *Breath alcohol technician (BAT)* means a municipal supervisor or collection  
5 site technician trained and certified in the use of a DOT approved evidential  
6 breath testing device.

7  
8 *DOT* means the U.S. Federal Department of Transportation.

9  
10 *Employee* means any person in the employ of the municipality whose  
11 activities are directed by the municipality. Within this definition:

- 12  
13 1. *Covered Employee* means only those classes of employee:  
14  
15 a. Subject to drug testing as required by Titles 14 and 49  
16 Code of Federal Regulations;  
17  
18 b. Subject to reporting and regulation under the Alaska  
19 Police Standards Council; and  
20  
21 c. Subject to any other mandatory Federal or State drug  
22 testing requirement.  
23  
24 2. *Non-covered employee* means all other classes of employee  
25 not explicitly defined as “covered.”  
26

27 *Prohibited Drugs* means substances listed Schedule I or Schedule II of the  
28 Controlled Substances Act 21 U.S.C. 801 et seq. and published at 21 CFR  
29 1308.11 and 21 CFR 1308.12.  
30

31 *Substance misuse* means use of prohibited drugs or inappropriate  
32 consumption of alcohol, prescription drugs, and/or over-the-counter  
33 medication.  
34

35 *Substance misuse test* means a breath alcohol test or a saliva, blood, or  
36 urinalysis drug test.  
37

38 *Work-related accident* means an accident either occurring in the workplace  
39 or in the course of an employee performing work within the scope of their  
40 employment on behalf of the municipality.  
41

42 **3.30.191 Substance misuse policy.**  
43

- 44 A. It is the policy of the Municipality of Anchorage to provide a drug free  
45 workplace to its employees and to eliminate substance misuse within

1 its workforce; as such, the use, manufacture, distribution, and  
2 possession of alcohol and drugs are prohibited at the municipal  
3 workplace, and, to the greatest extent possible, education and  
4 substance use disorder treatment shall be prioritized over termination  
5 to address employee substance misuse.  
6

7 B. *Testing.* The municipality shall use substance misuse testing of  
8 employees or applicants for employment only to the extent required  
9 by federal and state laws or regulations. The human resources  
10 department shall publish and publicly post a Policy/Procedure  
11 outlining:  
12

- 13 1. The substances for which employees or applicants may  
14 be tested;
- 15 2. The specific circumstances under which an employee or  
16 applicant may be tested for substance misuse; and  
17
- 18 3. The procedures that will be used to test for substance  
19 misuse, protect the employee or applicant and the  
20 integrity of the drug and alcohol testing process,  
21 safeguard the validity of the test results, and ensure the  
22 test results are attributed to the correct employee or  
23 applicant.  
24

25  
26 C. *Self-reporting.* Employees who self-report their substance misuse or  
27 their enrollment in a rehabilitative program prior to testing positive for  
28 substance misuse may not be disciplined or terminated on the basis  
29 of their report. The department of human resources shall establish  
30 procedures to provide self-referring employees necessary assistance  
31 to address their substance misuse while maintaining a drug and  
32 alcohol free workplace.  
33

34 D. *Precedence of law:* In the event of any inconsistency between state or  
35 federal regulations and these provisions, the applicable state or  
36 federal law or regulation shall govern.  
37

### 38 **3.30.192 Substances tested.**

39  
40 A. Alcohol.  
41

1. Alcohol level breath testing shall be performed by a BAT. An employee's direct supervisor may not perform as a BAT except in circumstances where there is no other BAT readily available.
2. Covered employees shall be tested on an evidential breath testing device, according to 49 CFR, Part 655.

B. Prohibited Drugs.

1. Employees may be tested for the misuse of prohibited drugs only under the provisions of 3.30.193. Use of prohibited drugs shall not be considered a violation of the substance misuse policy when properly used pursuant to a valid prescription or otherwise authorized by state or federal law.
  - a. *Non-covered employees.* For the purposes of this subsection, Alaska Statute Chapter 17.38 and Anchorage Municipal Code 10.80 shall be deemed appropriate legal authorization for non-covered employees to consume marijuana, provided they do not possess, consume, or are under the influence of marijuana at their workplace or while performing duties on behalf of the municipality.
  - b. *Covered employees.* For the purposes of this subsection, neither Alaska Statute Chapter 17.38 nor Anchorage Municipal Code 10.80 shall not be deemed appropriate legal authorization for covered employees to consume marijuana, and marijuana shall continue to be considered a prohibited substance under subsection 3.30.192B.1.
2. Unless provided otherwise in this Rule, when testing for use of prohibited drugs, the most current applicable cutoff levels established by the DOT shall be used to determine a positive result.

C. Marijuana.

1. *Covered employees.* Covered employees are subject to testing for marijuana under applicable DOT or state standards, and therefore shall be tested under the provisions of 3.30.192B.2.
2. *Non-covered employees.* While at the workplace or performing duties for the municipality, the use, possession, or being under

1 the influence of marijuana shall be considered substance  
2 misuse by non-covered employees.

3  
4 a. Testing for the presence of marijuana shall be through  
5 collection of saliva, blood, or urine specimens. The  
6 tested employee shall have the right to choose the  
7 method of testing, however, absent an expressed  
8 preference, saliva shall be the default method.

9  
10 b. For testing of non-covered employees under this  
11 subsection, the following cutoff levels will be used to  
12 determine a positive test result, and the employee shall  
13 be presumed to be under the influence of marijuana:

14  
15 i. For a saliva specimen, a test result of equal to or  
16 greater than 25 ng/ml.

17  
18 ii. For a blood specimen, a test result equal to or  
19 greater than 15 ng/ml

20  
21 iii. For urine specimen, a test result equal to or  
22 greater than 200 ng/ml.

23  
24 **3.30.193 Authorized tests.**

25  
26 Substance testing shall only be conducted under the provisions of this section  
27 and through procedures conforming to 49 CFR Part 40 as established by the  
28 department of human resources in a published Policy/Procedure.

29  
30 A. *Testing.* All employees shall be subject to testing under this  
31 subsection.

32  
33 1. *Reasonable suspicion.* Reasonable suspicion testing shall be  
34 conducted when a supervisor determines there are reasonable  
35 and specific grounds to believe that the poor performance or  
36 unsafe acts of an employee are due to substance misuse.

37  
38 a. The supervisor's determination shall be based on  
39 specific, contemporaneous, articulable observations  
40 concerning the appearance, behavior, speech, or body  
41 odors of the employee.

42  
43 b. The human resources department shall be responsible  
44 for publication of a "Supervisors' Reasonable Suspicion  
45 Observation Checklist" which shall be utilized to assist

1 supervisors in making reasonable suspicion  
2 determinations.

