

City of East Chicago, Indiana
Substance Abuse Policy
Employee Handbook

Revised 2011

Anthony Copeland, Mayor

Contents

Preface 1

Public Policy and Purpose of Drug and Alcohol Testing Program1

 Use of Controlled Substances Prohibited1

 Prospective Employees and the Use of Controlled Substances1

 Consumption and Use of Alcohol by Employees Prohibited1

 Continuing Authorization of the Drug and Alcohol Testing Program2

 Possession of Drugs or Alcohol on City Property.....2

 Effect of this policy on Departments with more Stringent Requirements2

Scope of Testing.....2

 Substances to be Tested2

 Categories of Testing3

 Pre-employment Testing3

 Random Testing4

 Departmental Testing6

 Reasonable Suspicion Testing.....6

 Reasonable Suspicion Testing Procedures and Location7

 Post Accident Testing.....7

 Return to Work Testing.....9

 Follow-up and Compliance Testing.....9

 Testing Procedures and Location9

Compliance10

 Refusal to Undergo Required Testing10

 Consequences of a Positive Test or Refusal11

 Inconclusive, Invalid or Adulterated Tests12

 Substance Abuse Referral Program13

Standards for Testing.....	14
Screening and Confirmatory Testing	14
Preservation of Samples by the Laboratory	14
Positive Test Threshold Levels	14
Specimen Collection; Transportation of Employees	16
Specimen Integrity	16
Adulteration or Tampering with Specimen	16
Privacy in Drug Testing	17
Medical Review and Medical Review Officer	17
Notice and Training	17
Supervisor Training.....	17
Coordination of Testing	18
Notice to Employees	18
Reporting of Confirmed Positive Test Results.	18
Rights and Responsibilities.....	19
Right to have Specimen Retested.....	19
Right of Appeal of Actions taken under this Ordinance.	19
Right of Appeal for Police Officers and Fire Fighters	19
Preservation of Information and Records	19
Confidentiality Requirements	20
Responsibility of Department Heads and Supervisors	20
Indemnification and Defense of Actions	20
Monitoring of Testing Frequency	20
Effect and Implementation.....	20
Repeal of Previous Policies and Procedures.....	20
Severability.....	21
Section Titles and Headings	21
Promulgation of Procedures, Rules and Regulations	21
Effective Date	21
Important Contact Information*	21
Acknowledgment Form	22

Preface

Substance Abuse Policy and Testing Program for Employees of the City of East Chicago

The following is the Substance Abuse Policy and Testing Program (“Policy”) of the City of East Chicago, Indiana (“City”), as adopted under **City of East Chicago Ordinance No. 11-0023** adopted the **26th** day of **September 2011** and codified in the East Chicago Municipal Code as §41.60. This policy replaces previous substance abuse policies and programs, and specifically replaces City of East Chicago Ordinances No. 03-0026 and No., 08-0035.

Public Policy and Purpose of Drug and Alcohol Testing Program

A. Use of Controlled Substances Prohibited

The unlawful use, possession, distribution, dispensation, or manufacture of controlled substances by City of East Chicago employees or others in the workplace is prohibited. The illegal use, consumption, possession, manufacturing, distribution, or dispensing of drugs and controlled substances by employees reduces efficiency in government, endangers the safety of City employees as well as the citizenry in general, is contrary to public policy, and a violation of State and Federal Laws, the City Code and the City employee manual.

An employee who consumes or works under the influence of alcohol or other intoxicants reduces efficiency in government, endangers the safety of other City employees as well as the citizenry in general, and is contrary to public policy. The operation of an automobile or other motor vehicle in the performance of job duties by a City employee while under the influence of alcohol or other intoxicants is a threat to public safety, is a violation of this policy, and additionally, may be a violation of State and Federal Laws.

B. Prospective Employees and the Use of Controlled Substances

Persons who illegally use drugs or controlled substances are hereby declared to be unsuitable for employment by the City. Persons who demonstrate evidence of the consumption of drugs for which they do not possess a current, valid lawful prescription present in bodily fluids or hair samples during the employment evaluation process, are not suitable for employment by the City. Persons who are found to have alcohol present in bodily fluids during the employment evaluation process are not suitable for employment by the City.

C. Consumption and Use of Alcohol by Employees Prohibited

The consumption of alcohol by employees while on duty or employees having a Blood Alcohol Concentration (“BAC”) of 0.02% or greater during working hours reduces efficiency in government, endangers the safety of City employees as well as the citizenry in general, and is contrary to the public purpose. Persons who are intoxicated during working hours are hereby declared to be unsuitable for employment by the City. The consumption of alcohol by employees, or evidence of

the employees having BAC levels 0.02% or greater is hereby determined to constitute a violation of the City Code and personnel regulations of the City.

D. Continuing Authorization of the Drug and Alcohol Testing Program

To insure compliance with policies set forth in this policy manual, the continuation of the substance abuse testing program is hereby authorized.

E. Possession of Drugs or Alcohol on City Property

Possession of illegal drugs or other intoxicants in the workplace is explicitly prohibited. Possession of illegal drugs on City property, or while on duty with the City is a crime which shall be reported to law enforcement and shall be grounds for immediate dismissal from employment with the City of East Chicago.

F. Effect of this policy on Departments with more Stringent Requirements

This policy and the procedures outlined herein are generally applicable to all City of East Chicago employees, but it shall not supersede more restrictive testing requirements mandated by Federal requirements for certain city departments or job classifications. Specifically, the provisions of this policy shall not supersede more stringent federally-mandated testing requirements for East Chicago Bus Transit, or other specific requirements mandated by State or Federal law or grant requirements.

