

Submitted by: Chairman of the Assembly at the  
Request of the Mayor

Prepared by: Employee Relations Department

For Reading: January 13, 1998

See AO 98-5(S)

ANCHORAGE, ALASKA

AO NO. 98-5

AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE SUBSECTION 3.70.090 A. TO ELIMINATE THE EMPLOYEE SUBSTANCE ABUSE TESTING POLICY, PROCEDURES AND RULES AS A SUBJECT OF COLLECTIVE BARGAINING AND AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 3.30 TO ESTABLISH THE MUNICIPALITY'S SUBSTANCE ABUSE TESTING POLICY, PROCEDURES AND RULES AS A NEW PERSONNEL RULE 19.

THE ANCHORAGE ASSEMBLY ORDAINS:

**Section 1.** Anchorage Municipal Code subsection 3.70.090 A. is hereby amended to read as follows:

**3.70.090      Collective bargaining.**

A. After determination of the appropriate bargaining unit and bargaining representative in accordance with the provisions of this chapter and subject to the other provisions of this chapter, the mayor or his authorized representative shall enter into negotiations with the bargaining representative of the employee unit in a timely fashion, not to exceed 30 days after certification by the board, concerning the wages, hours and other terms and conditions of employment.

1. Notwithstanding anything to the contrary contained in this Title, substance abuse testing and all issues and other matters related to or affecting such testing shall not be subject to collective bargaining under this chapter, provided however, nothing in this subsection shall prohibit employee grievance and arbitration of discipline and/or discharge pursuant to substance abuse testing policy and procedures.

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*(The remainder of this section is not affected by this ordinance and therefore is not set out, but remains in effect.)*

AO No. 69-75; AO No. 88-131(S); AO No. 88-148; AO No. 89-46(S-1))

**Section 2.** Anchorage Municipal Code chapter 3.30 is hereby amended by enacting a new Part 19, Rule 19 to read as follows:

**PART 19. RULE 19 - SUBSTANCE ABUSE TESTING**

**3.30.190      Substance Abuse Testing Policy**

A *Testing.* The Municipality shall use drug and alcohol tests to determine whether employees or applicants for employment are in compliance with the Municipal Substance Abuse Policy/Procedure 40-22. Every substance abuse test shall include two (2) components, alcohol and drugs.

B. *Effect of Testing Results.* Positive results for a urinalysis drug test shall result in termination and/or disqualification from employment consideration. Failure to pass a breath alcohol test shall result in discipline up to and including termination, and/or disqualification from employment consideration as follows:

1 In the case of alcohol testing results,

- a. Employees testing .02 or greater but less than .04 shall be subject to discipline but not be terminated based solely on the test results alone.
- b. If the results of the test are .02 or greater but less than .04 alcohol concentration, the employee shall be removed from the work site. The employee may not return to duty within eight (8) hours of the first test unless the employee repeats the breath test and has an alcohol concentration that measures less than .02. The employee shall be placed on leave and such paid leave shall be deducted from their annual leave account. Employees who do not have sufficient leave shall be charged leave without pay.
- c. If the results of the test show an alcohol concentration of .04 or greater, the employee has failed the test and the employee shall be removed from his/her position and placed on leave without pay. Within 48 hours of the test the employee shall be informed by their supervisor of educational and substance abuse treatment programs, and be evaluated by a SAP. The determination of the SAP shall be considered in further decisions regarding continued employment of the employee.

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

- 1 Consideration for re-employment or employment may be denied even if all criteria have been met at the discretion of the Employee Relations Director.

### **3.30.191 Definitions**

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

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

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

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

9  
10 *Commercial Driver's License (CDL)* means a private driver's license issued by the State to  
11 afford a qualified and competent individual the privilege of operating a commercial motor  
12 vehicle.

13  
14 *Contractor* means the organization having knowledge and experience in SAMSHA  
15 laboratory drug testing procedures that is hired by the Employee Relations Department to  
16 select employees for random testing.

17  
18 *DHHS* means the U.S. Federal Department of Health and Human Services.

19  
20 *Director* means the Director, Department of Employee Relations or his designee.

21  
22 *DOT* means the U.S. Federal Department of Transportation

23  
24 *Employee* means any person in the employ of the Municipality whose activities are directed  
25 by the Municipality.

