

**ADDENDUM TO PERSONNEL POLICY
DRUG AND ALCOHOL TESTING POLICY
CITY OF PASS CHRISTIAN**

1. **INTRODUCTION.** The City of Pass Christian is committed to providing a safe workplace in which its employees work effectively with one another and with the public they serve. There is considerable evidence that alcohol and/or drug use can result in impaired work performance and may pose significant risk for property damage and/or to impaired employees, co-workers and the public at large. Though the City does not wish to intrude into the private lives of its employees, the City has a responsibility to all City workers and to the public it serves and intends to create and maintain the safest work environment possible for all its employees, to reduce the risk of on-the-job injuries and to maximize delivery of services to the citizens of Pass Christian. The City also wishes to adopt a policy to comply with the Drug-Free Workplace Act of 1988 and amendments thereto as required by certain Grants and other Federal Funding.

This policy does not govern or apply to employees who are subject to testing as commercial motor vehicle operators under the federal statutes and implementing regulations issued by the Federal Highway Administration of the U.S. Department of Transportation. They will be governed by a separate policy that will be enacted pursuant to that legislation. However, such employees may be tested as authorized by this policy if the circumstances giving rise to such testing do not arise from the employee's operation of a commercial motor vehicle.

Therefore, you are hereby advised that the City of Pass Christian, Mississippi, has implemented a drug and alcohol policy and conducts a testing program, pursuant to Sections 71-7-1, et al., of the Mississippi Code of 1972, Ann. (hereinafter referred to as "the Act"), and you are hereby advised of the existence of said Act.

2. **DEFINITIONS.** As used in this policy, the following terms shall have the meaning ascribed to them herein unless the context requires otherwise:
 - a. THE ACT: Sections 71-7-1, et. seq., of the Mississippi Code of 1972, Annotated.
 - b. ALCOHOL: ethyl alcohol.
 - c. APPLICANT: any person who has applied for employment with the City of Pass Christian, Mississippi, in any position, including those applying to serve as a Part-Time Police Officer and Part Time Firefighter.
 - d. THE CITY: the City of Pass Christian, Mississippi.
 - e. CONFIRMATION TEST: a drug and/or alcohol test on a specimen to substantiate the results of a prior drug and/or alcohol test on the specimen. The confirmation test must use an alternate method of equal or greater sensitivity than that used in the previous drug and/or alcohol test.
 - f. DRUG: an illegal drug, or a prescription or nonprescription medication; also can include alcohol.

- g. DRUG AND ALCOHOL TEST: a chemical test administered for the purpose of determining the presence or absence of a drug or alcohol or their metabolites in a person's bodily fluids and/or body.
- h. EMPLOYEE: any person who supplies a service for remuneration or pursuant to any contract for hire, express or implied, with the City of Pass Christian. *For the purposes of this policy only*, Part Time Police Officers and Firefighters are deemed to be employees of the City of Pass Christian.
- i. EMPLOYEE ASSISTANCE PROGRAM: a program which may be provided by the City of Pass Christian offering assessment, short-term counseling and referral services to employees, including drug, alcohol and mental health programs.
- j. EMPLOYEE REQUESTED THIRD TESTING: an employee may, at the employee's or applicant's own expense, have a third test conducted on the same sample, at a licensed laboratory chosen by the employee and approved by the City. The third testing shall only require a limits of detection result.
- k. EMPLOYER: the City of Pass Christian.
- l. ILLEGAL DRUG: any substance, other than alcohol, having psychological and/or physiological effects on a human being and that is not a prescription or nonprescription medication, including controlled dangerous substances and controlled substance analogs or volatile substances which produce the psychological and/or physiological effects of a controlled dangerous substance through deliberate introduction into the body.
- m. INITIAL TEST: an initial drug or alcohol test to determine the presence or absence of drugs or alcohol or their metabolites in specimens.
- n. LABORATORY: any laboratory that is currently certified or accredited by the federal Clinical Laboratory Improvement Act, as amended, by the federal Substance Abuse and Mental Health Services Administration, by the College of American pathologists, or that has been deemed by the State Board of Health to have been certified or accredited by an appropriate federal agency, organization or another state.
- o. MEDICAL REVIEW OFFICER (MRO): a licensed physician responsible for receiving laboratory results generated by the City's drug and alcohol testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.
- p. NEUTRAL SELECTION BASIS (RANDOM) DRUG AND ALCOHOL TESTING: a mechanism for selecting employees for drug tests that:
 - i. results in equal probability that any employee from a group of employees subject to the selection mechanism will be selected, and
 - ii. does not give an employer discretion to waive the selection of any employee selected under the mechanism.
- q. NONPRESCRIPTION MEDICATION: a drug that is authorized pursuant to federal or state laws for general distribution and use without a prescription in the treatment of human diseases, ailments or injuries.
- r. POST ACCIDENT DRUG AND ALCOHOL TESTING: see Section 6 (c) below.
- s. PRESCRIPTION MEDICATION: a drug prescribed for use by a duly licensed physician, dentist or other medical practitioner licensed to issue prescriptions.