Scope of Testing

A. Substances to be Tested

Whenever substance abuse testing is administered pursuant to this or any other City policy or ordinance, the urine, blood, hair and/or breath test results will be reviewed by the City Medical Review Officer (MRO) to detect the presence of the following drug groups and substances:

1. Alcohol (ethyl)
2. Amphetamines (e.g., speed)
3. Cocaine
4. Opiates (e.g. Codeine, Heroin, Morphine, Hydromorphone, Hydrocodone)
5. Phencyclidine (PCP)
6. Marijuana (THC)
7. Additionally, the MRO may order tests for substances classified under the Indiana Code as follows:

- a. Schedule I, II, III, IV and V drugs under Indiana Code 35-48-2.
- b. Non-scheduled prescription drugs
- c. Designer drugs and defined and regulated by the Federal Government

The MRO shall consult federal guidelines in determining what quantities or levels of tested substances shall constitute a positive drug test.

B. Categories of Testing

Under this Ordinance the following types of drug testing shall be performed:

1. Pre-employment testing
2. Random Testing
3. Departmental Testing
4. Reasonable Suspicion (i.e. testing for cause)
5. Post-Accident Testing
6. Return-to-Work Testing
7. Follow-up and Compliance Testing

1. Pre-employment Testing

Persons under consideration for employment by the City shall be required to undergo a drug and alcohol test. This test is to be administered upon the City's tendering of a contingent offer of employment to the applicant, and shall be administered before a final offer of employment can be made. Prospective employees shall be informed of the City Substance Abuse Testing Policy and shall be advised that they are required to sign a consent form permitting the drug and alcohol test as required under this Ordinance.

All offers of employment made by the City shall be contingent upon the applicant's successful completion of a drug and alcohol test and a determination by the MRO that the test result was negative. Positive, inconclusive or invalid tests shall be a bar to employment with the City, and any offer of employment shall be withdrawn upon the MRO's determination that the applicant's test results are not negative.

An applicant receiving a positive, inconclusive or invalid test result shall be barred from employment with the City for a period of three (3) years.

The City shall bear the cost of any pre-employment screening. Such results are confidential, and are for the exclusive use of the City of East Chicago to use as part of its employment process.

a. *Pre-employment Testing procedures*

Human Resources will explain testing procedures, location, timeline, and consent requirements to prospective employees. The prospective employee shall sign the acknowledgement and consent to testing and will then be assigned a timeline to report for testing by Human Resources. The prospective employee shall report to the designated test facility within thirty (30) minutes of signing the acknowledgement and consent.

Any person who refuses to undergo testing, or comply with testing requirements at the testing facility shall be ineligible for employment for a period of three (3) years from the date of refusal. Any such person subsequently employed by the City shall be required as a condition of employment to undergo random, follow-up and compliance testing, as specified in this ordinance.

b. *Results Required before Employment*

All offers of employment with the City are contingent upon the determination by the MRO that the applicant's Pre-Employment Test results are negative. Before any person begins employment with the City and/or is entered into the payroll system, the MRO shall provide the Human Resources Department written certification of the test results. No department or agency head shall cause any person to become an employee until written certification has been received from the MRO.

2. *Random Testing*

All employees of the City of East Chicago shall be eligible for random drug and alcohol testing, and shall be selected for such testing utilizing a random software program suitable for such purpose, which uses payroll numbers or other unique identifier other than employee name for covered employees and other persons subject to the program.

a. *Eligibility for Random Testing*

All employees of the City of East Chicago are eligible for random drug and alcohol testing. This shall include every employee for whom a payroll warrant is processed through the City of East Chicago Controller's office. Employees reporting to any work site, taxing district of the City, or other division of government (judicial, legislative, or executive), and paid by the civil City are not exempted from this policy.

b. *Testing of Supervisory Personnel*

Department Heads, Supervisors, Managers, Foremen and others employed by the City in positions of leadership shall be subject to this policy. When Department Heads or Supervisors are selected for random or other testing, the MRO shall designate a person or persons responsible for accompanying the Department Head or Supervisor to the testing facility. The same procedures which apply to rank and file employees shall apply to Supervisors, Foremen and Department Heads with regard to this policy.

c. Exclusion of Elected Officials

Elected officials are exempted from inclusion in the City's drug and alcohol testing program in their official capacity as an elected official, but may opt to voluntarily participate in the program. However, an elected official who is also employed by the City of East Chicago is not exempted in his or her status as employee, and thus is not excluded from selection for testing as an employee.

d. Random Testing Dates and Time

Testing may be performed on more than one date each month, and dates may be selected randomly or may be otherwise chosen by the MRO or the MRO's designee at his or her discretion. Each month, not less than ten percent (10%) of eligible employees shall be selected for such random testing. The selection process shall be overseen by two (2) persons not otherwise involved in the testing process.

The selection method for employees to be tested shall be such that each workday shall present each employee with a new opportunity to be selected for testing, except employees who are randomly selected and successfully undergo testing with a negative test result shall be exempted from testing and removed from the random test pool for ninety (90) days after a successful test. After ninety days, such persons shall be returned to the random test pool.

An employee selected for random testing shall report to the designated test facility within one (1) hour of being notified of his or her selection for testing.

e. Certification of List of Employees to be Randomly Tested

The City Controller's Office and Information Technology Department shall work with Human Resources to ensure that the employee payroll number (or other unique identifier) of every employee eligible for testing under this policy is included in the list used for selection for random testing. Said list shall be certified by the City Controller's office within fifteen (15) days of the adoption of this Ordinance and shall be updated whenever any employee is reassigned, transferred or otherwise experiences a change in job status. Said list shall be re-certified annually by the City Controller's Office.