26  
27 *Employee Assistance Program* means the program provided by the Municipality to assist  
28 employees in dealing with personal problems affecting job performance which may involve  
29 drug abuse and/or alcohol misuse.

30  
31 *Evidential Breath Testing Device (EBT)* means an instrument reliable in measuring alcohol  
32 concentration in breath that meets the National Highway Traffic Safety Administration  
33 specifications, and is included in the conforming products list of evidential breath testing  
34 devices.

35  
36 *Failed Alcohol Test Result* means presence of alcohol in the breath at a level of .04 or greater  
37 as confirmed by an evidential breath testing device administered by a trained and certified  
38 Breath Alcohol Technician (BAT).

39  
40 *Medical Review Officer (MRO)* means a licensed physician responsible for receiving  
41 laboratory results generated by the Municipality's drug testing program. The MRO shall have  
42 knowledge of substance abuse disorders and have appropriate medical training to interpret  
43 and evaluate an individual's positive test result together with his/her individual medical  
44 history and any other relevant biomedical information.

45  
46 *Negative Test Result* means 1) absence of drugs in the urine of an employee/applicant based

on levels defined by SAMHSA and confirmed by a SAMHSA certified laboratory and/or a medical review officer; 2) absence of alcohol in breath based on levels defined in 49 CFR, Part 653 and 654, and confirmed by a SAMHSA certified laboratory or evidential breath testing device (EBT)

*Periodic Unannounced Test* means substance abuse test given to an employee as part of a Return-to-Duty Contract. This is not to be confused with random testing. (See Return-to-Duty and Follow-up Test)

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

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

*Pre-Employment Test* means a substance abuse test given to a successful applicant for a public safety or safety-sensitive position.

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

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

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

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

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

*Safety-Sensitive Position* means a position requiring a commercial drivers license (CDL) and having a substantially significant degree of responsibility for the safe operation of mass transportation and motor carrier service where the unsafe performance of an incumbent could

result in death or injury to self or others. *Safety-Sensitive Positions* include but are not limited to:

- 1 Bus operator, route inspector, shift supervisor, operations supervisor, mechanics, other shop personnel, and anyone supervising employees in the aforementioned positions, in the PublicTransportation Department;
- (2) Positions requiring a CDL; and
- (3) Any other positions determined to be safety-sensitive under 49 CFR Part 653 and 654.

*SAMHSA* means Substance Abuse and Mental Health Services Administration responsible for laboratory certification. Laboratory certification was formerly the responsibility of the National Institute on Drug Abuse.

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

*Substance Abuse* means use of prohibited drugs as defined in section 3.30.192 or inappropriate consumption of alcohol, prescription drugs, and/or over-the-counter medication.

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

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

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

### **3.30.192 Prohibited Drugs**

- A. Subject to subsection B. of this section, prohibited drugs for which testing shall be conducted are:

1 Marijuana, Cocaine, Opiates, Phencyclidine (PCP), and Amphetamines specified in  
Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. 801 et seq. and  
published at 21 CFR 1308.11 and 21 CFR 1308.12; and

2.  
Additional substances listed in Schedule I or II of the Controlled Substances Act, 21  
U.S.C. 801 et seq. and published at 21 CFR 1308.11 and 21 CFR 1308.12 which are  
determined necessary for inclusion on the list of prohibited drugs by the Employee  
Relations Director and approved by the Medical Officer of the Municipality and for  
which notice of testing therefor has been given to all affected employees.

B. Drugs identified in Schedule I or II of the Controlled Substances Act, 21 U.S.C. 801 et seq.  
and published at 21 CFR 1308.11 and 21 CFR 1308.12 may be considered legal when used  
pursuant to a valid prescription or otherwise authorized by law.

1 Notwithstanding subsection B. of this section, if usage causes unsafe or poor  
performance such usage shall be a violation of this Rule 19 and Municipal  
Policy/Procedure 40-22.

### **3.30.193 Testing Program Guidelines**

A. *Testing Times.* Except as otherwise provided in this subsection A., all testing shall be  
conducted just before, during, or just after scheduled duty hours.

When required as a result of reasonable suspicion or an accident, testing shall occur  
as close as possible to the triggering event.

B. *Testing Accessibility.* The Municipality has made provision for 24 hour a day, 365 day a year  
substance abuse testing. The Employee Relations Department shall be responsible for  
notifying departments of the name, location, and phone number for designated collection  
sites. Such information shall be posted in each department.

