

## **1.8.6 Employee Drug and Alcohol Testing Policy**

### **I. POLICY**

It is the policy of this Department that its members be physically and mentally fit to serve and protect the public. In accordance with the Drug-Free Work Place Act of 1988, the City of Johnstown Police Department prohibits the use of or possession on or off duty of a controlled substance by a member unless:

- a. Possession is required in the course of a member's official duties.
- b. The controlled substance has been legally prescribed for a medical condition for the member.

### **II. PURPOSE**

The purpose of this regulation is to provide a drug and alcohol-free workforce and workplace. This regulation also seeks to implement a fair, reliable, and valid member random drug and alcohol testing program, while providing uniformity in the interpretation and application of Department policy regarding the illicit use of drugs by its members.

### **III. PROCEDURE**

**OVERVIEW:** It is the policy of this department that the critical mission of law enforcement justifies maintenance of a drug and alcohol free environment through the use of a reasonable employee drug and alcohol-testing program.

The law enforcement profession has several uniquely compelling interests that justify the use of employee drug and alcohol testing. The public has a right to expect that those who are sworn to protect them are at all times both physically and mentally prepared to assume their duties. There is sufficient evidence to conclude that the use of controlled substances, and other forms of drug abuse, will seriously impair an employee's physical and mental health, and thus, their job performance.

Where law enforcement officers participate in illegal drug use, drug activity and/or misuse alcohol, the integrity of the law enforcement profession and public confidence in it are destroyed. This confidence is further eroded by the potential for corruption created by drug use.

Therefore, this department shall implement a drug and alcohol-testing program [hereinafter "The Program"] to detect prohibited drug use and alcohol abuse by sworn employees.

**There are serious consequences in this policy for individuals who use controlled substances and misuse alcohol.**

SCOPE: This policy shall apply to all sworn City of Johnstown Police Department employees. This City acknowledges that this policy is a mandatory subject of bargaining that any revisions to the policy will not be done until after notice to the Union with opportunity for bargaining.

This policy prohibits the possession, ingestion, use, trafficking and being under the effects of drugs or any other substance, which affects the senses.

This policy outlines the procedures to be implemented regarding the reporting, testing, rehabilitation and restoration of active employment necessary to ensure compliance with our policy of operating in a totally safe, healthful and productive environment.

1. Definitions:

- a. Alcohol: means the intoxicating agent in beverage alcohol [beer, wine and spirits], the consumption of which may impair an employee's ability to perform his/her job or whose use may pose a threat to the safety of others.
- b. Alcohol Concentration: means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test. This measurement is intended to be approximately equivalent to the percent of "blood alcohol concentration" commonly used in "driving while intoxicated" situations. If other alcohol concentration measurement procedures are use i.e.: saliva this measurement term will be equivalent.
- c. Alcohol Use: means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
- d. Positive Alcohol Test Result: means a confirmed alcohol test result with an Alcohol Concentration of 0.02 or greater.
- e. Sworn Employee: mean those employees who have been formally vested with full law enforcement powers and authority.

- f. Refusal to Submit: to an alcohol or controlled substances test means that a Sworn Employee:
  - i. Failed to provide sufficient quantity of urine or failed to provide sufficient quantities of breath or other fluids without a valid medical explanation or diagnosed pre-existing psychological disorder.
  - ii. Engaged in conduct that clearly obstructs the testing process.
  - iii. Directly refused to take a drug or alcohol test.
  - iv. Tampered with or attempted to adulterate the specimen.
  - v. Did not report directly to the collection site after notification and/or intentionally delayed the collection and/or testing process.
- g. Controlled Substances: are the following substances or derivatives thereof:
  - i. Amphetamines
  - ii. Cocaine
  - iii. Opiates
  - iv. Phencyclidine
- h. Drugs: Any substance which requires a prescription or other writing from a licensed physician or dentist for its use and which will impair an employee's ability to perform his/her job and whose use will pose a threat to the safety of others.
- i. Medical Authorization: is a prescription or other writing from a licensed physician or dentist for the use of a drug in the course of medical treatment. This **excludes** the use of methadone in a certified drug program.

## 2. Reporting

Sworn employees are required to report to the Chief of Police the use of any drug or substance used pursuant to the proper medical authorization. Each sworn employee shall further provide evidence of medical authorization upon request. Such information shall be kept on hand in the event of a positive test result.