3  
4 2. *Post-accident.*

5  
6 a. Following a work-related accident, each employee  
7 directly involved in or contributing to the accident shall  
8 be tested for alcohol and drugs when the accident  
9 involved:

10  
11 i. The loss of human life;

12  
13 ii. Bodily injury to any person who, as a result of the  
14 injury, immediately requires medical treatment  
15 away from the scene of the accident; or

16  
17 iii. One or more motor vehicles incurring disabling  
18 damage as a result of the accident, requiring the  
19 motor vehicle to be transported away from the  
20 scene by a tow truck or other motor vehicle.

21  
22 b. Work-related accidents involving motor vehicles and not  
23 resulting in the loss of human life will only require testing  
24 under subsection 3.30.193A.2.a if the employee  
25 receives a citation. All work-related accidents resulting  
26 loss of human life shall require testing regardless of  
27 whether a citation is issued.

28  
29 3. *Return-to-duty and follow-up testing.* Testing under this section  
30 shall be conducted:

31  
32 a. When an employee self-reports a substance misuse  
33 problem prior to taking a substance misuse test which  
34 results in a positive result and enters an educational or  
35 treatment program;

36  
37 b. When an employee has violated Municipal  
38 Policy/Procedure or Rule 19 and as a condition of  
39 continued employment agrees to a return-to-duty  
40 contract; or

41

1 c. After an employee has notified their supervisor of the  
2 employee's participation in a substance misuse  
3 treatment program.  
4

5 B. *Testing specific to covered employees.* Only those employees  
6 classified as covered employees shall be subject to testing under the  
7 provisions of this subsection.  
8

9 1. *Pre-employment.* Pre-employment drug and alcohol testing  
10 shall be conducted at the most cost-effective time in the  
11 selection process for covered employee positions.  
12

13 a. A non-covered employee who transfers, is promoted,  
14 demoted, rehired, or is reinstated, to a covered  
15 employee position shall be required to complete a pre-  
16 employment drug test.  
17

18 b. Failure to take and successfully pass the substance  
19 misuse test shall disqualify the applicant.  
20

21 2. *Random.* Random testing shall only be applicable to those  
22 employees required by federal or state government regulations  
23 and will be administered in accordance with the applicable  
24 federal or state regulations.  
25

26 **3.30.194 Effects of testing results.**  
27

28 A. *Treatment and Discipline.* Subject to the limitations within this section,  
29 the human resources department shall publish a policy of treatment  
30 and progressive discipline, up to termination and/or disqualification  
31 from employment consideration, for employees testing positive for  
32 alcohol or prohibited drugs.  
33

34 B. *Negative Dilute Test Results.* In the event of a negative dilute test  
35 result, the provisions of 49 CFR Part 40 shall govern. A subsequent  
36 negative dilute test result may only be construed as a test refusal if the  
37 employee or applicant providing the sample is offered the opportunity  
38 to submit a blood or hair follicle test at personal expense and declines  
39 to submit.  
40

41 C. *Positive Test Results.*  
42



- 1 1. A positive test may be considered grounds for disqualification  
2 from employment for either an applicant or an employee. The  
3 ultimate decision for employment, discipline, or termination,  
4 shall be at the discretion of the head of the supervising  
5 department or designee after consulting with the human  
6 resources director.  
7
- 8 2. In the event of a confirmed positive test, an employee shall be  
9 removed from duty immediately. Upon determination of the  
10 supervising department head, the employee may be subject to  
11 progressive discipline which may include, but is not limited to,  
12 required participation in a substance use disorder educational  
13 or treatment program, termination, or any other action required  
14 by state or federal regulation, depending on the severity of the  
15 incident.  
16
- 17 3. Notwithstanding the terms of any imposed discipline or return-  
18 to-duty agreement, a negative test shall be required before an  
19 employee may return to duty.  
20

21 D. *Reapplication after a positive substance misuse test.* An applicant who  
22 is disqualified or an employee who is terminated under this policy  
23 because of a positive substance misuse test result may not reapply  
24 for employment for at least six months after the disqualification or  
25 termination took place. Consideration for re-employment shall be at  
26 the discretion of the head of the supervising department or designee  
27 after consulting with the human resources director.  
28

29 **Section 2.** The existing text of Anchorage Municipal Code chapter 3.30, part 19  
30 being repealed under this ordinance is attached as Exhibit A, in accordance with  
31 Anchorage Municipal Code subsection 1.05.050B.  
32

33 **Section 3.** Any provision of the Anchorage Municipal Code that is inconsistent  
34 with this ordinance is hereby repealed.  
35

36 **Section 4.** The Department of Human Resources shall publish any new policies  
37 and procedures as required by this ordinance and update and revise any affected  
38 existing policies and procedures to bring them in line with this ordinance by January  
39 1, 2024. The Human Resources Director may publish interim guidance as necessary  
40 to govern the procedures to be used until the formal adoption of new policies and  
41 procedures by the Administration, so long as such interim guidance does not conflict  
42 with this part 19, *Rule 19*, of chapter 3.30.  
43

44 **Section 5.** This ordinance shall be provided to the Personnel Rules Committee

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for its review prior to public hearing in accordance with Anchorage Municipal Code section 3.30.018 and with Charter § 10.01(b). In the event the Committee fails provide comment prior to the date of public hearing, the Assembly is not required to delay either the hearing or subsequent action on this ordinance.

**Section 6.** This ordinance shall be effective immediately upon passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Chair

ATTEST:

\_\_\_\_\_  
Municipal Clerk



# MUNICIPALITY OF ANCHORAGE

## ASSEMBLY MEMORANDUM

No. AM 753-2023

Meeting Date: September 26, 2023

**From: Assembly Chair Constant**

**Subject: AN ORDINANCE OF THE ANCHORAGE ASSEMBLY REPEALING AND REPLACING ANCHORAGE MUNICIPAL CODE CHAPTER 3.30, PART 19, RULE 19 – PERSONNEL RULES TO CONFORM THE SUBSTANCE MISUSE TESTING OF EMPLOYEES TO FEDERAL AND STATE REGULATIONS AND PROVIDE THE HUMAN RESOURCES DEPARTMENT AUTHORITY TO ESTABLISH POLICIES AND PROCEDURES FOR SUBSTANCE MISUSE TESTING AND, AS NECESSARY, TO PUBLISH INTERIM GUIDANCE TO EMPLOYEES AND SUPERVISORS.**

### **I. Introduction.**

The purpose of this proposed ordinance is to repeal and replace the Municipality of Anchorage's drug testing policy, specifically shifting from a punitive policy to a health-centered approach. It also substantially changes the policy regarding the testing of marijuana for municipal employees. With the changing legal landscape surrounding marijuana in Alaska and the evolving understanding of individual liberty and privacy interests, it is time to reevaluate our drug testing policy. This proposal aims to remove marijuana testing for most municipal employees, aligning with the state's stance on marijuana legalization while still maintaining safety standards for safety-sensitive positions, as defined by the Department of Transportation.