C. *Testing Personnel.* Municipal Work Site breath alcohol testing for both initial and  
confirmatory tests shall be conducted by BATs trained in DOT procedures and in operation  
of EBTs. A list of municipal BATs shall be posted in each department. The Employee  
Relations Department shall furnish all municipal agencies and unions with a list containing  
the name, telephone number, and hours of availability for each BAT. All other substance  
abuse testing shall be conducted by collection site personnel and a SAMSHA certified  
laboratory.

D. *Methods of Testing.* Testing shall be done through analysis of urine specimens and breath  
samples provided by applicants/employees. Each substance abuse test shall have two (2)  
components, a test for the presence of alcohol and a test for the presence of drugs. Urine  
specimens shall be analyzed with an immunoassay screening test. Positive test results from  
the immunoassay shall be confirmed by a Gas Chromatography-Mass Spectrometry (GC-  
MS) test. The presence of alcohol shall be determined by an EBT.

E. *Collection Sites/Testing Laboratories.* Collection of urine specimens/breath samples from applicants for municipal employment and municipal employees shall be done at designated collection sites, using the "split-sample" method of collection for urine specimens. Urine collection shall be scheduled by the Employee Relations Department and performed by collection site personnel.

F. *Municipal Work sites.* Breath testing at the work site shall be coordinated by designated department supervisory personnel. The breath sample shall be collected at a site that optimizes confidentiality.

Substance abuse testing for pre-employment, random, and return-to-duty/follow-up testing shall be administered at a designated municipal collection site or testing laboratory by collection site personnel.

2. In instances where reasonable suspicion or post-accident testing are required and the appropriate alcohol testing device and a BAT are readily accessible, the alcohol test shall be administered at a municipal work site. The drug test shall then be administered at a designated municipal collection site or testing laboratory. If the appropriate testing device and/or BAT are not readily accessible, both tests shall be administered at a designated municipal collection site or testing laboratory.

G. *Compliance and Chain-of-Custody.* The collection site shall adhere to the collection provisions set forth in 49 CFR Part 643 and 654. A strict chain of custody shall be maintained on each specimen as described in 49 CFR Part 653 and 654.

### **3.30.194 Alcohol Testing**

A. Breath alcohol testing shall be administered for pre-employment, random, reasonable suspicion, post-accident, and Return-to-Duty/Follow-up Testing. Pre-employment alcohol testing is not required by federal regulations but shall be conducted on the basis of the Municipality's independent authority.

B. Alcohol level breath testing shall be performed by a BAT. An employee's direct supervisor may not perform as a BAT except in circumstances where there is no other BAT readily available.

C. Safety-sensitive employees shall be tested on an evidential breath testing device, according to 49 CFR Part 653 and 654. Employees with a CDL shall be allowed to take the alcohol breath test only in accordance with rules specified in this subsection C.2.

*Screen Test.* The initial test shall be done using an EBT in accordance with 49 CFR Part 653 and 654. If the initial test results are less than .02 alcohol concentration, then the test results are negative and shall be reported by the BAT as such. If the initial test results are .02 or greater, a confirmatory test shall be conducted.

2. *Confirmatory Test.* The confirmatory test may be conducted on the same EBT as the initial test in accordance with 49 CFR Part 653 and 654. Before the confirmatory test may be given, a minimum of 15 minutes must pass for either the same EBT machine to clear or before the use of another EBT machine. The confirmation test shall be given before 20 minutes has passed since the initial test was performed. Only the results of the confirmatory test shall be reported, irrespective of the results on the initial test. During such 15 minute period, the employee shall avoid any actions that could increase mouth alcohol.

**3.30.195 Split Sample Testing of Urine Specimens**

- A. In instances when a urinalysis test result is positive, an employee or applicant may wish to have the specimen analyzed again. In order to provide for this eventuality, the procedure for collecting urine specimens shall be a split sample collection for all employees and applicants.
- B. An applicant/employee may obtain a split sample test on a urine specimen if the analysis of the initial specimen confirms a positive drug test result for the presence of prohibited drugs. The applicant/employee has 72 hours from notification of the positive test results to request, through the MRO, that the split sample specimen be sent to another SAMSHA certified laboratory for analysis.
- 1 Any split sample test shall be performed by SAMSHA certified laboratory of the applicant's/employee's choice. The full cost of any split sample test shall be paid by the individual or union requesting the test. The same methods and standards for chain-of-custody and notification shall be applicable to a split sample test.
- a. The SAMHSA cutoff levels shall be used for split sample tests of urine specimens.
2. If the split sample result is negative, the positive result of the initial test is canceled and no further adverse action shall be taken against the employee based on the initial positive result.