The absence of an employee's identifier from such a list shall not invalidate an otherwise proper alcohol or drug test administered to an employee, provided that the employee was properly within the class of employees required to undergo random or reasonable suspicion testing under this Ordinance.

f. Absent Employees

Employees selected for random testing not present for work on the day of selection shall be tested on the first day of return to work, provided that the employee's absence was scheduled in advance, or the employee called off prior to being notified of his or her selection for testing. The Supervisors shall contact the MRO or the MRO's designee to reschedule the test, which shall take place on the same date the employee returns to work.

3. Departmental Testing

The MRO or the MRO's designee may order all of the members of a City department who are otherwise subject to random testing under this Ordinance to be tested at one time. Such tests shall be categorized and treated as random tests within the meaning and intent of this Policy.

4. Reasonable Suspicion Testing

- i) Any employee may be required to undergo drug and alcohol testing if there is reasonable suspicion that the employee is under the influence of drugs or alcohol while on duty. "Reasonable suspicion" shall exist when a reasonable person would suspect, based on specific and articulable facts, taken together with rational inferences from those facts, that an employee is under the influence of drugs or alcohol.
- ii) Circumstances which may form a basis for determining "reasonable suspicion" may include, but are not limited to:
 - a. A pattern of abnormal or erratic behavior, including violent behavior or language directed at co-workers, Supervisors or the public, including the communication of threats.
 - b. A work-related accident.
 - c. Direct observation of drug or alcohol use, or presence of the physical symptoms of drug or alcohol use, including but not limited to alcohol odor on breath, slurred speech, and poor coordination and/or reflexes.
 - d. Possession of alcohol or illegal drugs in the workplace.
 - e. Behavior or action to avoid or invalidate testing.
- iii) Supervisors are required to document the specific facts, symptoms or observations which formed the basis for their determination that reasonable suspicion exists to warrant the testing of an employee.
- iv) Supervisors shall immediately notify the Department Head of the existence of reasonable suspicion, who in turn shall notify Human Resources. Human Resources shall consider the available facts and information, determine if a test is warranted and if warranted, cause the employee to immediately undergo testing. If the Supervisor, Department Head or Director of Human Resources is not available, the most senior person with knowledge of the situation shall make the determination, based on the available facts and information, and cause the employee to immediately undergo testing if a reasonable suspicion exists. In all cases, reasonable suspicion testing shall take place within one (1) hour of the time that the suspicion becomes known.

- v) A Department Head or Supervisor's failure to report an employee who is reasonably suspected of being intoxicated, under the influence of drugs or otherwise in violation of this policy shall itself constitute a violation for which the Department Head or Supervisor shall be accountable.
- vi) An employee calls off or leaves the workplace after becoming aware of his or her selection for reasonable suspicion or other test under this policy, shall be treated as a refusal.

5. Reasonable Suspicion Testing Procedures and Location

- i) An employee selected for Reasonable Suspicion Testing shall immediately report to the designated facility, escorted by the employee's Supervisor, Department Head or other person designated by the MRO.
- ii) When Department Heads or Supervisors are selected for testing, the MRO shall designate a person or persons responsible for accompanying the Department Head or Supervisor to the testing facility within the timeline outline herein. The same procedures which apply to rank and file employees shall apply to Supervisors, Foremen and Department Heads with regard to this policy.
- iii) In all cases, reasonable suspicion testing shall take place within one (1) hour of the time that the suspicion becomes known. If the test is not preformed within one (1) hour, the Department Head or Supervisor shall prepare a report stating the reason(s) why the test was not timely administered. The MRO or the MRO's designee will consider any delay in the timing of the test when interpreting test results. If the test is not timely administered, the Department Head and/or Supervisor may be subject to disciplinary action, in addition to any penalty imposed on the employee.
- iv) Failure to undergo the required testing within the above specified time periods shall be considered a refusal, unless the MRO determines that such delay was not deliberate, or was caused by circumstances beyond the control of the employee.

6. Post Accident Testing

Any employee involved in an accident during working hours, operating any City-owned vehicle, or riding as a passenger in any City-owned vehicle involved in an accident shall immediately notify his or her Supervisor within thirty (30) minutes of the accident. If the Supervisor is unavailable, the employee shall notify the Department Head within the same time frame. If the accident occurred during non-regular work hours, the employee shall contact the East Chicago Police Department, 219.391.8268 or 219.391.8267, or the East Chicago Health Department Emergency Communications Center, 219.391.8467 and notify them of the need for post-accident testing. Employees are required to notify the appropriate individual or authority immediately after an accident and must comply with the time limits set forth herein in the section entitled "Time Limits for Post-Accident Testing".

Post-accident drug and alcohol tests shall be performed immediately upon the occurrence of any of the following:

a. An employee is involved in a motor vehicle accident while operating a city owned vehicle or any motor vehicle during work hours, where such accident:

- i. Results in a fatality, or bodily injury to any party which requires immediate medical treatment; or
- ii. Results in any damage to a city vehicle or any motor vehicle; or
- iii. Results in property damage as a result of a city employee operating a vehicle or other equipment.

b. An employee sustains a work related injury requiring medical evaluation or treatment.