#### **A. Prioritizing Healthcare Over Punitive Measures.**

First, this ordinance proposes a significant shift in the Municipality's approach to addressing substance use disorders among employees. In recognition of the evolving landscape of addiction treatment and the growing understanding of the complex nature of substance use, it moves the Municipality away from a policy of mandatory termination for employees who test positive for drugs or alcohol towards a more compassionate and healthcare centered approach.

Historically, our organization has adhered to a strict policy that mandated the termination of employees who tested positive for drugs during workplace screenings. While this approach aimed to maintain a drug-free workplace, it often overlooked the underlying issues contributing to substance use disorders and failed to offer any support or resources to affected individuals.

Recognizing the need for change, this ordinance proposes a shift to a more empathetic and constructive approach that emphasizes healthcare and support over punitive measures. Our new policy prioritizes the following principles:

## **B. Treatment Over Termination.**

Instead of immediate termination, employees who test positive for drugs may be offered access to confidential, professional evaluation and treatment for substance use disorders. Addiction is a medical condition, and our aim is to help affected individuals regain their health and well-being. It is the policy's intent to provide access to resources, counseling, and psychoeducational groups, encouraging individuals to seek the help they need without fear of retribution.

## **C. Compliance and Safety.**

While the approach is shifting towards a more compassionate stance, it still maintains a commitment to workplace safety and compliance with relevant regulations. Employees who seek treatment and adhere to their treatment plans will have the opportunity to return to work when deemed fit by medical professionals.

This transition to a healthcare centered approach to substance use disorders not only aligns with the Assembly's commitment to employee well-being but also promotes a safer and more supportive work environment. This policy change is intended to encourage individuals to seek help when needed, reducing the stigma associated with addiction, and ultimately fostering a safer, healthier, and more resilient workforce.

## **II. Updating Marijuana Testing Policy After Legalization.**

### **A. Legal Background: *Ravin v. State* Decision (1975).**

In 1975, the Alaska Supreme Court delivered a landmark decision in *Ravin v. State*, which decriminalized the possession of small amounts of marijuana in the home for personal use. This decision was based on an interpretation of the right to privacy under the Alaska Constitution, affirming an individual's liberty interest to possess and use marijuana in the privacy of their home.

### **B. Legalization of Medical and Personal Use of Marijuana.**

In subsequent years, Alaskan voters expressed their support for marijuana legalization through ballot initiatives. In 1998, with the passage of Proposition 2, Alaska legalized medical marijuana, recognizing its therapeutic benefits for patients with qualifying medical conditions. Then, in 2014, Alaska voters approved Proposition 8, fully legalizing the personal use and possession of marijuana for adults over 21 years old. These ballot initiatives demonstrate the public's shifting perspective on marijuana and its acceptance as a regulated substance, akin to alcohol.

### **C. Balancing Liberty and Privacy Interests.**

#### **1. Individual Liberty Interest.**

The Alaska Supreme Court's decision in *Ravin v. State* laid the foundation for

1 recognizing an individual's liberty interest in the private use of marijuana. This liberty  
2 interest extends to municipal employees who are responsible citizens, obeying the  
3 law within the privacy of their homes. Subjecting these employees to mandatory  
4 drug testing for marijuana infringes upon their fundamental right to make choices  
5 regarding their personal activities outside of work, as long as they comply with the  
6 law.

## 7 8 **2. Fundamental Right to Privacy.**

9  
10 Privacy rights are inherent in both the Federal and State Constitutions, safeguarding  
11 citizens from unwarranted intrusions into their private lives. In the context of  
12 marijuana use, an employee's private activities that do not affect their job  
13 performance should be protected from undue scrutiny by their employer. As long as  
14 employees are not impaired while on duty, their private use of marijuana should be  
15 considered off-limits in drug testing.

## 16 17 **D. State's Safety Interest and USDOT Regulations**

### 18 19 **1. US Federal and State Policy Positions**

20  
21 While recognizing individual liberty and privacy interests, it is essential to maintain  
22 a balance that prioritizes public safety. For safety-sensitive positions, where  
23 impairment could have severe consequences, drug testing remains vital. The United  
24 States Department of Transportation (USDOT) regulates safety-sensitive positions  
25 and mandates drug testing for marijuana and other substances for certain jobs.

### 26 27 **2. Alaska Policy Standards Council Policy**

28  
29 Also, the Alaska Police Standards Council (APSC) has current policy based on state  
30 regulations that prohibits sworn officers from possession, distribution, and/or  
31 cultivation of marijuana:

32  
33 In its statewide meeting on May 3, 2017, the Council determined, by unanimous  
34 vote, that possession, distribution and/or cultivation of marijuana by certified police,  
35 correction, probation/parole, and municipal corrections officers, is prohibited under  
36 applicable state regulations – even by an officer licensed by the Alaska Marijuana  
37 Control Board to possess, distribute, and/or cultivate marijuana. The Council also  
38 determined, by unanimous vote that the regulations should and would remain  
39 unchanged. The Council at both the February 2015 and May 2017, meetings  
40 reaffirmed the principle that the use, possession, distribution, and/or cultivation of  
41 marijuana are incompatible with the law enforcement profession.

42  
43 In light of this policy, Anchorage Police Department sworn officers who must comply  
44 with APSC standards and State regulations (REF: AS 18.65.130-290, 13 AAC  
45 85.010 thru 13 AAC 89.150) should remain covered under USDOT testing protocols.

### 46 47 **E. Tailoring the Policy**

48  
49 The proposed amendment suggests removing marijuana testing for most municipal

1 employees and retaining it only for positions required by USDOT regulations. This  
2 approach aligns with the state's marijuana regulations while ensuring that safety  
3 remains a top priority in critical roles where impairment poses a significant risk.

#### 4 5 **F. Regulating Marijuana Like Alcohol**

6  
7 When Alaska voters approved Proposition 8 in 2014, they explicitly mandated  
8 regulating marijuana like alcohol. In doing so, they recognized that responsible  
9 adults should have the freedom to make choices about their recreational activities  
10 as long as they adhere to the law. Removing marijuana testing for most municipal  
11 employees honors the will of the voters and treats marijuana use with the same  
12 approach as alcohol consumption, focusing on workplace impairment rather than  
13 private behavior.