**3.30.196 Confidentiality**

- A. Individuals shall be authorized access to substance abuse test results and related information only on a strict need-to-know basis, as determined by the Director of Employee Relations.
- B. The detailed laboratory analysis of a urine specimen may be released by the MRO, upon written request from the Employee Relations Department to the applicant/employee. The Employer Relations Department shall adhere to applicable federal regulations with regard to confidential documents and information.



**3.30.197 Pre-Employment Applicant Testing and Procedure**

A. *Pre-Employment drug and alcohol testing* shall be the final step in the selection process for safety-sensitive and public safety positions. Pre-employment testing may result from the employment actions of new hire, rehire, promotion, demotion, transfer, reinstatement, and re-employment.

1 Employees in safety-sensitive or public safety positions shall be required to take a substance abuse test for transfer, promotion, or demotion unless this requirement is waived by the Director because an employee has passed a substance abuse test within the last 30 days.

2. Failure to take and successfully pass the substance abuse test shall disqualify the applicant.

B. *Procedures.* The following procedures shall be utilized in Pre-employment testing:

1 The Employment Office shall notify applicants/employees in writing of requirements for testing and the consequences of positive drug and/or failed alcohol test results.

2. The Employment Office shall provide to the collection site personnel the names of those applicants/employees who are to be tested.

3. The Employment Office shall contact the applicant/employee and schedule appointments for collection of urine specimens/breath samples from the designated individuals.

4. The Employment Office shall notify each applicant/employee to be tested of the date, time, and place of the appointment. The applicant/employee shall be required to appear for the test at the designated time.

5 Collection site personnel shall follow the guidelines for collection of urine specimens/breath samples.

6. The laboratory shall analyze urine specimens/breath samples in accordance with guidelines for urine specimen/breath sample analysis.

7. The MRO shall review positive drug test results in accordance with guidelines.

8. Positive drug test results submitted by the MRO shall disqualify the employee/applicant from the position for which the employee/applicant is being considered. The Employee Relations Department shall inform the applicant of such disqualification and shall terminate an applicant employee.

9. A failed alcohol test shall disqualify the employee/applicant from the position for which the employee/applicant is being considered. The Employee Relations Department shall inform the applicant of such disqualification and shall terminate an applicant employee.
10. Employees/applicants whose alcohol testing results are .02 or greater but less than 0.4 shall be disqualified from the position for which the employee/applicant is being considered. The Employee Relations Department shall inform the applicant of such disqualification and shall take appropriate disciplinary action against the applicant employee.

**3.30.198 Reasonable Suspicion Testing**

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

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

- B. *Reasonable Suspicion Procedure.* When a municipal supervisor who has been trained in the signs and symptoms of drug abuse and/or alcohol misuse observes behavior or appearance that is characteristic of alcohol misuse or drug abuse, the supervisor shall complete the "Supervisors' Reasonable Suspicion Observation Checklist" provided as part of this Rule 19. The supervisor shall call the Employee Relations Department immediately after completing the "Supervisor's Reasonable Suspicion Observation Checklist." A determination concerning the appropriateness of testing shall be made within one (1) hour. If a test is authorized, testing shall occur as soon as possible but no later than 32 hours for drugs and no later than eight (8) hours for alcohol. If a test is administered, the "Supervisor's Reasonable Suspicion Observation Checklist" shall be forwarded to the Employee Relations Department no later than 24 hours following the approval to test. The form shall contain as much detail as possible outlining observations upon which reasonable

suspicion was based.