### 3. Required Hours of Compliance

The required hours of compliance for prohibited behavior [defined below relating to controlled substance, drug and/or alcohol use are listed below.

- a. Controlled Substances: A sworn officer is prohibited from the use of the defined controlled substances at any time on or off the job.
  - b. Alcohol: A sworn officer must not consume alcohol while:
    - i. Available to perform law enforcement duties. This means that when a sworn officer is available to perform their law enforcement duties, such as when an individual is at home and has been informed of a possible call-in. Emergency situations may require a sworn officer to be available 24 hours a day. If a sworn officer has consumed alcohol and unable to respond, the employee has an obligation to state so. No disciplinary action will be taken against said employee.
    - ii. Four hours prior to being scheduled to perform law enforcement duties.
    - iii. On-duty: performing their duty as a law enforcement officer until dismissed by the supervisor.
4. Prohibited Conduct: the items listed below are “Prohibited Conduct Events” with “Consequences of Prohibited Conduct,” defined herein.
- a. Alcohol Concentration: No sworn officer shall report for duty or remain on duty requiring the performance of law enforcement activities while having an alcohol concentration of 0.02 or greater.
  - b. Alcohol Possession: No sworn officer shall be on duty while the officer possesses uses or ingests alcohol [as defined in this policy] except while in the performance of duties.
  - c. On-duty Use: No sworn officer shall use alcohol while performing law enforcement duties.
  - d. Pre-duty Use: No sworn officer shall perform law enforcement duties within four [4] hours after using alcohol.

- e. Refusal to Submit: No sworn officer shall refuse to submit to a drug or alcohol test required in this policy. A refusal to submit shall be treated as a positive test result for that test under the “Consequences of Prohibited Conduction” portion of this policy.
- f. Controlled Substance Use: No sworn officer shall report for, or remain on, duty requiring the performance of law enforcement duties when the employee uses any controlled substance or drug, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee’s ability to safely perform law enforcement duties and notice has been given to the Chief of Police.

## 5. Circumstances for Drug and/or Alcohol Testing

Sworn Officers will be required to submit to approved drug and alcohol tests in certain situations including the circumstances listed below. Submission to testing is a condition of continued employment with the City of Johnstown. An individual may not select the source of any laboratory testing.

- a. Pre-Employment: Any employment offer to a Sworn Officer position is contingent upon that individual’s submission to a drug test and achieving negative test results. An applicant who tests positive for drugs will be considered medically unqualified to work for the City of Johnstown, and will not be eligible to reapply.
- c. Return to Work: Following an absence due to layoff, medical or personal leave of absence [excluding vacation] in excess of thirty (30) working days. Employees will not be penalized by being held off work as a result of waiting for test results.

Once a Sworn Officer has completed sanctioned treatment; obtained program certification of being free from alcohol, drugs and controlled substances; and is restored to active service, he/she must have a minimum of six (6) follow-up test within twelve months (12) after returning to duty. There is no limit to the frequency of the follow-up tests. Tests may be for both drugs and alcohol independent of the type of test with a positive result.

- c. Reasonable Suspicion: If, based on the observations of at least one supervisor, the City has reasonable suspicion to believe that a Sworn

Officer is impaired while on duty by drug use and/or alcohol misuse, the Sworn Officer shall be required to submit to immediate drug and/or alcohol testing based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the Sworn Officer. Said observations shall be kept in writing and reported to the City Manager.

In the event of a positive test result, a Sworn Officer taken in for a reasonable suspicion test will be returned to the police station and required to arrange for independent transportation home. A Sworn Officer under the influence of alcohol or a controlled substance will not be allowed to drive his or her own vehicle home.

The City of Johnstown agrees to provide supervisors with training, at no loss in pay, to help supervisors recognize drug and alcohol problems.

- d. Post-Injury: Any on-the-job injury requiring medical treatment when there is probable cause.
- e. **Random: Sworn Officers are subject at any time to random drug testing while on duty. When notified, Sworn Officers will be taken to the collection site by his/her supervisor. Testing shall be performed during regularly scheduled working shift. The probability of being randomly selected in the future is not changed by prior random selections.**

A Sworn Officer may be tested multiple times, or not at all, during any given year. The same Sworn Officer will not be tested more than two months in a row. If such a situation arises, said officer's name would be removed from rotation for the next monthly test and restored after that.