#### 14 15 **III. Conclusion**

16  
17 The proposed repeal and replacement of the Municipality of Anchorage's drug  
18 testing policy achieves several important policy goals. First, it provides a shift in  
19 policy that provides our workforce with the opportunity to seek and receive critical  
20 healthcare interventions rather than face an immediate and mandatory punitive  
21 response to substance misuse. In a climate where recruitment and retention must  
22 be prioritized, this policy change is warranted.

23  
24 Second, regarding marijuana testing, it aims to strike a balance between individual  
25 liberty and privacy interests and the state's safety concerns. By removing marijuana  
26 testing for most municipal employees and retaining it for positions regulated by  
27 USDOT, we uphold the principles laid out in the *Ravin v. State* decision and respect  
28 the will of Alaska voters.

29  
30 Finally, this policy adjustment reflects a progressive and fair approach to drug  
31 testing, ensuring the safety of the public while respecting the personal choices and  
32 privacy of municipal employees.

#### 33 34 **I request your support for the ordinance.**

35  
36 Reviewed by: Assembly Counsel's Office

37  
38 Respectfully submitted: Christopher Constant, Assembly Chair  
39 District 1, North Anchorage  
40

## **PART 19. - RULE 19, SUBSTANCE MISUSE TESTING**

### **3.30.190 Substance misuse testing policy.**

- A. *Testing.* The municipality shall use drug and alcohol tests to determine whether employees or applicants for employment are in compliance with the Municipal Substance Abuse Policy/Procedure 40-22. Every substance misuse test shall include two components, alcohol and drugs, unless stated otherwise.
- B. *Effect of testing results.* A refusal to take or submit to a substance misuse test, as defined in [3.30.1912](#), shall result in termination and/or disqualification from employment. Positive results for a urinalysis drug test shall result in termination and/or disqualification from employment consideration. Failure to pass a breath alcohol test shall result in discipline up to and including termination, and/or disqualification from employment consideration as follows:
1. In the case of alcohol testing results.
    - a. Employees testing .02 or greater but less than .04 shall be subject to discipline but not be terminated based solely on the test results alone.
    - b. If the results of the test are .02 or greater but less than .04 alcohol concentration, the employee shall be removed from the work site. The employee may not return to duty within eight hours of the first test unless the employee repeats the breath test and has an alcohol concentration that measures less than .02. The employee shall be placed on leave and such paid leave shall be deducted from their annual leave account. Employees who do not have sufficient leave shall be charged leave without pay.
    - c. If the results of the test show an alcohol concentration of .04 or greater, the employee has failed the test and the employee shall be removed from his/her position and placed on leave without pay. Within 48 hours of the test the employee shall be informed by their supervisor of educational and substance abuse treatment programs, and be evaluated by a SAP. The determination of the SAP shall be considered in further decisions regarding continued employment of the employee.

C. *Reapplication after a positive and/or failed test.* An applicant who is disqualified or an employee who is terminated based on a positive drug and/or failed alcohol test result may not reapply for employment for at least one year after the disqualification or termination took place. The applicant or employee shall submit to the employee relations director a certificate on which the attending SAP certifies that the individual has successfully participated in an appropriate treatment program. The treatment program shall typically be at least 12 months duration, including in-patient treatment, out-patient treatment, and after-care. The individual may not have tested positive for drugs or failed an alcohol test at any point during the treatment program. The program shall have included unannounced testing at the cutoff levels defined in this Rule 19.

1. Consideration for re-employment or employment may be denied even if all criteria have been met at the discretion of the employee relations director.

(AO No. 98-5(S), § 2, 2-10-98; AO No. 99-143, § 1, 11-23-99; AO No. [2020-24](#), § 1, 3-10-20)

### **3.30.191 Definitions.**

As used in this Rule 19, the following words and phrases shall have the meanings indicated unless the context clearly indicates otherwise:

*Alcohol* means ethyl alcohol (ethanol) in a beverage or medication.

*Breath alcohol technician (BAT)* means a municipal supervisor or collection site technician trained and certified in the use of a DOT approved evidential breath testing device.

*Collection site personnel* means technicians who instruct and assist individuals at a collection site and receive and make an initial examination of the urine specimen provided by those individuals. Collection site personnel shall have successfully completed training to carry out this function or shall be a licensed medical professional or technician who has been provided DOT instructions for collection. Technicians may also be BATs.

*Commercial driver's license (CDL)* means a private driver's license issued by the state to afford a qualified and competent individual the privilege of operating a commercial motor vehicle.



## Exhibit A

*Contractor* means the organization having knowledge and experience in SAMHSA laboratory drug testing procedures that is hired by the human resources department to select employees for random testing.

*DHHS* means the U.S. Federal Department of Health and Human Services.

*Director* means the director, department of human resources or his designee.

*DOT* means the U.S. Federal Department of Transportation.

*Employee* means any person in the employ of the municipality whose activities are directed by the municipality.

*Employee assistance program* means the program provided by the municipality to assist employees in dealing with personal problems affecting job performance which may involve drug misuse and/or alcohol misuse.

*Evidential breath testing device (EBT)* means an instrument reliable in measuring alcohol concentration in breath that meets the National Highway Traffic Safety Administration specifications, and is included in the conforming products list of evidential breath testing devices.

*Failed alcohol test result* means presence of alcohol in the breath at a level of .04 or greater as confirmed by an evidential breath testing device administered by a trained and certified breath alcohol technician (BAT).

*Medical review officer (MRO)* means a licensed physician responsible for receiving laboratory results generated by the municipality's drug testing program. The MRO shall have knowledge of substance misuse disorders and have appropriate medical training to interpret and evaluate an individual's positive test result together with his/her individual medical history and any other relevant biomedical information.

*Negative test result* means 1) absence of drugs in the urine of an employee/applicant based on levels defined by SAMHSA and confirmed by a SAMHSA certified laboratory and/or a medical review officer; 2) absence of alcohol in breath based on levels defined in 49 CFR, Part 655, and confirmed by a SAMHSA certified laboratory or evidential breath testing device (EBT).

*Periodic unannounced test* means substance misuse test given to an employee as part of a return-to-duty contract. This is not to be confused with random testing. (See return-to-duty and follow-up test)

## Exhibit A

*Positive drug test result* means the presence of drug(s) in the urine of an applicant/employee based on levels defined by SAMHSA as confirmed by a SAMHSA certified laboratory and a medical review officer.

*Post accident test* means a substance misuse test given to an employee when an accident has occurred and drugs and/or alcohol may be a contributing factor in the accident and/or significant damage to life and/or property has occurred.

*Pre-employment test* means an urinalysis drug test given to a successful applicant for a public safety or safety-sensitive position.

*Promotion* means a change in status of an employee from a position of one class to a position of another class having a higher salary range.