- t. REASONABLE SUSPICION DRUG AND ALCOHOL TESTING: see Section 6 (a) below.
 - u. SPECIMEN: a tissue or product of the human body chemically capable of revealing the presence of drugs and/or alcohol in the human body.
3. **SUBSTANCES TO BE TESTED FOR.** Except as otherwise provided, when drug and alcohol screening is required under the provisions of this policy, a urinalysis test will be given to detect the presence of drugs and a breath or saliva test and blood test will be given to detect the presence of alcohol, including any of the following groups:
- a. Alcohol (Ethyl);
 - b. Amphetamines (speed);
 - c. Cocaine (Metabolite);
 - d. Cannabinoid (THC, Marijuana);
 - e. Opiates (Codeine, Heroin, Morphine, Hydromorphone, Hydrocodone);
 - f. Phencyclidine (PCP, Angel Dust)

Additionally, procedures reasonably incident to analysis of specimens for controlled substances (i.e., testing for adulterants), are permitted.

The list herein above is not intended as an exclusive or exhaustive inventory of all drugs that may be tested for by the City, and the City reserves the right to unilaterally amend this list to add additional drugs or classes thereof, when necessary and permitted by law.

4. **CONCENTRATION LEVELS.** The concentration levels of each specific drug which will trigger a positive result are as follows:

a. For threshold testing:

<u>Drug</u>	<u>Cut-off Limit</u>
Alcohol	.04% (.08% for post accident testing)
Amphetamines	500 ng/ml
Cocaine	150 ng/ml
Cannabinoid (Marijuana)	50 ng/ml
Opiates	2000 ng/ml
Phencyclidine	25 ng/ml
6 AM	10 ng/ml

- b. For the confirmatory GC/MS (Gas Chromatography/Mass Spectroscopy) test (for

confirmation purpose) or confirmatory GC (Gas Chromatography):

<u>Drug</u>	<u>Cut-off Limit</u>
Alcohol	.04% (.08% for post accident testing)
Amphetamines	250 ng/ml
Cocaine	100 ng/ml
Cannabinoid (Marijuana)	15 ng/ml
Opiates	2000 ng/ml
Phencyclidine	25 ng/ml
6 AM	10 ng/ml

The City shall have the right to modify the specific concentration level for each drug from time to time as is necessary in accordance with data provided by the testing laboratory selected by the City to perform testing.

5. **JOB APPLICANT TESTING.** All selectees for vacant sensitive positions as defined herein, as well as those seeking admission as Part Time Police Officers or Firefighters, are required to submit to a pre-employment drug test, excluding alcohol tests, as a condition of the application process and after being offered employment for any position, voluntary or otherwise, with the City.

a. The City shall notify the applicant as to when to appear for the drug testing. The cost of the testing will be borne by the City. Positive results on an initial test will be subject automatically to a confirmation test to verify the results. Confirmation by the MRO that an applicant's test was positive will be grounds for denial of the application for employment.

b. Applicants for the aforementioned positions who test positive or refuse to be tested when so requested may not be hired. Such applicants may re-apply for employment after six (6) months from the date of confirmation of the positive results, and if selected again, shall be subject to drug testing again, and must meet any other departmental requirements.

6. **CURRENT EMPLOYEE TESTING**

a. Reasonable Suspicion Testing. The City may require any employee to undergo reasonable suspicion drug and alcohol testing if there is a reasonable, individualized suspicion that the employee is under the influence of drugs and/or alcohol during work hours.