Random testing of the Johnstown Police Department sworn officers shall be performed not more frequently than monthly. Sworn officer's names will be drawn for testing only by the laboratory testing service.

The minimum annual testing percentage rate for random alcohol testing shall be ten (10) percent of the number of Sworn Officers in the City's testing pool. The minimum annual percentage rate for random controlled substances testing shall be twenty-five (25) percent of the number of Sworn Officers in the City's testing pool.

## 6. Testing Process Integrity

Drugs: The actual Drug test and analysis will be conducted only at testing agency laboratories that are certified by the Department of Health and Human Services. The City of Johnstown and laboratory services utilized in

connection with Drug testing, will establish a process intended to insure the accuracy and confidentiality of test results and the fair and respectful treatment of persons being tested. There are various testing result thresholds of the presence of Drugs before they will be reported as a presumed positive to the Medical Review Officer [MRO].

A urine specimen, which is identified as positive on an initial test, will be confirmed using gas chromatography/mass spectrometry techniques before the laboratory sends results to the MRO.

Individuals tested are in direct visual contact with their specimen until the collection process is complete. There are tamperproof seals on the collection containers, initialed by the donor, and the specimens are sealed in tamperproof containers with chain of custody paperwork. There is a rigorous "chain of custody" process that directly follows a specimen from initial collection through final testing. If there are unrecoverable irregularities in the process, the test is declared a "broken chain of custody" and it is canceled.

All individuals who are tested must be identified via picture identification or by authorized Employer personnel to assure that the individuals tested are the correct individuals. Social security or officer numbers are used to track the identification process.

Alcohol: An initial Alcohol screening test measures the AC of the Safety-Sensitive Individual at the time of the test. If an initial alcohol-screening test is 0.02 or greater, a second test evidential testing device must reconfirm the initial result before it is a Final Test Result.

Before this confirmation test is completed, a fifteen (15) to thirty (30) minute wait is required to reduce the impact of mouth Alcohol. The confirming testing process may only be performed on evidential breath testing equipment utilizes air blanks to assure that ambient conditions are not negatively affecting the testing process. In addition, the Alcohol breath testing equipment is periodically checked and calibrated with samples containing known Alcohol concentrations.

The Officer is given a copy of the test results. All test results are affixed with tamper evident tape to the testing forms.

## 7. Collection Procedures

- a. A testing agency to be determined by the Administration of the City of Johnstown will perform drug and alcohol screening tests.

Testing may include urinalysis for drug testing, Breathalyzer test, blood test or other approved drug/alcohol test/screen procedure. **A FOP Lodge 86 representative will be provided the opportunity to be present during all collection processes.**

- b. Drug Collection Procedures: Upon notification, the Sworn Officer will be transported to the assigned collection site without delay and with appropriate identification. In insufficient quantity situations (less than the minimum required amount of urine), a specimen must be discarded and a new collection will be initiated. During the collection process, Sworn Officers may only consume fluids in permitted quantities.

8. Testing Procedures: Controlled Substances

- a. Drug Testing Procedures: Sworn Officers required to submit to a drug test shall follow a two-step procedure. There are two types of testing or processing to be administered, an initial screen test, and a confirmation test. The drug screening tests selected shall be capable of identifying drugs as defined herein.\
- b. The Initial Screening Test: A urine sample provided by the Sworn Officer is first tested using the initial drug screening procedure. All specimens will be initially screened for the following controlled substances at cutoff levels not greater that those specified below:

<u>Drug/Drug Metabolite</u>	<u>Max. Acceptable Cutoff in Nanograms/Milliliter</u>
Marijuana metabolites	100
Cocaine metabolites	300
Opiate metabolites	300
Phencyclidine [PCP]	25
Amphetamines	1,000
Methaqualone	750
Benzodiazepines	350
Barbiturates	200

An initial positive test result will not be considered conclusive; rather, it will be classified as “confirmation pending”.

Notification of test results to the supervisor or other departmental designee shall be held until the confirmation test results are obtained.