1. For situations in which health and safety are not an immediate issue:
  - a. Immediately after becoming aware of factors leading to making a reasonable suspicion determination, the supervisor of the employee who is suspected of drug abuse and/or alcohol misuse shall report to the Employee Relations Department those reasonable and specific grounds which have resulted in reasonable suspicion using the "Supervisor's Reasonable Suspicion Observation Checklist";
  - b. If the reasonable and specific grounds do not meet the criteria for reasonable suspicion, the Employee Relations Department shall so advise the supervisor and the supervisor may talk to and/or discipline the employee as appropriate on the behavioral and performance aspects of the employee's conduct which have caused concern. This discussion and/or disciplinary action shall focus on conduct and performance; and
  - c. If the reasonable and specific grounds meet the criteria for reasonable suspicion, the supervisor and the employee shall meet as soon as possible after the occurrence. The discussion at the meeting shall focus on the behavioral and performance aspects of the employee's conduct that have resulted in reasonable suspicion. The employee shall be notified of the requirement to test at that meeting. The supervisor shall escort the employee to the collection site.
2. For situations in which an employee's behavior poses a potential present danger to the health and/or safety of the public, other employee(s), or the employee and it is reasonably suspected that such behavior has resulted from drug abuse and/or alcohol misuse, the supervisor shall act immediately to eliminate or reduce the present danger to health and safety by:
  - a. Requiring the employee to cease performing the danger causing activity immediately until the potential danger causing behavior itself has been eliminated;
  - b. Arranging for the employee to leave the scene under escort if necessary and return to an appropriate municipal work site or collection site, or otherwise remain in a place where no person's health and safety is endangered. Under no circumstances shall an employee be allowed to drive a vehicle or operate municipal equipment if the employee is suspected of violating Municipal Policy/Procedure 40-22 or this Rule 19. The employee's supervisor shall make arrangements for the employee's transportation home

following testing. If the employee appears to be in violation of Municipal Policy/Procedure 40-22 and this Rule 19 and insists on driving, the supervisor shall notify the Anchorage Police Department or Alaska State Troopers immediately. The Employee Relations Department shall be contacted and advised of the situation; and

- c. Following elimination of the present danger to health and/or safety:
  - (i) The supervisor of the employee who is suspected of drug abuse and/or alcohol misuse shall immediately report to the Employee Relations Department those reasonable and specific grounds which have resulted in reasonable suspicion.
  - (ii) If the reasonable and specific grounds do not meet the criteria for reasonable suspicion, refer to subsection 1.B of this section.
  - (iii) If the reasonable and specific grounds meet the criteria for reasonable suspicion, refer to subsection 1.C of this section.
- 3. Collection site personnel shall follow the guidelines for collection.
- 4. The laboratory shall analyze urine specimens/breath samples in accordance with guidelines for analysis.
- 5. The MRO shall review positive drug test results in accordance with guidelines.
- 6. The employee shall be removed from duty in accordance with 3.30.190 B of this Rule 19 until further notification.

**3.30.199 Post-Accident Testing**

- A. *Post Accident Testing* shall be conducted for any employee involved in a work related accident that results in a citation for a moving violation or death or personal injury or medical help required away from the scene of the accident or damage to municipal or private property or a vehicle being towed from the scene of the accident or removed from service.
  - 1 If post-accident criteria is not met and if a supervisor has reasonable and specific grounds to believe a substance abuse test is appropriate, "reasonable suspicion" procedures shall be reviewed and followed.
- B. *Post-Accident Testing Procedure.* Post accident testing shall be conducted when there has been a work related accident occurring while an employee is performing job duties that results in: a citation for a moving violation; death; personal injury;

requiring medical help away from the scene of the accident; damage to municipal or private property or a vehicle being towed from the scene of the accident or removed from service. In any of these circumstances, any employee who is directly involved in the incident shall be subject to the specific criteria set forth below, for being tested for drugs and/or alcohol. The first priority shall be treatment of any injuries and cooperation with law enforcement personnel.