(1) "Reasonable Suspicion Testing" is defined to be drug and alcohol testing based on a belief that an employee is using or has used drugs and/or alcohol in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of

experience, and may be based upon, among other things:

- a. Observable phenomena, such as direct observation of drug use and/or the physical symptoms or manifestations of being under the influence of a drug;
 - b. Abnormal conduct or erratic behavior while at work, absenteeism, tardiness or deterioration in work performance;
 - c. A report of drug use provided by a reliable and credible sources which has been independently corroborated;
 - d. Evidence that an employee has tampered with a drug and alcohol test during his employment with the current employer;
 - e. Information that an employee has caused or contributed to an accident while at work;
 - f. Evidence than an employee is involved in the use, possession, sale, solicitation or transfer of drugs and/or alcohol while working or while on the employer's premises or operating the employer's vehicle, machinery or equipment.
- (2) The Department Director (or the employee's supervisor designee, in the absence of the Director) is required to detail, in writing, the specific facts, symptoms, or observations which form the basis for his/her determination that reasonable suspicion exist to warrant the drug testing of an employee. This documentation shall be forwarded immediately to the appropriate Department Director (if completed by the supervisor's designee) and to the City Clerk/Human Resources Manager. The City Clerk/Human Resources Manager, after review and approval of the documentation submitted, shall prepare written notification to the employee requesting that the employee consent to reasonable suspicion drug and alcohol testing and cause that notice to be delivered to the employee. In the absence of the City Clerk/Human Resources Manager, notification responsibilities shall be handled by either the Mayor or his designee, or the Department Director.
- (3) It shall be the responsibility of the Mayor, or his designee, to enforce the provisions of this section as to any Department Director.
- (4) Any reasonable suspicion drug and alcohol testing conducted or requested by the employer shall occur within two (2) hours of notification to the employee for the purpose of submitting a urine sample for testing and submitting to either (at the discretion of the city official approving the testing) a saliva strip test or a breath/intoxilizer test and shall be deemed to be performed during work time for purposes of determining compensation and benefits for current employees.
- (5) Confirmatory testing for drugs shall be performed as set forth elsewhere

in this policy. If the saliva strip test or breath/intoxilizer test reveals a blood alcohol level of .04% or higher, for this type of testing the employee will be requested to consent to a blood draw for further confirmatory testing via GC (Gas Chromatography). A subsequent positive result of .04% blood alcohol level or a refusal to submit to any of these tests may result in disciplinary action up to and including termination.

b. Random Drug Testing (a/k/a Neutral Selection Drug Testing)

- (1) All City employees in any of the classes of sensitive employment listed in paragraph 3 below shall be subject to random drug testing at least once each calendar year. Names of employees holding those positions shall be placed in a pool for random selection. Each quarter, a computer program shall be used to generate a list of eligible employees and to select randomly fifteen to twenty employees from that list for testing at some time within the next three months or such other number of the eligible employees as the City shall determine with the entity administering such tests.
- (2) After an employee has been randomly selected for testing, he/she shall be immediately advised of their selection by the City Clerk/Human Resources Manager, Department Director or his/her designee. Those employees shall report to the testing location within one (1) hour of notification for the purpose of submitting a urine sample for drug testing. Any randomly selected employee who is absent from work on the date of his/her selection for any reason (including but not limited to absences for sick leave, vacation, military leave and paid or unpaid leave of absence) or otherwise unable to take such drug test as directed at that time due to good faith reasons verified by the City Clerk/Human Resources Manager, the Mayor, or his/her designee, shall be advised of his/her selection upon his/her return to work and be required to submit a urine sample as set forth herein at that time or such other time as the City Clerk/Human Resources Manager shall determine.
- (3) The City of Pass Christian has determined that the following positions are deemed to be "sensitive" and, as such, are subject to random drug testing:
 - a. All uniformed and certified positions within the Police and Fire Department, including Part Time Police Officers and Firefighters, trainees, and clerical positions in such departments having actual and regular access as a part of their position to truly sensitive information concerning law enforcement and firefighting personnel and/or investigation or prosecution of criminal cases;
 - b. All non-clerical positions within the Public Works Department engaging in activities affecting public health or safety;