*Public safety position* means a position in the police or fire department having a substantially significant degree of responsibility for the safety of the public where the unsafe performance of an employee could result in death or injury to self or others, including but not limited to all sworn personnel, emergency communications clerks, police clerks working within the dispatch section supervisory positions, firefighters/paramedic, dispatchers, mechanics, fire apparatus engineers, fire investigators and fire inspectors.

*Random test* means an unannounced substance misuse test given periodically to employees who are required by government regulations to be subject to random testing, and AFD and APD classifications subject to random testing under this Rule 19.

*Reasonable suspicion test* means a test based on objective observation/information indicating that an employee may be violating this Rule 19 and/or Municipal Policy/Procedure 40-22.

*Return-to-duty contract* means a contract between the municipality and an employee which allows an employee continued employment under stringent guidelines prohibiting use of drugs and alcohol. Failure to meet contract terms which includes successfully passing substance misuse tests, shall result in termination.

*Safety-sensitive position* means a position requiring a commercial drivers license (CDL) and having a substantially significant degree of responsibility for the safe operation of mass transportation and motor carrier service where the unsafe performance of an incumbent could result in death or injury to self or others. Safety-sensitive positions include but are not limited to:

## Exhibit A

- (1) Bus operator, route inspector, shift supervisor, operations supervisor, mechanics, other shop personnel, and anyone supervision employees in the aforementioned positions, in the public transportation department;
- (2) Positions requiring a CDL; and
- (3) Any other positions determined to be safety-sensitive under CFR Part 655.

*SMMHSA* means substance misuse and mental health services administration responsible for laboratory certification. Laboratory certification was formerly the responsibility of the National Institute on Drug Abuse.

*Split sample collection* means urine collected in a single specimen bottle or container, and subdivided into two specimen bottles, one bottle to be used as the primary specimen, the other bottle to be used as a split specimen. Both specimen bottles are labeled and sealed and both specimen bottles are shipped to the testing laboratory in a single shipping container.

*Substance misuse* means use of prohibited drugs as defined in [section 3.30.192](#) or inappropriate consumption of alcohol, prescription drugs, and/or over-the-counter medication.

*Substance misuse professional (SMP)* means a licensed physician with a medical doctor or a Doctor of Osteopathy degree with knowledge of and clinical experience in the diagnosis and treatment of alcohol and/or drug related disorders, or a licensed or certified psychologist, social worker or employee assistance professional with knowledge of and clinical experience in the diagnosis and treatment of alcohol and/or drug related disorders, or alcohol and/or drug misuse counselors certified by the National Association of Alcoholism and Drug Abuse Counselors (NAADAC) Certification Commission. This does not include state-certified counselors.

*Substance misuse test* means a breath alcohol test and/or an urinalysis drug test.

*Successful applicant* means a person who has been selected to fill a position, subject to successful completion of a urinalysis drug screening test.

*Testing cutoff levels* means the most current applicable SAMHSA Panel cutoff levels for drugs, and most current applicable cutoff levels established by the DOT for alcohol, to determine the presence of drugs and/or alcohol.

(AO No. 98-5(S), § 2, 2-10-98; AO No. 99-143, § 1, 11-23-99; AO No. 2006-100, § 1, 7-25-06; AO No. [2019-42](#), § 2, 4-23-19; AO No. [2020-24](#), §§ 1, 2, 3-10-20)

**3.30.192 Prohibited drugs.**

- A. Subject to subsection B. of this section, prohibited drugs for which testing shall be conducted are:
1. Marijuana, Cocaine, Opiates, Phencyclidine (PCP), and Amphetamines specified in Schedule I or Schedule II of the Controlled Substances Act 21 U.S.C. 801 et seq. and published at 21 CFR 1308.11 and 21 CFR 1308.12; and
  2. Additional substances listed in Schedule I or II of the Controlled Substances Act 21 U.S.C. 801 et seq. and published at 21 CFR 1308.11 and 21 CFR 1308.12 which are determined necessary for inclusion on the list of prohibited drugs by the employee relations director and approved by the medical officer of the municipality and for which notice of testing therefor has been given to all affected employees. Additional substances determined necessary for inclusion will be included only when protocols and threshold levels for laboratory testing are established and approved by SAMHSA.
- B. Drugs identified in Schedule I or II of the Controlled Substances Act, 21 U.S.C. 801 et seq. and published at 21 CFR 1308.11 and 21 CFR 1308.12 may be considered legal when used pursuant to a valid prescription or otherwise authorized by law.
1. Notwithstanding subsection B. of this section, if usage causes unsafe or poor performance such usage shall be a violation of this Rule 19 and Municipal Policy/Procedure 40-22.

(AO No. 98-5(S), § 2, 2-10-98)

**3.30.193 Testing program guidelines.**

- A. *Testing times.* Except as otherwise provided in this subsection A., all testing shall be conducted just before, during, or just after scheduled duty hours. Employees tested just before or just after their scheduled shift will be entitled to compensation for the time spent outside their scheduled shift accomplishing the test.

Exhibit A

1. When required as a result of reasonable suspicion or an accident, testing shall occur as close as possible to the triggering event.
- B. *Testing accessibility.* The municipality has made provision for 24-hour a day, 365-day a year substance misuse testing. The human resources department shall be responsible for notifying departments of the name, location, and phone number for designated collection sites. Such information shall be posted in each department.
- C. *Testing personnel.* Municipal work site breath alcohol testing for both initial and confirmatory tests shall be conducted by BATs trained in DOT procedures and in operation of EBTs. A list of municipal BATs shall be posted in each department. The human resources department shall furnish all municipal agencies and unions with a list containing the name, telephone number, and hours of availability for each BAT. All other substance misuse testing shall be conducted by collection site personnel and a SAMHSA certified laboratory.
- D. *Methods of testing.* Testing shall be done through analysis of urine specimens and breath samples provided by applicants/employees. Each substance misuse test shall have two components, unless stated otherwise, a test for the presence of alcohol and a test for the presence of drugs. Urine specimens shall be analyzed with an immunoassay screening test. Positive test results from the immunoassay shall be confirmed by a Gas Chromatography-Mass Spectrometry (GC-MS) test. The presence of alcohol shall be determined by an EBT.
- E. *Collection sites/testing laboratories.* Collection of urine specimens/breath samples from applicants for municipal employment and municipal employees shall be done at designated collection sites, using the "split-sample" method or collection for urine specimens. Urine collection shall be scheduled by the human resources department and performed by collection site personnel.
- F. *Municipal work sites.* Breath testing at the work site shall be coordinated by designated department supervisory personnel. The breath sample shall be collected at a site that optimizes confidentiality.
  1. Substance misuse testing for preemployment, random, and return-to-duty/follow-up testing shall be administered at a designated municipal collection site or testing laboratory by collection site personnel.