- 1 In the event of an accident, municipal supervisors shall initiate testing procedures as appropriate, regardless of the decision to test by law enforcement personnel. If law enforcement personnel do not allow the employee to undergo separate municipal testing, the supervisor shall notify the Employee Relations Department as soon as possible.
2. *Post-accident* alcohol testing shall be done as soon as possible but no later than eight (8) hours after the accident and post accident drug testing shall be done no later than 32 hours after the accident.
3. If the accident resulting in damage to municipal or private property was caused by a public safety employee, operating within standard operating policy guidelines, the requirement for post accident testing may be waived by a Command Officer for APD employees, or the Health and Safety Officer for AFD employees.
4. The following procedure shall be followed for post accident testing:
  - a. The supervisor shall immediately inform the employee that a substance abuse test is required as soon as is reasonable and possible. Municipal personnel shall cooperate with law enforcement authorities.
  - b. The supervisor shall immediately report the incident to the Employee Relations Department. The employee shall be tested as soon after the accident as possible. In instances of hospitalization of the employee, the Employee Relations Department shall notify the collection site to arrange for testing. The employee shall be notified of the testing. If the employee is unconscious and unable to consent to a substance abuse test, the employee shall be required to sign a release as soon as the attending physician determines the employee is able to do so. At that time, the employee shall sign the necessary forms and provide a urine specimen/breath sample.
  - c. The Employee Relations Department shall arrange for the test with collection site personnel, or authorize the supervisor to do so.
  - d. Collection site personnel shall follow the guidelines for urine specimens/breath samples.

e. In the event of hospitalization of the employee, collection site personnel shall notify the Employee Relations Department that the testing was conducted.

f. The employee shall be removed from duty in accordance with 3.30.190 B.

5. Nothing in this section shall preclude Reasonable Suspicion Testing where facts and circumstances may not require Post Accident Testing.

### **3.30.1910 Return -to-Duty and Follow-Up Testing**

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

Testing under this section shall be conducted:

- a. After an alcohol test result of greater than .02; or
- b. As part of a Return-to-Duty Contract; or
- c. After an employee has notified his/her supervisor of the employee's participation in a substance abuse treatment program.

2. An employee may be tested at any time during:

- a. The period of the employee's participation in the substance abuse treatment program; or
- b. The 60 month period immediately following the employee's return to duty after successful completion of a substance abuse treatment program; or
- c. The time-frame outlined in the Return-to-Duty Contract.

B. *Return-to-Duty and Follow-up Testing Procedure.* Whenever an employee who has violated the Municipal Policy/Procedure 40-22 or this Rule 19 is allowed to return-to-duty, substance abuse testing shall be conducted on a periodic unannounced basis for up to 60 months following his/her return-to-duty. The Affirmative Action/Compliance Manager shall oversee the inclusion of this testing requirements in return-to-duty contracts that are part of grievance resolutions, arbitration decisions,

job jeopardy contracts, or voluntary rehabilitation decisions.

1. The *Return-to-Duty Contract* shall clearly outline the supervisor's desired performance goals and employee obligations including remaining completely drug and/or alcohol free. The contract shall also clearly state the disciplinary action that shall be taken if the employee fails to adhere to the provisions of the contract. A violation of the contract may result in discipline up to and including termination.
2. Once a Return-to-Duty Contract has been agreed to by the employee, supervisor, and union (where applicable), as well as reviewed and approved by the Employee Relations Department and other appropriate authorities, the following steps shall be taken:
  - a. The Affirmative Action/Compliance Manager shall establish an individualized testing schedule.
  - b. The Affirmative Action/Compliance Manager shall keep the schedule confidential and secured. The Municipality may require testing at anytime while the Return-to-Duty Contract is in effect.
  - c. The Affirmative Action/Compliance Manager shall notify the employee's supervisor one day prior to the substance abuse test. The supervisor shall keep this information confidential. This notification is to allow minimal disruption to work scheduling.
  - d. The supervisor may inform the employee of the test no earlier than one (1) hour prior to collection appointment.
  - e. Once notified, the employee shall immediately go to the collection site accompanied by the supervisor.
  - f. Urine specimen/breath sample collection, analysis, review, and Employee Relations Department response shall be done in accordance with procedures specified in this Rule 19.

### **3.30.1911 Random Testing**

- A. *Random testing* shall only be applicable to employees required by government regulations and/or this Rule 19 to be subject to random testing, including but not limited to APD/AFD employees in classifications subject to random testing under this Rule 19.
  1. Once each month, the contractor shall randomly select the appropriate percentage of employees, as determined by the Employee Relations

Department, employed in safety-sensitive and public safety positions to be tested. The selection shall be performed through use of a statistically valid computer random selection method.

- B** *Random Testing Procedure* Random testing shall be conducted just before, during, or just after scheduled duty hours.

The Employee Relations Department shall provide the contractor with the identification of employees to be included in a statistically valid computer random selection program which allows for each employee in a safety-sensitive or public safety position to have an equal chance of being tested.