- c. All positions within the Legal Department;
- d. All positions within the City Clerk/Human Resources Office or other City offices that have access to truly sensitive information involving public health and safety, such that, inattentiveness due to the drug impairment of the employee could cause serious risk of significant injury or damage to property or others affecting public health and safety, and ;
- e. All persons who operate any city owned motor vehicle and/or motorized construction equipment or work with hazardous materials or chemicals on a regular basis as a part of their job duties that affects public health or safety;

c. Post Accident/Injury Drug and Alcohol Testing

- (1) In the event that an employee occupying a sensitive position sustains a serious injury at work requiring off-site or immediate emergency medical attention (i.e. more than simple first aid), which injury is reasonably believed by his/her supervisor to be caused by or contributed by the employee; the sensitive employee asserts a serious work-related injury caused or contributed to by the fault of the employee as determined by the City Clerk/Human Resources Manager, the Mayor, or his/her designee, and that injury is actually reported by City staff under workers compensation laws or policies and with reasonable suspicion that the employee has used drugs or alcohol that impair his/her performance at such time; the sensitive employee causes or contributes to a fatality, an injury to the employee or another, or serious damage (estimated by the supervisor to be in excess of \$500 for replacement or cost of repair of such damage) to City or private vehicles or property and with reasonable suspicion that the employee has used drugs or alcohol that impair his/her performance at such time; the sensitive employee receives a citation or is charged with a criminal offense for a moving traffic violation or otherwise for operation of a City vehicle with a reasonable suspicion that the employee was operating the City's vehicle while impaired; or the employee has deliberately or recklessly violated serious safety workplace practices or rules unreasonably subjecting the employee or his/her co-workers to hazards or risks, the City shall administer drug and alcohol testing and/or require that the employee submit him/herself to drug and alcohol testing. In the event any of the above incidents shall occur requiring drug testing while the employee is on duty but outside of normal working hours or away from the City limits while the employee is working for the City the employee must make every reasonable effort to report such incident to his/her supervisor at his/her earliest convenience to allow the supervisor to attempt to have the employee drug tested at some other location if at all possible. If the employee has a positive test indicating the presence, at the time of injury, of any drug illegally used or the use of a valid prescription medication(s) taken contrary to the

prescriber's instructions and/or contrary to label warnings, or eight one-hundredths percent (.08%) or more by weight volume of alcohol in the person's blood, it shall be presumed (unless circumstances indicate otherwise) that the proximate cause of the injury was the use of a drug illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or intoxication due to the use of alcohol by the employee.

- (2) An employee shall be required to submit to drug and alcohol testing as directed by his/her supervisor, or his designee in his absences, to report to a medical or testing facility for drug and alcohol testing. After the incident necessitating the drug testing the employee shall not ingest any alcohol or prescription medication until he/she has submitted to such test. The employee shall be escorted to the facility by his/her supervisor or the supervisor's designee and shall report to the testing location within two (2) hours of notification for the purpose of submitting a urine sample for testing and submitting to either (at the sole discretion of the City official ordering the testing) a saliva strip test or a breath/intoxilizer test and shall be deemed to be performed during work time for the purposes of determining compensation and benefits for current employees. The Drug and Alcohol testing shall be conducted as set forth elsewhere in this policy. Under no circumstances, shall the employee be allowed to drive to the testing facility or otherwise operate any City vehicle or motorized equipment until he/she has been tested.
- (3) With respect to drug testing, "Cut-off Limits" for threshold and confirmatory testing as set forth in Section 4 of this policy shall apply. If the saliva strip test or breath/intoxiizer test reveals a threshold blood alcohol level of .08% or higher, the employee will be requested to consent to a blood draw for further confirmatory testing via GC (Gas Chromatography). A subsequent positive result of .08% blood alcohol level shall be presumptive evidence that the proximate cause of the injury was intoxication due to the use of alcohol by the employee. See also Section 13 of this policy for additional consequences of a confirmed positive test result.
- (4) If the employee refuses to submit to drug and alcohol testing immediately after the alleged work-related injury as set forth herein, then it shall be presumed that the employee was using a drug illegally, or was using a valid prescription medication(s) contrary to the prescriber's instructions or contrary to label warnings, or was intoxicated due to the use of alcohol at the time of the accident and that the proximate cause of the injury was the use of an illegal drug, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or intoxication due to the use of alcohol by the employee. See also Section 12(b) of this policy. In the event an employee is unable to comply with the directive to take the drug test due to serious injuries or other conditions outside his/her control as determined and documented by the City Clerk/Human Resources

Manager, the Mayor, and/or his/her designee in consultation with the employee's supervisor or others, then the aforementioned presumption will not apply.