- c. The Confirmation Test: A specimen testing positive will undergo an additional confirmatory test. The confirmation procedure shall be technologically different and more sensitive than the initial screening test. The confirmation test will be considered negative if the results have cutoff levels not greater than those specified below:

<u>Drug/Drug Metabolite</u>	<u>Max. Acceptable Cutoff in Nanograms/Milliliter</u>
Marijuana metabolites	15
Cocaine metabolites	150
Opiate metabolites	300
Phencyclidine [PCP]	25
Amphetamines	500
Methaqualone	750
Benzodiazepines	300
Barbiturates	200

A test result determined to be positive under the above criteria may be regarded as negative if the drug or metabolite detected results solely from the individual's consumption of prescribed or over the counter medication in accordance with a physician's instructions.

Sworn Officers having negative drug test results shall receive a memorandum stating that no illegal drugs were found. Any employee who breaches the confidentiality of testing information shall be subject discipline.

#### 9. Testing Procedures: Alcohol

- a. Alcohol testing will be performed utilizing approved testing equipment and technicians. Breath Alcohol Technicians [BATs] are those individuals who have completed mandatory training on required collection and testing procedures and on the proper operation of equipment and approved Alcohol testing procedures. Final confirmation testing will be conducted on an Evidential Breath Testing [EBT] device (a breath-testing device approved by the National Highway Traffic Safety Administration) which is on the "Conforming Products List of Evidential Breath Measurement Devices".

- b. There are two types of breath tests that are to be administered, an initial screening test, and a confirmation test.

- c. The Initial Screening Test: The first type of test is an initial screening test that is conducted using an authorized alcohol-testing device by approved collection personnel. Any result less than 0.02 is considered a negative test and no further screening is conducted. If the initial screening test is 0.02 or greater, an alcohol confirmation test will be conducted.
- d. The Confirmation Test: If the initial screening test is 0.02 or greater, a confirmation test is performed by a BAT or EBT following a specified procedure after a specified waiting period. The EBT will have the capability of printing out the evidential test result.

#### 10. Medical Review Officer

The program will utilize a Medical Review Officer [MRO], a licensed physician [medical doctor or doctor of osteopathy] who has appropriate knowledge and medical training to interpret and evaluate an individual's initial confirmed positive test result together with his or her medical history and any other relevant biomedical information. The MRO's responsibility will include providing a review of the laboratory's "chain of custody" documentation to ensure that it has properly tracked the handling and storage of the urine specimen.

Before determining that an initial presumed positive test result is a Final positive, a canceled test, or a negative test result, the MRO will rule out alternate medical explanations through reviewing the tested individual's medical records, and will give the individual an opportunity to discuss the test result. It is the Sworn Officer's responsibility to contact the MRO within twenty-four (24) hours upon receiving a message from the MRO to return a telephone call. Failure of the Sworn Officer to contact the MRO within this time frame will result in a Final determination of the result of the presumed positive Drug test result without input from the Sworn Officer.

An MRO-confirmed positive test result will require the use of a Substance Abuse Professional [SAP] to evaluate the officer and recommend a course of treatment. The Sworn Officer will have to report the MRO-confirmed positive test result to their Preferred Care Provider for referral to an authorized SAP and treatment program.

#### 11. Counseling

The City of Johnstown will provide each employee confirmed as testing positive, appropriate initial and follow up counseling as per the recommended course of treatment. Officers may be placed in an outpatient or in-patient program based on the recommended treatment of the Substance Abuse Professional. Officers will be placed on an unpaid leave of absence for participation in an in-patient treatment program. Costs of any treatment, as prescribed by the provided agency will, however, are the responsibility of the officer [including deductibles] if not covered under City health care coverage.

When an officer is referred to counseling and counseling reports to the City Manager in writing that the officer has not met the requirements of the Program, the officer may be subject to discipline up to and including, discharge. Restoration to active service for that officer may not be an option as a result.

- a. Voluntary Enrollment into Counseling: This service will also be made available to any officer who may voluntarily wish to participate in such counseling. Options may include an outpatient or inpatient treatment program. Officers voluntarily requesting treatment may utilize available leave [i.e., sick leave] or they will be placed on an unpaid leave of absence for participation in an inpatient treatment program.

The “consequences of Prohibited Conduct” described in this policy shall not apply to Sworn Officers voluntarily seeking treatment, unless the officer fails to complete the treatment program or other criminal circumstances arise. Nothing in this policy shall prohibit Management from imposing discipline for matters unrelated to treatment.

Costs of any treatment, as prescribed by the provided agency will, however, are the responsibility of the employee [including deductibles] if not covered under City health care coverage.