- i. An employee who is involved in a motor vehicle accident or work-related accident as described in this section shall immediately notify his/her Supervisor and the MRO or the MRO's designee. If the accident occurs during non-regular working hours the employee shall notify the designated representative of the MRO by contacting the East Chicago Health Department Emergency Communications Center, 219.391.8467, or the East Chicago Police Department, 219.391.8268. Employees are required to notify the appropriate individual or authority immediately after an accident and must comply with the time limits set forth herein in the section entitled "Time Limits for Post-Accident Testing".

- a. Failure to comply with the notification requirements of this section shall be considered a refusal to undergo drug and alcohol testing as required by the Ordinance. An employee who is subject to post-accident testing shall remain readily available for and submit to such testing; otherwise, the employee may be deemed to have refused to submit to the required testing.

- b. A urine, blood, hair, and/or breath test for controlled substances conducted by any federal, state or local law enforcement official having independent authority for such test shall be considered to meet the requirements of this section, provided the results of such test are made available to the Director of Human Resources, the MRO or the MRO's designee. An employee who knowingly seeks to prevent the MRO, the MRO's designee or Director of Human Resources from receiving the post-accident drug or alcohol test results shall be deemed to have refused post-accident testing within the meaning of this policy.

c. Time Limits for Post-Accident Testing

- i. An alcohol or drug test required under this section shall be administered within one (1) hour following the accident. If the test is not performed within one (1) hour, the Department Head or Supervisor shall prepare a report stating the reason(s) why the test was not timely administered.

- ii. In all cases, the test shall be administered as soon as practicable. The MRO or the MRO's designee will consider any delay in the timing of the test when interpreting test results. If the test is not timely administered, the Department Head and/or Supervisor may be subject to disciplinary action, in addition to any penalty imposed on the employee.
- iii. Failure to undergo the required testing within the above specified periods following an accident shall be considered a refusal unless the MRO determines that such delay was not deliberate, or was caused by circumstances beyond the control of the employee.

7. Return to Work Testing

a. Prerequisite Return to Work After a Positive Alcohol Test

Any employee who is determined to have a positive test for alcohol and subsequently participates in and completes the Substance Abuse Referral Program, hereafter (SARP) shall have an alcohol and drug test performed before they are permitted to return to work. The test shall be performed on a date selected by the Director of Human Resources and may be in addition to any test required by the SARP. A second positive alcohol test within 5 years of the initial positive test will result in immediate termination.

b. Return from Leave

An employee absent from work for 30 days or more due to a leave of absence, FMLA, other medical leave or worker's compensation related leave shall undergo testing upon his or her return to work.

8. Follow-up and Compliance Testing

Any employee who is determined to have a positive test for alcohol who participates in the SARP, and is subsequently certified to return to work shall be subject to follow-up testing. Such follow-up testing shall be performed on a random basis and shall be conducted a minimum of six (6) times during the twelve-month period. If the MRO determines that the frequency of testing does not comply with the requirements of this or any other section of this Ordinance, the MRO or the MRO's designee may order additional testing to meet the requirements of this Ordinance. The provisions of this section shall apply to any employee who is required to undergo follow-up testing under any section of this Ordinance.

c. Testing Procedures and Location

1. The City's MRO or the MRO's designee will contact the Supervisor of the randomly selected employees, in writing, to inform the Supervisor that their employees have been randomly selected. The Supervisor shall sign the written notification acknowledging receipt of the notification, keep a departmental copy, send the original to the MRO, and forward a copy to the City's Human Resources Department (Human Resources).

- Supervisors (or other persons designated by the MRO) are responsible for accompanying selected employees to the test facility designated by the MRO or the MRO's designee within the time specified by the MRO or designee, and in all cases within one hour of the time employee is notified of his or her selection for testing. When Department Heads or Supervisors are selected for testing, the MRO shall designate a person or persons responsible for accompanying the Supervisor or Department Head to the testing facility within the timeline outline above. The same procedures which apply to rank and file employees shall apply to Supervisors, Foremen and Department Heads with regard to this policy.

Compliance

A. Refusal to Undergo Required Testing

An employee or prospective employee who refuses to undergo a drug and alcohol test required by this Ordinance shall be considered to have a positive drug test and shall be subject to the provisions relating thereto. For purposes of this Ordinance the following shall be considered as a refusal:

- Failure to present to the designated testing facility within one (1) hour after notification of the requirement to undergo testing.
- Failure to consent to testing upon presentation to the facility or failure or refusal to comply with testing procedural requirements.
- Failure to provide a specimen or sample required for the test procedure without a genuine inability to provide a specimen or sample (as determined by a medical examination).
- Failure to provide the test facility with proof of identity satisfactory to meet the requirements of the testing facility.
- Engaging in conduct that obstructs the testing process including, but not limited to, tampering with a specimen or sample in order to prevent a valid test through substitution, dilution; or adulteration of a specimen.
- Failure to comply with the accident notification requirements of this Ordinance or failure to be tested within the time limits relating thereto.
- A Department Head or Supervisor's failure to report an employee's apparent violation of the City's substance abuse policy shall itself constitute a violation of this policy for which the Department Head or Supervisor shall be held accountable.

B. Consequences of a Positive Test or Refusal

An individual who has a verified positive test result or who refuses to undergo testing as described above shall be subject the following:

1. Positive Pre-Employment Test shall be a disqualification from employment:

If the test is positive for an individual seeking employment, the person shall not be employed by the City and shall not be eligible for employment for a period of three (3) years from the date of the positive test. Should such person subsequently be employed, as a condition of employment he/she shall be required to undergo random, follow-up testing as described herein in the section entitled "Follow-up and Compliance Testing".