- (5) Employees may obtain a copy of Mississippi Code Annotated Section 71-3-121 (1972, as amended), and Drug and Alcohol Testing Regulations which governs post accident drug and alcohol testing, other matters, and the implications, with respect to workers' compensation, of a positive test from the City Clerk/ Human Resources Office. The provisions thereof are hereby incorporated into this policy.
- (6) All employees shall notify their department supervisor of their criminal conviction for a controlled substance violation within the workplace within five calendar days. A conviction is a finding of guilt or imposition of a sentence, including deferred adjudication or probation. The Department Head shall immediately report such information to the City Clerk/Human Resources Manager or Mayor, in his/her absence, and such conviction shall be reported to the Federal Grant Funding Agency within ten calendar days after receiving notice as required under the Drug-Free Workplace Act of 1988.

d. Duties of the City Clerk/Human Resources Manager

The City Clerk/Human Resources Manager, the Mayor, and/or his/her designee in his/her absence shall be responsible for coordinating the administration of drug and alcohol testing required pursuant to this Section.

e. Medical Review Officer

The city, as a part of its drug and alcohol testing program, must employ or designate a Medical Review Officer (MRO) to interpret, evaluate and monitor its drug and alcohol testing program.

- (1) The city shall contract for and/or provide medical review officer services as part of its drug and alcohol testing program.
- (2) The medical review officer must be a licensed physician or a doctor of medicine knowledgeable in drug and alcohol abuse disorders, including but not limited to the medical effects of prescription drugs and the pharmacology and toxicology of illicit drugs.
- (3) It is responsibility of the medical review officer to review and interpret positive drug and alcohol tests pertaining to the drug and alcohol testing program. It shall be the duty of the medical review officer to review

positive test results, together with the employee's/applicant/s medical history and any other relevant biomedical information, and determine whether any alternative medical explanation could account for the positive test results.

- (4) The MRO and Laboratory shall comply with all Drug and Alcohol Testing Regulations promulgated by the Department of Health.

7. **SUPERVISOR TRAINING.** The City Clerk/Human Resources Manager shall obtain and provide a program of training to assist supervisory personnel in identifying drug and alcohol use among employees. Such training will be directed towards helping supervisors recognize the conduct and behavior that gives rise to a reasonable suspicion of drug and/or alcohol use and post-accident testing.

8. **PRIOR NOTICE OF TESTING POLICY.**

- a. The Human Resources Manager shall provide written notice of its drug and alcohol testing policy to all affected current employees thirty (30) days prior to its implementation and to all job applicants at the time of application.
- b. The notice given shall contain the following information:
 - (1) The need for drug and alcohol testing;
 - (2) The circumstances under which testing may be required;
 - (3) The procedure for confirming an initial positive drug and alcohol test result;
 - (4) The consequences of a confirmed positive test result;
 - (5) The consequences of refusing to undergo a drug and alcohol test;
 - (6) The right to explain a positive test result and the appeal procedures available;
 - (7) The availability of drug abuse counseling and referral services; and
 - (8) A general statement concerning confidentiality.
- c. Notice shall be posted in an appropriate and conspicuous location on the employer's premises and copies of the policy shall be made available for inspection during regular business hours by employees in the employer's personnel office, the City's website or other suitable locations; and

- d. Job applicants shall be notified in writing, upon application and prior to the collection of the specimen for the drug test that the applicant may be tested for the presence of drugs or their metabolites.

9. **CONSENT.**

- a. Before a drug and alcohol test is administered, employees and applicants will be asked to sign a consent form authorizing the test and permitting the release of the test results to those City officials with a "need to know". Unless authorized by the Mayor, the City officials with a "need to know" shall be limited to the Department Director involved, the City Clerk/Human Resources Manager, the City Attorney, and the Mayor.
- b. The consent form shall be generated by the City Clerk/Human Resources Manager and shall provide space for employees and applicants to acknowledge that they have been notified of the City's drug testing policy, and to indicate current or recent use of prescription or over-the-counter medication.
- c. The consent form shall also set forth the following information:
 - (1) The procedure for confirming an initial positive test result;
 - (2) The consequences of a confirmed positive test result;
 - (3) The right to explain a confirmed positive test result and the appeal procedures available; and
 - (4) The consequences of refusing to undergo a drug and alcohol test.