2. In instances where reasonable suspicion or post-accident testing are required and the appropriate alcohol testing device and a BAT are readily accessible, the alcohol test shall be administered at a municipal work site. The drug test shall then be administered at a designated municipal collection site or testing laboratory. If the appropriate testing device and/or BAT are not readily accessible, both tests shall be administered at a designated municipal collection site or testing laboratory.
- G. *Compliance and chain-of-custody.* The collection site shall adhere to the collection provisions set forth in 49 CFR Part 653 and 654. A strict chain of custody shall be maintained on each specimen as described in 49 CFR Part 653 and 654.

(AO No. 98-5(S), § 2, 2-10-98; AO No. 99-143, § 1, 11-23-99; AO No. [2019-42](#), § 2, 4-23-19; AO No. [2020-24](#), §§ 1, 2, 3-10-20)

**3.30.194 Alcohol testing.**

- A. Breath alcohol testing shall be administered for random, reasonable suspicion, post-accident, and return-to-duty/follow-up testing.
- B. Alcohol level breath testing shall be performed by a BAT. An employee's direct supervisor may not perform as a BAT except in circumstances where there is no other BAT readily available.
- C. Safety-sensitive employees shall be tested on an evidential breath testing device, according to 49 CFR, Part 655. Employees with a CDL shall be allowed to take the alcohol breath test only in accordance with rules specified in this subsection C.2.
  1. *Screen test.* The initial test shall be done using an EBT in accordance with 49 CFR Part 655. If the initial test results are less than .02 alcohol concentration, then the test results are negative and shall be reported by the BAT as such. If the initial test results are .02 or greater, a confirmatory test shall be conducted.
  2. *Confirmatory test.* The confirmatory test may be conducted on the same EBT as the initial test in accordance with 49 CFR Part 655. Before the confirmatory test may be given, a minimum of 15 minutes must pass for either the same EBT machine to clear or before the use of another EBT machine. The confirmation test shall be given before 20 minutes has passed since the initial test was performed.

Only the results of the confirmatory test shall be reported, irrespective of the results on the initial test. During such 15-minute period, the employee shall avoid any actions that could increase mouth alcohol.

(AO No. 98-5(S), § 2, 2-10-98; AO No. 99-143, § 1, 11-23-99; AO No. 2006-100, § 2, 7-25-06)

**3.30.195 Split sample testing of urine specimens.**

- A. In instances when a urinalysis test result is positive, an employee or applicant may wish to have the specimen analyzed again. In order to provide for this eventuality, the procedure for collecting urine specimens shall be a split sample collection for all employees and applicants.
- B. An applicant/employee may obtain a split sample test on a urine specimen if the analysis of the initial specimen confirms a positive drug test result for the presence of prohibited drugs. A split sample test shall not be conducted if the analysis of the initial urine specimen confirms an adulterated test result. The applicant/employee has 72 hours from notification of the positive test results to request, through the MRO, that the split sample specimen be sent to another SAMHSA certified laboratory for analysis.
  - 1. Any split sample test shall be performed by SAMHSA certified laboratory of the applicant's/employee's choice. The full cost of any split sample test shall be paid by the individual or union requesting the test. The same methods and standards for chain-of-custody and notification shall be applicable to a split sample test.
    - a. The SAMHSA cutoff levels shall be used for split sample tests of urine specimens.
  - 2. If the split sample result is negative, the positive result of the initial test is canceled and no further adverse action shall be taken against the employed based on the initial positive result.

(AO No. 98-5(S), § 2, 2-10-98; AO No. 99-143, § 1, 11-23-99)

**3.30.196 Confidentiality.**

- A. Individuals shall be authorized access to substance misuse test results and related information only on a strict need-to-know basis, as determined by the director of employee relations.

- B. The detailed laboratory analysis of a urine specimen may be released by the MRO, upon written request from the applicant/employee. The employer relations department shall adhere to applicable federal regulations with regard to confidential documents and information.

(AO No. 98-5(S), § 2, 2-10-98; AO No. [2020-24](#), § 1, 3-10-20)

**3.30.197 Pre-employment applicant testing and procedure.**

- A. Pre-employment drug and alcohol testing shall be the final step in the selection process for safety-sensitive and public safety positions.
  - 1. A non-safety sensitive employee who transfers, is promoted, demoted, rehired, or is reinstated, to a safety-sensitive position shall be required to complete a pre-employment drug test.
  - 2. Police and fire department employees who transfer, are promoted, demoted, rehired, or reinstated to another position are required to complete a pre-employment drug test. Police and fire department employees are exempt from random drug testing.
  - 3. Failure to take and successfully pass the urinalysis drug test shall disqualify the applicant.
- B. *Procedures.* The following procedures shall be utilized in pre-employment urinalysis drug testing:
  - 1. The employment office shall notify applicants/employees in writing of requirements for testing and the consequences of positive drug test results.
  - 2. The employment office shall provide to the collection site personnel the names of those applicants/employees who are to be tested.
  - 3. The employment office shall contact the applicant/employee and schedule appointments for collection of urine specimens from the designated individuals.
  - 4. The employment office shall notify each applicant/employee to be tested of the date, time, and place of the appointment. The applicant/employee shall be required to appear for the test at the designated time.



5. Collection site personnel shall follow the guidelines for collection of urine specimens.
6. The laboratory shall analyze urine specimens in accordance with guidelines for urine specimen analysis.
7. The MRO shall review positive drug test results in accordance with guidelines.
8. Positive drug test results submitted by the MRO shall disqualify the employee/applicant from the position for which the employee/applicant is being considered. The human resources department shall inform the applicant of such disqualification and shall terminate an applicant employee.

(AO No. 98-5(S), § 2, 2-10-98; AO No. 99-143, § 1, 11-23-99; AO No. 2005-78, § 1, 6-28-05; AO No. [2019-42](#), § 2, 4-23-19)

**3.30.198 Reasonable suspicion testing.**

A. *Reasonable suspicion testing* shall be conducted when there are reasonable and specific grounds to believe that the poor performance or unsafe acts of an employee are due to a violation of this Rule 19.

1. Reasonable suspicion testing may be based upon, among other things:
  - a. Observable phenomena, including but not limited to direct observation of drug use or possible alcohol consumption or possession, and/or the physical symptoms of drug misuse and/or alcohol misuse; and
  - b. A pattern of abnormal conduct or erratic behavior.
2. Although reasonable suspicion testing does not require certainty, mere "hunches" are not sufficient. The human resources department shall review the circumstances under which reasonable suspicion testing is requested and authorize the test if circumstances warrant. The "Supervisors' Reasonable Suspicion Observation Checklist" (Attachment A) shall be utilized to assist supervisors in making reasonable suspicion determinations.