2. Termination of Employment as a Result of a Positive Drug Test

Any employee who has a positive test result for any of the controlled substances listed herein under "Substances to be Tested" shall be terminated from employment with the City without further notice.

- a. A current, valid, legal prescription issued in the name of the employee may be a defense to a positive test for the same drug or metabolite thereof. It shall be the responsibility of the employee to supply the MRO or the MRO's designee with a copy of said prescription issued prior to the test, or sign releases enabling the MRO or the MRO's designee to obtain copies of said prescription within one business day of MRO's determination of a positive test.
- b. The MRO, in his or her sole discretion, shall determine if the positive test result is the result of the employee's legal use of a prescription drug and deem that the employee has passed the drug and alcohol test.

3. Employment Termination as a Result of an Alcohol Test under Certain Circumstances

Any employee with a positive alcohol test result shall be terminated without further notice under the following conditions:

- a. A positive alcohol test result and refusal to participate in the Substance Abuse Referral Program.
- b. Failure to complete or failure to comply with any requirements of the SARP where such participation is the result of a positive alcohol test.
- c. An Employee who has two positive test results within a five-year period, shall be terminated as a result of the second positive test.
- d. An employee who has submitted a specimen or sample which is not his/her own or which yields test results showing the presence of one or more adulterants or complyontaminants added to the specimen or sample to interfere with the detection of substances controlled under this Ordinance.

4. Mandatory Employee Participation in Substance Abuse Referral Program as a result of a Positive Test for Alcohol

- a. If the alcohol test result is reported positive for an employee, he or she shall be subject to immediate termination unless he or she agrees to participate in a Substance Abuse Referral Program (SARP).
- b. Should an employee with a positive alcohol test desire to participate in said program he or she must notify the Director of Human Resources that he or she wishes to participate in such SARP.
- c. As a condition of continued employment with the City, the employee shall consent to and undergo evaluation by a Substance Abuse Professional (hereafter "SAP"), and if recommended by the SAP, rehabilitation, and further agree to follow-up testing as required in the section of this policy entitled "Substance Abuse Referral Program". The employee must complete the requirements of SARP as set forth herein unless the SAP treating the employee recommends return by the employee to work while completing the SARP and such return is approved by the MRO. The employee is subject to retest for alcohol or drugs before he or she is permitted to return to work.
- d. The Employee must give the Substance Abuse Professional permission to release any treatment information and status reports to the Director of Human Resources. The employee is responsible for ensuring that any changes in the employee's status or participation level in the SARP is reported to the Director of Human Resources within one week.
- e. An employee who elects to participate in the SARP but fails to complete the SARP will be terminated. In the event the employee is allowed to return to work while completing any of the elements of the SARP, the SAP shall make such evaluations and reports upon the progress of the employee.

C. Inconclusive, Invalid or Adulterated Tests

- 1. An inconclusive or invalid test shall not be deemed to be a successful test, and an employee determined by the MRO to have had an inclusive test result shall not be exempt from further testing.
- 2. In the case of an inconclusive or invalid test, the MRO shall determine if the sample shall be re-tested, or a new test shall be administered to the employee. The MRO shall review and consider the employee's valid, legal prescriptions when a positive, inconclusive or invalid test could have resulted from legally prescribed medication.
- 3. A test determined by the MRO to have been adulterated shall be deemed a positive, failed test.

D. Substance Abuse Referral Program

The MRO shall establish a Substance Abuse Referral Program (“SARP”). The SARP shall include programs to assist employees who have a positive alcohol test and abstain from further use of prohibited substances.

1. Employees who participate in a SARP as a result of a positive alcohol test shall be evaluated first by a Substance Abuse Professional (SAP) to determine the appropriate interventions. The SAP shall evaluate the employee, and upon finding that the employee requires assistance with an alcohol problem shall refer the employee to the treatment program designated by the MRO providing such services or interventions. Upon successful completion of such program and/or interventions, the SAP shall re-evaluate the employee. If the SAP determines that additional treatment is necessary the employee shall not be permitted to return to work until such additional treatment is successfully completed. If, during participation in a treatment program, the employee is released to return to work, the program shall notify the employee's SAP, who shall then evaluate the employee, along with any information provided by the treatment program, and determine if the employee shall be permitted to return to work. The SAP may recommend that the employee undergo follow-up testing or a specific monitoring protocol as a condition for returning to work, but in no event shall such follow-up testing requirement be less frequent than that specified elsewhere in this Ordinance.
2. The SAP shall not refer an employee to the SAP's private practice or to a person or organization from which the SAP receives remuneration or in which the SAP has a financial interest. In all cases the program must be approved and/or certified by the appropriate agency of the State of Indiana or the United States Department of Health and Human Services.
3. Upon completion of the initial evaluation and the development of a treatment plan (including referral) the SAP shall provide the Human Resources Department with a report of the evaluation, the treatment plan and the referral. The treatment program shall also provide timely reports of an employee's progress, changes in status or participation level or completion of the program to the SAP and the Human Resources Department. Prior to permitting the employee to return to work, the SAP shall prepare a follow-up report to the Human Resource Department. The report shall summarize the employee's treatment, the dates of program participation, the clinical characterization of the employee's participation, and shall include a statement that the employee has successfully completed all recommendations of the SAP and is released to return to work. The SAP may also recommend specific additional follow-up testing beyond that required by this Ordinance.
4. An employee who participates in the SARP must consent to the release of information by the SAP and the treatment program to the Director of Human Resources as a condition of his or her continued employment with the City. If consent is not given, the employee shall be terminated from employment with the City. Further, if any employee refuses to participate in the recommended treatment plan or does not complete the treatment plan, the employee shall be subject to immediate termination. The treatment plan and all program requirements, including

scheduled outpatient sessions or treatment, must be successfully completed, without interruption, in order for the employee to be permitted to continue employment with the City.