10. **CONFIRMATION OF TEST RESULTS (CONFIRMATORY TEST).**

- a. An employee or job applicant whose drug test yields an initial positive result shall automatically be given a second test, using gas chromatography/mass spectrometry (GC/MS) confirmatory drug testing.
- b. The volume of the specimen collected for the drug test shall be sufficient for at least two (2) drug tests. The second test shall use a portion of the same urine sample from the employee or applicant which was used in the first test. See Section 6(a)(5) above for additional confirmatory alcohol testing procedures.
- c. In the event that the second test confirms the initial positive test results, the employee or applicant shall be notified of the results, in writing, by the City Clerk/Human Resources Manager or his/her designee within five (5) working days after receipt of the positive confirmed test result report from the testing laboratory. The letter of notification shall identify the particular substance found and its concentration level and inform the employee or applicant of the consequences of such report and the options available to the employee/applicant. The employee/applicant may request and receive a copy of

the test result report. An opportunity shall be given to the employee or applicant to provide any information that he/she considers relevant to the test including identification of currently or recently used prescription or nonprescription drugs, or other relevant medical information. The provision of this information shall not preclude the administration of the drug test, but shall be taken into account in interpreting any positive confirmed results.

- d. An employee or applicant whose second test (GC/MS or GC) confirms the original initial positive test result may, at the employee's or applicant's own expense, have a third test conducted on the same sample, at a licensed laboratory chosen by the employee and approved by the City. Every specimen that produces a positive confirmed result shall be preserved in a frozen state by the licensed laboratory that conducts the confirmation test for a period of ninety (90) days from the time the results of the positive confirmed test are mailed or otherwise delivered to the employer. During this period, the employee or applicant who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee's or applicant's expense, at the licensed laboratory chosen by the employee or applicant. The licensed laboratory that has performed the test for the employer shall be responsible for the transfer of the portion of the specimen to be retested and for the integrity of the chain of custody during such transfer.

11. **WRITTEN SUBMISSION OF LABORATORY TEST RESULTS.** The laboratory shall disclose to the employer a written test result report within five (5) working days after the test, which shall at a minimum, state:

- a. The name and address of the laboratory that performed the test and the positive identification of the person tested;
- b. Any positive confirmed drug test results on a specimen which tested positive on an initial test, or a negative drug test result on a specimen; provided, however, that reports should not make reference to initial or confirmatory test when reporting positive or negative results;
- c. A list of the drugs tested for;
- d. The type of test conducted for both initial and confirmation test and the cutoff limits of the tests; and
- e. The report shall not disclose the presence or absence of any physical or mental condition or of any drug other than the specific drugs and metabolites that an employer requests to be identified.

12. **REFUSAL TO CONSENT.**

- a. Applicants. A sensitive job applicant who refuses to consent to a drug and/or alcohol test will be denied employment with the City.
- b. Employees. A sensitive employee who refuses to consent to a drug and/or

alcohol test, when reasonable suspicion of drug or alcohol use has been identified, or in conjunction with random selection testing or post accident/injury testing as set forth above, shall be subject to disciplinary action up to and including termination.

- c. Any sensitive employee or applicant who attempts to or does, in fact, alter, tamper with, substitute or otherwise modify the given sample shall be deemed to have refused to consent to drug and/or alcohol testing.
- d. See Section 6 (c) of this policy for additional implications associated with a refusal to consent to post accident/injury drug and alcohol testing.
- e. When required by the Federal American with Disabilities Act and any other applicable laws or regulations the City, and upon a proper and timely request, the City will reasonably accommodate any eligible applicant or employee who is unable to provide a sufficient urine sample as provided herein by allowing the applicant or employee to submit to another type of acceptable drug test. The City encourages all applicants and employees prior to drug testing to disclose any medical condition or reason to the City Clerk/Human Resources Director that would prevent the applicant or employee from providing a sufficient urine sample for drug testing purposes. All information provided will be kept confidential as required by law. As allowed by law, the City reserves the right to require any applicant or employee to provide adequate proof of any medical condition, such as paruresis, to the City Clerk/Human Resources Director to