Exhibit A

B. *Reasonable suspicion procedure.* When a municipal supervisor who has been trained in the signs and symptoms of drug misuse and/or alcohol misuse observes behavior or appearance that is characteristic of alcohol misuse or drug misuse, the supervisor shall complete the "Supervisors' Reasonable Suspicion Observation Checklist" provided as part of this Rule 19. The supervisor shall call the human resources department immediately after completing the "Supervisor's Reasonable Suspicion Observation Checklist." A determination concerning the appropriateness of testing shall be made within one hour. If a test is authorized, testing shall occur as soon as possible but no later than 32 hours for drugs and no later than eight hours for alcohol. If a test is administered, the "Supervisor's Reasonable Suspicion Observation Checklist" shall be forwarded to the human resources department no later than 24 hours following the approval to test. The form shall contain as much detail as possible outlining observations upon which reasonable suspicion was based.

1. For situations in which health and safety are not an immediate issue:
  - a. Immediately after becoming aware of factors leading to making a reasonable suspicion determination, the supervisor of the employee who is suspected of drug misuse and/or alcohol misuse shall report to the human resources department those reasonable and specific grounds which have resulted in reasonable suspicion using the "Supervisors Reasonable Suspicion Observation Checklist";
  - b. If the reasonable and specific grounds do not meet the criteria for reasonable suspicion, the human resources department shall so advise the supervisor and the supervisor may talk to and/or discipline the employee as appropriate on the behavioral and performance aspects of the employee's conduct which have caused concern. This discussion and/or disciplinary action shall focus on conduct and performance; and
  - c. If the reasonable and specific grounds meet the criteria for reasonable suspicion, the supervisor and the employee shall meet as soon as possible after the occurrence. The discussion at the meeting shall focus on the behavioral and performance aspects of the employee's conduct that have resulted in reasonable suspicion. The employee shall be notified of the requirement to test at that meeting. The supervisor shall escort the employee to the collection site.

2. For situations in which an employee's behavior poses a potential present danger to the health and/or safety of the public, other employee(s), or the employee and it is reasonably suspected that such behavior has resulted from drug misuse and/or alcohol misuse, the supervisor shall act immediately to eliminate or reduce the present danger to health and safety by:
  - a. Requiring the employee to cease performing the danger causing activity immediately until the potential danger causing behavior itself has been eliminated;
  - b. Arranging for the employee to leave the scene under escort if necessary and return to an appropriate municipal work site or collection site or otherwise remain in a place where no person's health and safety is endangered. Under no circumstances shall an employee be allowed to drive a vehicle or operate municipal equipment if the employee is suspected of violating Municipal Policy/Procedure 40-22 or this Rule 19. The employee's supervisor shall make arrangements for the employee's transportation home following testing. If the employee appears to be in violation of Municipal Policy/Procedure 40-22 and this Rule 19 and insists on driving, the supervisor shall notify the Anchorage Police Department or Alaska State Troopers immediately. The human resources department shall be contacted and advised of the situation; and
  - c. Following elimination of the present danger to health and/or safety:
    - (i) The supervisor of the employee who is suspected of drug misuse and/or alcohol misuse shall immediately report to the human resources department those reasonable and specific grounds which have resulted in reasonable suspicion.
    - (ii) If the reasonable and specific grounds do not meet the criteria for reasonable suspicion refer to subsection 1.B of this section.

(iii) If the reasonable and specific grounds meet the criteria for reasonable suspicion, refer to subsection 1.C of this section.

3. Collection site personnel shall follow the guidelines for collection.
4. The laboratory shall analyze urine specimens/breath samples in accordance with guidelines for analysis.
5. The MRO shall review positive drug test results in accordance with guidelines.
6. The employee shall be removed from duty in accordance with 3.30.190.B. of this Rule 19 until further notification.

(AO No. 98-5(S), § 2, 2-10-98; AO No. [2019-42](#), § 2, 4-23-19; AO No. [2020-24](#), § 2, 3-10-20)

**3.30.199 Post-accident testing.**

- A. *Post accident testing* shall be conducted for any employee involved in a work related accident that results in a citation for a moving violation or death or personal injury or medical help required away from the scene of the accident or damage to municipal or private property or a vehicle being towed from the scene of the accident or removed from service.
1. If post-accident criteria is not met and if a supervisor has reasonable and specific grounds to believe a substance misuse test is appropriate, "reasonable suspicion" procedures shall be reviewed and followed.
- B. *Post-accident testing procedure.* Post accident testing shall be conducted when there has been a work related accident occurring while an employee is performing job duties that results in: a citation for a moving violation; death; personal injury; requiring medical help away from the scene of the accident; damage to municipal or private property or a vehicle being towed from the scene of the accident or removed from service. In any of these circumstances, any employee who is directly involved in the incident shall be subject to the specific criteria set forth below, for being tested for drugs and/or alcohol. The first priority shall be treatment of any injuries and cooperation with law enforcement personnel.

## Exhibit A

1. In the event of an accident, municipal supervisors shall initiate testing procedures as appropriate, regardless of the decision to test by law enforcement personnel. If law enforcement personnel do not allow the employee to undergo separate municipal testing, the supervisor shall notify the human resources department as soon as possible.
2. Post-accident alcohol testing shall be done as soon as possible but no later than eight hours after the accident and post accident drug testing shall be done no later than 32 hours after the accident.
3. If the accident resulting in damage to municipal or private property was caused by a public safety employee, operating within standard operating policy guidelines, the requirement for post accident testing may be waived by a command officer for APD employees, or the health and safety officer for AFD employees.
4. The following procedure shall be followed for post accident testing:
  - a. The supervisor shall immediately inform the employee that a substance misuse test is required as soon as is reasonable and possible. Municipal personnel shall cooperate with law enforcement authorities.
  - b. The supervisor shall immediately report the incident to the human resources department. The employee shall be tested as soon after the accident as possible. In instances of hospitalization of the employee, the employee relations department shall notify the collection site to arrange for testing. The employee shall be notified of the testing. If the employee is unconscious and unable to consent to a substance misuse test, the employee shall be required to sign a release as soon as the attending physician determines the employee is able to do so. At that time, the employee shall sign the necessary forms and provide a urine specimen/breath sample.
  - c. The human resources department shall arrange for the test with collection site personnel, or authorize the supervisor to do so.
  - d. Collection site personnel shall follow the guidelines for urine specimens/breath samples.