Standards for Testing

A. Screening and Confirmatory Testing

1. A screening analysis shall be conducted for the presence of substances listed under the section of this Ordinance entitled "Substances to be Tested". The screening testing shall be conducted in accordance with the guidelines of the Department of Health and Human Services. If the screening test is positive for any of the listed substances a second analysis shall be conducted on the specimen. The second, or confirmatory analysis, shall utilize a gas chromatograph-mass spectrophotometry technique to detect the presence and concentration of the listed substances. The confirmatory test results shall be reported to the MRO if the analysis yields results in excess of the threshold values set forth the section of this Ordinance entitled "Positive Test Threshold Levels".
2. The MRO may order the testing laboratory to perform a routine test of any specimen or group of specimens for the purpose of detecting the presence of contaminants or substances added to the specimen to adulterate it or to interfere with laboratory testing or detection of controlled substances. Upon receiving laboratory results showing an adulterating compound or interfering substance to be present in any specimen, the MRO may disqualify the test and the tested individual will be deemed to have refused to undergo a test required by the Ordinance.

B. Preservation of Samples by the Laboratory

The laboratory shall maintain a long-term storage of all specimens that are found to be positive. Said specimens shall be maintained in long-term frozen storage for a minimum period of five (5) years. If there is any disputed matter relating to a test or any pending or threatened litigation relating to the test or action relating thereto, then the specimen shall be preserved until all such matters are fully resolved.

C. Positive Test Threshold Levels

1. Drug Thresholds

- a. Screening tests shall be conducted in accord with the guidelines of the United States Department of Health and Human Services or such supplemental regulations, if any, issued in accordance with the provision of this Ordinance for the substances listed in this Ordinance in the section entitled "Substances to be Tested". A positive result upon screening test performed in conformance with said guidelines or regulations shall require a confirmatory test of the same specimen.

- b. A confirmatory test shall be positive at the levels prescribed by the United States Department of Health and Human Services Guidelines appearing at 49 CFR §40.87 (or in any subsequently enacted federal Regulation superseding such Section) for the substances listed in the section of this policy entitled "Substances to be Tested" of this policy. Unless otherwise stated in said regulation, a confirmatory test shall be deemed to be positive at the following levels:
 - 1) Marijuana 15 nanograms per milliliter (ng/ml)'
 - 2) Cocaine 150 ng/ml;
 - 3) Opiates 300 nanograms per milliliter (See Note 1);
 - 4) Phencyclidine 25 ng/ml; and
 - 5) Amphetamines 500 ng/ml.
 - 6) For Schedule I, II and III drugs under Indiana Code 35-48-2, the level for a positive test shall be determined by the MRO or otherwise established under Indiana Law.
- c. The testing thresholds prescribed by this subsection shall be deemed amended by reference whenever the above-referenced regulations of the United States Department of Health and Human Services, the supplemental regulations of the City of East Chicago, or the regulations of the United States Department of Transportation which specify applicable testing thresholds are amended and made effective.
- d. A positive screening test shall not be deemed to be negative by reason of the fact that the level of the controlled substance found to exceed the threshold for a positive confirmatory test is less than the threshold level of sensitivity in the corresponding screening test for the substance.

2. Alcohol Thresholds

- a. A breath or blood alcohol test yielding a result of 0.02 BAC shall be considered a positive result for purposes of this Ordinance.
- b. If a screening test is performed and the reported value is 0.02 or greater, a confirmatory test shall then be performed utilizing an evidential-grade breath analysis device. A confirmatory test of 0.02 or greater shall be reported as positive.

D. Specimen Collection; Transportation of Employees

1. Unless otherwise specified in this Ordinance, collection of specimen shall comply with the procedures established by the United States Department of Transportation and the United States Department of Health and Human Services set forth in 73 FR §71858 “Mandatory Guidelines for Federal Workplace Drug Testing Programs” available at <http://edocket.access.gpo.gov/2008/pdf/e8-26726.pdf> or such future regulation which may supplant or replace such procedures.
2. Specimens shall be collected at a collection site designated and approved by the MRO. All employees who undergo testing under the provision of this Ordinance shall be transported to the specimen collection site by the employee's Department Head or by a Supervisor designated by the employee's Department Head.
3. An otherwise valid test result shall not be deemed to be invalid in the event an employee is transported to the collection site by someone other than the personnel outlined in the above paragraph.

E. Specimen Integrity

The specimen shall not be considered valid if the temperature of the specimen is outside the range set forth in 42 CFR 40 [see <http://www.gpoaccess.gov/cfr/>]. In this event, a second specimen shall be obtained as soon as possible, and in every case within two business days under the direct observation of a collection site staff person of the same gender as the employee being tested.

Whenever collection site personnel or the MRO have reason to believe that a specimen has been substituted or otherwise altered or adulterated, a second specimen will be obtained under observation as soon as possible at the collection site, and in every case within two business days of the determination that the original sample has been substituted, altered or adulterated.

F. Adulteration or Tampering with Specimen

When a specimen is reported to contain a substance which may interfere with the laboratory analysis for a prohibited substance, or other foreign substance, the MRO shall review the laboratory results and determine the nature of the foreign substance. The MRO or the MRO's designee shall investigate to determine if the foreign or interfering substance could be a result of medical therapy, a physiologic abnormality or a deliberate adulteration of the specimen. If the foreign or interfering substance is judged by the MRO to be an attempt at deliberate adulteration the MRO shall report the specimen to be adulterated. This shall be considered a refusal by the employee or applicant to undergo the required test as defined in the section of this Ordinance entitled “Refusal to Undergo Required Testing”.