13. CONSEQUENCES OF A CONFIRMED POSITIVE TEST RESULT.

- a. Applicants. Job applicants for sensitive positions will be denied employment with the City if their initial positive test results have been confirmed. Applicants shall be informed in writing if they are rejected on the basis of a confirmed positive drug test result. Applicants have the right to have a third test conducted on same sample as provided in Section 10(d), above.
- b. Employees. If a sensitive employee's initial positive test result has been confirmed, the employee shall be subject to disciplinary action up to and including termination. The employee shall be informed in writing if their termination is based on a confirmed positive drug test result. Employees have the right to have a third test conducted on the same sample as provided in Section 10(d), above.
- c. Counseling and Rehabilitation.
 - (1) The mandatory requirement for disciplinary action up to and including termination provided in paragraph 13(b) above notwithstanding, an employee shall not be terminated, nor shall any disciplinary action be taken against an employee due to the results of drug testing, who, prior to testing or notice thereof, or the incident requiring the drug test, voluntarily identifies himself/herself as a drug or alcohol user, and who obtains counseling and rehabilitation, either through a recognized, licensed public or private rehabilitation program, and which employee

thereafter refrains from violating the City's policy on drug use.

- (2) Any employee who voluntarily seeks drug or alcohol counseling and/or rehabilitation, pursuant to Section 13(c)(1) above, prior to the administration of a City drug test or notice that such testing will occur shall be required as a condition of employment to take and pass the City's pre-employment drug test before he/she will be permitted to return to work.
- (3) An employee who has voluntarily entered a drug counseling and/or rehabilitation program pursuant to this Section may be required, as a condition of continued employment, to be subject to neutral selection drug testing.
- (4) For purposes of the Section, the term "drug" shall be read to include "and alcohol."

14. **CONFIDENTIALITY.**

- a. All information from the employee's or applicant's drug and alcohol test is confidential and only those with a need to know are to be informed of the test results.
- b. A sensitive employee or job applicant to be tested shall be given
 - 1) A medication disclosure form to permit the employee or job applicant to disclose any non-prescription or prescription medications that have been taken within the last forty-five (45) days which may result in a positive test result, and

A statement that the form shall be submitted directly to the laboratory so that the City of Pass Christian shall have no access to the information disclosed on the form.

The procedure for submission of the form shall ensure that no person other than the laboratory has access to the information disclosed on the form.

- c. Disclosure of test results to any other person, agency or organization is prohibited, unless prior written authorization is obtained from the employee or applicant. Test results may not be used in a criminal prosecution of the employee or applicant without the consent of the employee or applicant.
 - a. The results of an initial positive drug test shall not be released until the results are confirmed by gas chromatography/mass spectrometry (GC/MS) or gas chromatography (GC) confirmatory testing in the case of an initial positive alcohol test.

- a. The records of unconfirmed positive test results and negative test results shall be destroyed by the testing laboratory. However, this shall not be construed to prohibit the testing laboratory to report to the City that no drugs that are set forth in Section 3 above, were present in the employee's or applicants' sample.

- b. All information, interviews, reports, statement and memoranda and test results, written or otherwise, received by the City of Pass Christian through its drug and alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with the Act and these regulations. Any information obtained by the City of Pass Christian pursuant to the Act and these regulations shall be the property of the employer. The City of Pass Christian shall not release to any person other than the employee or job applicant, or employer medical, supervisory or other personnel, as designated by the City of Pass Christian on a need to know basis, information related to drug and alcohol tests results unless:
 - 1) The employee or job applicant has expressly, in writing, granted permission for the City of Pass Christian to release such information;
 - 2) It is necessary to introduce a positive confirmed test result into an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding, or the information must be disclosed to a federal or state agency or other unit of the state or United States government as required under law, regulation or order, or in accordance with compliance requirements of a state or federal government contract, or disclosed to a drug abuse rehabilitation program for the purpose of evaluation or treatment of an employee; or
 - 3) There is a risk to public health or safety that can be minimized or prevented by the release or such information; provided, however, that unless such risk is immediate, a court order permitting the release shall be obtained prior to the release of the information.