Exhibit A

- e. In the event of hospitalization of the employee, collection site personnel shall notify the human resources department that the testing was conducted.
  - f. The employee shall be removed from duty in accordance with 3.30.190.B.
5. Nothing in this section shall preclude reasonable suspicion testing where facts and circumstances may not require post accident testing.

(AO No. 98-5(S), § 2, 2-10-98; AO No. [2019-42](#), § 2, 4-23-19; AO No. [2020-24](#), § 1, 3-10-20)

**3.30.1910 Return-to-duty and follow-up testing.**

A. *Return-to-duty and follow-up testing* shall be required 1) when an employee self reports a substance misuse problem prior to taking a drug test which results in a confirmed positive or prior to taking an alcohol test with a result greater than .02 and enters a treatment program or 2) when an employee has violated Municipal Policy/Procedure 40-22 and/or Rule 19 and as a condition of continued employment agrees to a return-to-duty contract.

- 1. Testing under this section shall be conducted:
  - a. After an alcohol test result of greater than .02: or
  - b. As part of a return-to-duty contract; or
  - c. After an employee has notified his/her supervisor of the employee's participation in a substance misuse treatment program.
- 2. An employee may be tested at any time during:
  - a. The period of the employee's participation in the substance misuse treatment program; or
  - b. The 60-month period immediately following the employee's return to duty after successful completion of a substance misuse treatment program; or
  - c. The time-frame outlined in the return-to-duty contract.

- B. *Return-to-duty and follow-up testing procedure.* Whenever an employee who has violated the Municipal Policy/Procedure 40-22 or this Rule 19 is allowed to return-to-duty, substance misuse testing shall be conducted on a periodic unannounced basis for up to 60 months following his/her return-to-duty. The compliance manager shall oversee the inclusion of these testing requirements in return-to-duty contracts that are part of grievance resolutions, arbitration decisions, job jeopardy contracts, or voluntary rehabilitation decisions.
1. The return-to-duty contract shall clearly outline the supervisor's desired performance goals and employee obligations including remaining completely drug and/or alcohol free. The contract shall also clearly state the disciplinary action that shall be taken if the employee fails to adhere to the provisions of the contract. A violation of the contract may result in discipline up to and including termination.
  2. Once a return-to-duty contract has been agreed to by the employee, supervisor, and union (where applicable), as well as reviewed and approved by the human resources department and other appropriate authorities, the following steps shall be taken:
    - a. The SAP shall establish an individualized testing schedule.
    - b. The SAP shall keep the schedule confidential and secured. The municipality may require testing at anytime while the return-to-duty contract is in effect.
    - c. The SAP shall notify the employees supervisor one day prior to the substance misuse test. The supervisor shall keep this information confidential. This notification is to allow minimal disruption to work scheduling.
    - d. The supervisor may inform the employee of the test no earlier than one hour prior to collection appointment.
    - e. Once notified, the employee shall immediately go to the collection site accompanied by the supervisor.
    - f. Urine specimen/breath sample collection, analysis, review, and employee relations department response shall be done in accordance with procedures specified in this Rule 19.

(AO No. 98-5(S), § 2, 2-10-98; AO No. 2005-78, § 2, 6-28-05; AO No. [2019-42](#), § 2, 4-23-19; AO No. [2020-24](#), § 1, 3-10-20)

**3.30.1911 Random testing.**

- A. *Random testing* shall only be applicable to employees required by government regulations and/or this Rule 19 to be subject to random testing.
1. Once each month, the contractor shall randomly select the appropriate percentage of employees, as determined by the human resources department, employed in safety-sensitive positions to be tested. The selection shall be performed through use of a statistically valid computer random selection method.
- B. *Random testing procedure.* Random testing shall be conducted just before, during, or just after scheduled duty hours.
1. The human resources department shall provide the contractor with the identification of employees to be included in a statistically valid computer random selection program which allows for each employee in a safety-sensitive position to have an equal chance of being tested.
  2. The testing dates and times shall be with unpredictable frequency throughout the year. Some safety-sensitive employees may be tested more than once a year; some may not be tested at all depending upon the random selection. All safety-sensitive employees remain in the random selection pool at all times, regardless of whether or not they have been previously selected for testing.
  3. Supervisors of the employees to be tested shall be notified by the compliance manager of the dates of the test appointments. That information shall be held in confidence. Employees are to receive No prior notification. The supervisor shall notify each employee to be tested and a supervisor shall escort them to the collection site. The employee is required to report for the test immediately. Specimen collection, analysis, review, and human resources department response shall be accomplished in accordance with this rule. Employees hired during the year shall be added to the selection pool during the month following their hire.



Exhibit A

(AO No. 98-5(S), § 2, 2-10-98; AO No. 2005-78, § 3, 6-28-05; AO No. [2019-42](#), § 2, 4-23-19)

**3.30.1912 Refusing to take a test.**

- A. Refusing to take or submit to a substance misuse test for any reason shall be construed as a positive drug test result or a failed alcohol test and all provisions relating to a positive drug test result or a failed alcohol test, except provision [3.30.195](#) B, shall be applicable.
- B. Refusing to submit to a substance misuse test includes, but is not limited to:
  - 1. Refusing to take a test,
  - 2. Inability to provide sufficient quantities of breath or urine to be tested without a valid medical explanation,
  - 3. Tampering with or attempting to adulterate the specimen or collection procedure,
  - 4. Not reporting to the collection site in the time allotted, or
  - 5. Leaving the scene of an accident without a valid reason before the tests have been conducted.

(AO No. 98-5(S), § 2, 2-10-98; AO No. 99-143, § 1, 11-23-99; AO No. [2020-24](#), § 1, 3-10-20)

**3.30.1913 Substance misuse testing policy and procedure for the public transportation department.**

The Municipality of Anchorage, Public Transportation Department Policy and Procedures for Substance Abuse Testing of Safety Sensitive employees Effective January 1, 1995, (Revised September, 1999 and May, 2006) is hereby adopted by reference and shall apply to safety sensitive employees of the Public Transportation Department of the Municipality as listed in Attachment 1 to said Policy.

(AO No. 99-143, § 2, 11-23-99; AO No. 2006-100, § 3, 7-25-06; AO No. [2020-24](#), § 1, 3-10-20)

**3.30.1914 Substance misuse testing policy and procedure for commercial drivers license holders (except public transportation department employees).**

The Municipality of Anchorage Federal Motor Carrier Safety Administration Policy and Procedures for Substance Abuse Testing of Safety Sensitive Employees (effective May, 2006) is adopted by reference and shall apply to all covered employees of the Municipality, except Public Transportation Department employees, as listed in Attachment 2 to the Policy.

(AO No. 2006-100, § 4, 7-25-06; AO No. [2020-24](#), § 1, 3-10-20)