G. Privacy in Drug Testing

Employees and applicants subject to drug and alcohol testing in accordance with this Ordinance shall be afforded reasonable privacy in the specimen collection process.

H. Medical Review and Medical Review Officer

The City of East Chicago Health Officer, a Physician licensed to practice in the state of Indiana and thus qualified to receive and interpret confidential medical records and to administer this policy, shall serve as the Medical Review Officer.

1. The Medical Review Officer (MRO) shall receive all drug test results. The MRO shall review and interpret confirmed positive test results reported by the laboratory. In performing this review, the MRO shall examine alternate medical explanations for any positive test. This may include conducting a medical interview, a review of the individual's medical history or a review of any other relevant biomedical factors. The MRO shall review and consider any valid, legal prescription when a positive test could have resulted from legally prescribed medication.
2. The MRO shall provide the employee an opportunity to discuss the test results before a final determination is made by the MRO. A medically licensed person under the direction of the MRO may make initial contact with the employee and may gather information from the employee and explain the requirements of this Ordinance.
3. Additionally, the MRO, after review of reports, specimen documentation, chain of possession documentation, quality control data, multiple samples and/or tests, and other relevant data, may determine that the result is scientifically insufficient for further action and classify the result as negative, or may direct the Director of Human Resources to have the individual retested.
4. The MRO shall work with the Human Resources Department to develop training programs or materials necessary for the implementation of this policy.
5. The MRO may designate a medically licensed individual to act as his or her designee for the ordering of tests, selection of employees to be tested, and receipt of test results, or other duties specified under this policy. This person must act under the supervision of, and report data, test results received, decisions made or other pertinent information to the MRO. The MRO shall be the final authority with regard to any determinations made under this section.

Notice and Training

A. Supervisor Training

The MRO and Human Resources Department shall develop a training program to assist Supervisory personnel in identifying drug and alcohol abuse among employees and on compliance with the procedures outlined in this policy. Such training will be directed toward

helping Supervisors recognize the conduct and behavior that gives rise to a reasonable suspicion of drug or alcohol use, properly inform employees of the requirements and procedures relating to the Drug Testing Program, and help Supervisory personnel understand their responsibilities in implementing this policy.

B. Coordination of Testing

The MRO and the MRO's designee are hereby directed and authorized to administer the testing of persons for drugs and alcohol as required herein and shall assist in the training of Supervisors as required herein. All matters relating to personnel administration shall be the responsibility of the Director of Human Resources. Implementation of the technical aspects of drug and alcohol testing shall be under the supervision and direction of the MRO and the MRO's designee.

C. Notice to Employees

The Human Resources Department shall provide written notice of all drug and alcohol policies, including this testing policy, to all employees. The notices shall contain, as a minimum, the following:

1. The City policy regarding drug and alcohol abuse and drug free workplace;
2. The need for drug and alcohol testing;
3. The circumstances under which testing may be required;
4. The procedure for confirming an initial positive drug test result;
5. The consequence of a confirmed positive test result;
6. The consequence of refusing to undergo a drug and alcohol test;
7. The right to explain a positive test result and the appeal procedures available; and
8. The availability of Substance Abuse Referral Program.

Delivery of a complete copy of this Ordinance to employees shall be deemed sufficient to comply with this section. Copies shall also be kept on file in the Human Resources Department and made available to employees upon request.

D. Reporting of Confirmed Positive Test Results.

The MRO or the MRO's designee shall report all results to the Director of Human Resources, who shall then institute such action as may be required by this Ordinance. Results of positive tests for Police Department personnel and Fire Department personnel shall be communicated to the Chief of the respective department. The Chief shall then institute such actions as are required by this Ordinance.

Rights and Responsibilities

A. Right to have Specimen Retested.

An employee or applicant whose confirmatory test as described herein is reported as positive may, at the employee's or applicant's own expense, have an additional independent test conducted on a portion of the same sample at a laboratory certified by the United States Department of Transportation or the United States Department of Health and Human Services to perform such drug analysis. The results of such analysis shall be forwarded directly to the MRO or the MRO's designee who, after reviewing same, shall report the results to the Human Resources Department. The Human Resources Director shall then determine the appropriate course of action to be taken as a result of said retesting.

B. Right of Appeal of Actions taken under this Ordinance.

1. If an employee (who is not a police officer or firefighter) is reported to have a positive test result and personnel action as described herein has been taken, the employee may request a hearing within **ten (10) days** of notification of such action. Such request shall be made in writing to the Board of Public Safety, who shall hear such appeal and make a final determination in the matter in keeping with this Ordinance and applicable City of East Chicago, State and Federal Law. The Board shall deliver written notice of the hearing to the employee in person or by a certified letter sent to his or her last known address. Said notice of hearing shall be delivered to the employee within thirty (30) days of receipt of the written request for hearing. The notice shall inform the employee of the place, date and time of such hearing and shall inform the employee of the hearing procedure and his or her rights in such procedure, including the right to be represented by legal counsel.
2. The hearing shall be conducted based upon the guidelines set forth in the Indiana Code or provided by the City Corporation Counsel. Within thirty (30) days following the close of the hearing, the Board shall issue a written decision and a brief summary of the facts and evidence supporting that decision.