The confidentiality provisions provided for by the Act shall not apply to other parts of an employee's or job applicant's personnel or medical files. If the employee refuses to sign a written consent form for release of information to persons as permitted in the Act, the City of Pass Christian shall not be barred from discharging or disciplining the employee.

Information related to the drug and alcohol tests shall not be disclosed if otherwise prohibited by and Federal or State law or regulation.

16. **PRIVACY IN DRUG TESTING.** The collection of specimens shall be performed under reasonable and sanitary conditions. Individual dignity shall be preserved to the extent practicable. Urine samples may be requested to be provided at the designated hospital or laboratory. The following procedures shall apply to the obtaining of the urine samples:

- a. Specimens shall be collected in a manner reasonably calculated to prevent substitution of specimens and interference with the collection or testing of specimens and in accord with the usual and customary testing procedures utilized by the City's selected testing laboratory.
- b. Specimen collection shall be documented, and the documentation procedures shall include:
 - (1) Labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results; and
 - (3) An opportunity for the employee or applicant to provide any information that he considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant medical information; the provision of this information shall not preclude the administration of the drug test, but shall be taken into account in interpreting any positive confirmed results.
- c. The City shall have the right to amend or modify the provisions contained in this section, when necessary, in order to insure both the privacy of the employee and/or applicant tested and to preserve his/her dignity, and yet to insure that there is no tampering with the specimen, or substitution of another's urine.
- d. Disciplinary action, up to and including termination, shall be taken against any employee who attempts to or does, in fact, alter, tamper with, substitute or otherwise modify the sample given, or who otherwise attempts to prevent or prohibit the obtaining of a valid sample or otherwise improperly modify or influence the test results.

17. **LABORATORY TESTING REQUIREMENTS.**

- a. All drug and alcohol testing of samples given by employees and/or applicants shall be conducted at such medical facility or licensed laboratory as may be selected by the City.
- b. The medical facility or laboratory selected by the City must submit to the City in writing a description of the procedures that will be used to maintain test samples and of the tests to be performed and the methodology thereof.

- c. Factors to be considered by the City in selecting a testing facility include:
 - (1) The Director of the laboratory and the laboratory shall be properly licensed;
 - (2) Written test procedures which insure privacy to employees and applicants, consistent with the prevention of tampering with the test results;
 - (3) Methods of analysis which ensure reliable test results, including the use of gas chromatography/mass spectrometry (GC/MS tests) to confirm an initial positive test result;
 - (4) Written chain-of-custody procedures which ensure proper identification, labeling and handling of test samples;
 - (5) Proper quality control, to include retention and storage procedures which ensure reliable results on confirmatory testing of original samples;
 - (6) Security measures to preclude alteration of specimens or test results;
 - (7) An internal review and certification process for test results, conducted by a person qualified to perform such function, and
 - (8) Availability of expert witnesses for testimony concerning the tests performed, test results or other questions which may later arise.
 - d. It shall be the responsibility of the City Clerk/Human Resources Manager to coordinate the details for the testing of samples of drugs and alcohol with laboratory selected by the City. Additional information concerning said laboratory may be obtained from the City Clerk/Human Resources office by any interested party.
- 18. This policy does not prevent the employer from establishing reasonable work rules related to employee possession, use, sale or solicitation of drugs, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules.
 - 19. Upon adoption, this policy shall be effective and shall apply immediately to all applicants. Written notice of this policy shall also be given forthwith by the Human Resources Manager to all affected current employees, and the implementation of this policy as to such current employees shall be effective thirty (30) days from the provision of notice.
 - 20. The City reserves the right to review and amend the provisions of this policy from time to time, as may be necessary, in order to set and maintain reasonable and effective drug testing guidelines, in consideration of the Fourth Amendment and the due process

requirements of the Constitutions of the United States and the State of Mississippi, as expressed or interpreted from time to time by the Courts of the United States or the State of Mississippi.

21. Any definition or provision herein that is inconsistent with any applicable statutory provision provided in MCA Section 71-7-1 et seq. and amendments thereto or the Miss. Department of Health Drug and Alcohol Testing Regulations or amendments thereto shall be repealed to the extent of such inconsistency and such statute or regulation shall apply instead.