- b. Counseling Generally: Officers seeking counseling or referred as part of an MRO confirmed positive, must inform their Preferred Care Provider [PCP] under the current health care insurance program. The PCP will then prepare a referral to a Substance Abuse Professional at an authorized facility. The current health-care insurance will cover the costs for treatment [excluding out-of-pocket costs] when this process and chain are followed.

Officers referred to counseling must comply in all respects with the directions and program requirement of the counseling agency or be subject do dismissal from service. Reasonable consideration will be given to those officers voluntarily enrolling in a treatment program. However, it is the officer’s responsibility to complete their treatment whether it is mandatory

or voluntary. Failure to complete a given treatment program after the City has been notified of treatment will mean the officer is not fit for duty.

In all cases, officers undergoing a rehabilitation program as prescribed must be released by the treating agency to fulfill full-time employment before reinstatement as defined in "Restoration to Active Service".

## 12. Restoration to Active Service

An officer who has been provided an unpaid leave of absence to undergo counseling and subsequent treatment for alcohol misuse will be restored to active duty in keeping with the discipline described in "Consequences of Prohibited Conduct". Further, said officer must be certified by such program or other medical authority as being free from use of alcohol, drugs or controlled substances.

Sworn Officers testing positive for controlled substances may receive counseling and treatment as described under this policy, but will not be allowed to return to duty with the Johnstown Police Department and will no longer be employed by the City of Johnstown.

## 13. Records

All Drug and alcohol testing and related medical records and information will be maintained in a confidential manner in the City Manager's Office and their disclosure shall be strictly limited to the City Manager and Chief of Police. Each Sworn Officer will have the right to have a copy of his/her drug and/or alcohol test result upon written request. Upon request from the Union, the City will provide an annual report showing the number of tests done, the reason for the test, the number positive, the substance, the action taken and other information requested by the local. Officer names will be excluded.

## 14. Consequences of Prohibited Conduct

The disciplinary penalties described herein will generally apply to straightforward situations in which the officer tests positive on a random or reasonable suspicion drug or alcohol test. Situations involving more complicated circumstances such as those involving an accident, property damage, personal injury, violations of law or City, State or Federal regulations or policies may result in more severe discipline being imposed than what is described herein.

A confirmed, positive test result alone will not result in criminal prosecution. Prosecution for violations of law will require corroborating evidence including, but not limited to, drug paraphernalia and controlled substances.

In the event of a positive drug test, or an alcohol test with the result of 0.04 or greater, the officer shall be removed from law enforcement duties.

- a. The following discipline will also be imposed:
  - i. Drugs: First Offense: termination
  - ii. Alcohol [0.04+]:
    - 1. First Offense: Twenty [20] working day suspension without pay.
    - 2. Second Offense: Termination

In the event of an alcohol test with a result of 0.02 to 0.039, the employee will be removed from law enforcement duties for not less than twenty-four [24] hours from the time of the test. In addition, the following penalties will apply:

- a. Alcohol [0.02 to 0.039]:
  - i. First Offense: Ten [10] working days suspension without pay.
  - ii. Second Offense: Twenty [20] working days suspension without pay.
  - iii. Termination

When an officer tests positive [0.02 or higher] for alcohol, he/she shall be sent home, and any regular work time from that point forward until discipline commences or until the end of a twenty-four [24] hour period, whichever occurs sooner, may be taken as paid sick, personal, or vacation time, if available, at the officer's option.

Disciplinary suspensions shall normally commence at the start of the next regular work day after the positive test. Suspensions will be served concurrent with any treatment/counseling program.

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Disciplinary action is subject to the grievance procedure described in the collective bargaining agreement.

Original Policy Issued: February 12, 2001 by order of former Johnstown City Manager Karl Kilduff; former Chief of Police Robert Huntley and former FOP President Angelo Cancelliere.

Revised Policy Issued: August 14, 2017 by Chief Robert F. Johnson and FOP President Daniel Zakraysek.

Effective Date: August 14, 2017

By Order Of:

A handwritten signature in black ink that reads "Robert F. Johnson". The signature is written in a cursive style with a large, prominent "R" and "J".

Robert F. Johnson  
Chief of Police

Approved by Flood City FOP #86

Daniel C. Zakraysek  
President  
Flood City FOP #86

David Pollino  
Secretary  
Flood City FOP #86