C. Right of Appeal for Police Officers and Fire Fighters

Actions taken under this Ordinance may be appealed by police officers to the Board of Safety and by firefighters to the Fire Civil Service Commission. Such appeal shall be made in accordance with the policies and procedures established by the Board of Safety and Fire Civil Service Commission.

D. Preservation of Information and Records

All laboratory test results and reports of both positive and negative tests shall remain in the possession of the MRO or the MRO's designee, who shall retain them for a minimum period of ten (10) years. Upon request from the Director of Human Resources, the Laboratory test results, along with all information obtained by the MRO or designee in determining if an individual test is reported as positive, shall be made available for inspection by the Director of Human Resources.

E. Confidentiality Requirements

All information relating to an employee's or applicant's drug and alcohol test is confidential. All records, reported test results and other information relating to drug and alcohol testing shall be kept in locked file cabinets located in a secure area with access limited to personnel involved in the administration of this Ordinance. Disclosure of test results to any person, agency or organization other than the appropriate city official or state or federal agency having appropriate jurisdiction, is prohibited unless specific written authorization is obtained from the employee or applicant. Any employee of the City who violates this section or any provisions of HIPAA by disclosing test results or other information relating thereto, shall be subject to immediate termination.

F. Responsibility of Department Heads and Supervisors

Department Heads and Supervisors are responsible for abiding by the confidentiality requirements, time limits, reporting requirements, and other responsibilities outlined in this Ordinance as well as following the direction of the MRO, or Director of Human Resources. A Department Head or Supervisor's failure to assist in the implementation and enforcement of this Ordinance including the failure to report an employee who is reasonably suspected of being in violation of this Ordinance shall itself constitute a violation for which the Department Head or Supervisor shall be held accountable.

G. Indemnification and Defense of Actions

The City shall defend and indemnify the MRO and his or her designee, the Director of Human Resources and his or her designee, personnel under supervision of the MRO or Human Resources Director, city officials, or city employees involved in the administration of this Ordinance in any litigation or administrative proceeding resulting from or relating to the administrative proceedings undertaken pursuant to this Ordinance.

H. Monitoring of Testing Frequency

The Medical Review Officer shall monitor the frequency of testing and the testing of individuals required by this Ordinance. If at any time the MRO determines that additional testing is necessary to comply with the requirements or intent of this Ordinance, the MRO or the MRO's designee shall initiate such additional testing. Such additional testing shall be ordered by the MRO in an unbiased and impartial manner.

Effect and Implementation

A. Repeal of Previous Policies and Procedures.

All previous policies and procedures relating to drug and alcohol testing in conflict with any provision of this Ordinance are hereby repealed.

B. Severability

In the event that any court or other entity having jurisdiction determines any provision of this Ordinance to be void or invalid, such determination shall not affect all other provisions of this Ordinance, which shall remain in full force and effect.

C. Section Titles and Headings

Section titles and other headings are included in this Ordinance for reference purposes only and are not to be considered as a legal or binding component of this Ordinance.

D. Promulgation of Procedures, Rules and Regulations

The Director of Human Resources or Medical Review Officer may propose rules and regulations that are necessary for the implementation of this Ordinance. Such proposed rules and regulations may be considered by the executive of the City and those found not be in conflict with this *Ordinance* may be issued as an Executive Order signed by the Mayor. Once signed by the Mayor, said rules shall be binding upon the employees of the City.

E. Effective Date

This Ordinance shall take effect fifteen (15) days after passage by the Common Council of the City of East Chicago and approval by the Mayor of the City of East Chicago. During this fifteen (15) day period, the Director of Human Resources shall distribute this Ordinance and related information to all employees of the City of East Chicago and its departments, agencies and political subdivisions who are subject to the provisions of this Ordinance.

F. Important Contact Information*

1. For Information related to the Substance Abuse Policy, testing, or to report reasonable suspicion of a violation of this Ordinance or a work-related vehicle or other accident:

Human Resources: (219) 391-8479

East Chicago Health Department: (219) 391-8258

East Chicago Health Department Communications Center: (219) 391-8467

2. Numbers to call in case of an accident involving a city-owned vehicle or other vehicle during work hours (in addition to the numbers listed above and the Department Head or Supervisor):

Emergency:

- **Call 911**
- East Chicago Emergency Communications Center: (219) 391-8268

Non-Emergency:

- East Chicago Police Department, (219) 391-8400 or (219) 391-8268.

*Note that the phone numbers listed above are subject to change.

City of East Chicago, Indiana
Substance Abuse Policy
Employee Handbook
Acknowledgment Form

I hereby acknowledge that I have received a copy of the City of East Chicago Substance Abuse Policy Manual, passed into law as East Chicago City Ordinance 11-0023. I understand and acknowledge that this policy is the law of the City, and applies to me during my term of employment with the City of East Chicago.

I understand that the purpose of this Policy is to protect the health and safety of the public and City employees, including myself.

I understand that it is my responsibility to familiarize myself with the information contained in the Substance Abuse Policy Manual. I understand that I am obligated to comply with the policies, procedures and rules detailed in the Substance Abuse Policy Manual. I understand that this policy replaces all previous City-wide Substance Abuse Policies, but that it does not supersede more stringent policies in effect in certain City departments (such as U.S. Department of Transportation regulations, which apply to East Chicago Bus Transit).

I understand that this policy applies to all employees regardless of whether of this acknowledgement is signed by any individual employee or kept on file by the City.

Employee Name (Please Print)

Employee Signature

Date

Department Head/Supervisor

Title

Human Resources

Date Received