2. The testing dates and times shall be with unpredictable frequency throughout the year. Some safety-sensitive or public safety employees may be tested more than once a year; some may not be tested at all depending upon the random selection. All safety-sensitive and public safety employees remain in the random selection pool at all times, regardless of whether or not they have been previously selected for testing.
3. Supervisors of the employees to be tested shall be notified by the Affirmative Action/Compliance Manager of the dates of the test appointments. That information shall be held in confidence. Employees are to receive NO prior notification. The supervisor shall notify each employee to be tested and a supervisor shall escort them to the collection site. The employee is required to report for the test immediately. Specimen collection, analysis, review, and Employee Relations Department response shall be accomplished in accordance with this Rule. Employees hired during the year shall be added to the selection pool during the month following their hire.

**3.30.1912 Refusing to Take a Test**

- A.** Refusing to take or submit to a substance abuse test for any reason shall be construed as a positive drug test result and all provisions relating to a positive drug test result shall be applicable.
- B.** Refusing to submit to a substance abuse test includes, but is not limited to:
- 1 Refusing to take a test,
  2. Inability to provide sufficient quantities of breath or urine to be tested without a valid medical explanation,
  3. Tampering with or attempting to adulterate the specimen or collection procedure,



4. Not reporting to the collection site in the time allotted, or
5. Leaving the scene of an accident without a valid reason before the tests have been conducted.

**Section 3.** This ordinance shall become effective immediately upon its passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Chair of the Assembly

ATTEST:

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

# MUNICIPALITY OF ANCHORAGE

## ASSEMBLY MEMORANDUM

No. AM 27-98 \_\_\_\_\_

Meeting Date: January 13, 1998

From: Mayor

Subject: Substance Abuse Testing Ordinance, AO No.

AO-98-5 removes substance abuse testing from collective bargaining. Additionally, it incorporates the Municipality's substance abuse testing policy into the law as an ordinance.

The substance abuse testing policy proposed for adoption herein incorporates the changes suggested by both Judge Hunt and Arbitrator Abemathy as well as certain other changes arising from comments received from organized labor. The substance abuse testing policy before you for adoption is substantively identical to the policy which is in effect at this time for most<sup>1</sup> employees of the Municipality, except for the changes noted in the Assembly Information Memorandum to be submitted separately.

**Need.** There continues to be a need for a well managed substance abuse testing policy at the Municipality of Anchorage. The public deserves to be served by employees who are free from the effects of alcohol or illegal substances. While the overwhelming majority of our employees are drug and alcohol free while on the job, there continue to be some who are not compliant with the requirement for a substance abuse free workplace. The only certain way of ensuring the public's safety and deterring potential policy violations is through consistent application of a well managed substance abuse testing policy to all Municipal employees. Such consistency can not be achieved unless the substance abuse testing policy is not subject to alteration through collective bargaining or due to an individual arbitrator's notion of what the terms of that policy should be.

The results from testing conducted in 1995, 1996, and YTD 1997 are as follows:

<u>YEAR</u>	<u>TESTS CONDUCTED</u>	<u>NUMBER OF POSITIVE TESTS</u>	<u>PERCENTAGE OF POSITIVE TESTS</u>
1995	395	6	1.52%
1996	538	5	0.93%
1997	732	9	1.23%

<sup>1</sup>Includes AMEA, APDEA, JCC, non-represented and executive employees. Excludes IAFF and IBEW represented ML&P employees.

While at first glance these positive test numbers do not appear to be unreasonably high, the Administration feels strongly that this documented level of substance abuse continues to represent an unacceptable level of risk to the public. These results also warrant a continuation of our existing policy of zero tolerance.

At the present time employees represented by AMEA, JCC, APDEA, as well as all Non-Represented employees and Executives are subject to the September 26, 1994 substance abuse testing policy. The full applicability of the policy to IBEW personnel is still before an interest arbitrator after months of hearings and negotiations. With only just over one year remaining on the present four year agreement, there is no clear resolution in sight. Likewise, the IAFF and the Municipality continue to disagree over several elements of our policy, specifically over testing for promotions, the Municipality's "Zero Tolerance" policy, and random testing. The IAFF refuses to bargain over drug testing until new contract talks commence. Like the situation involving IBEW represented employees, no end is in sight to this disagreement with the IAFF.

The ability of the Municipality to conduct random substance abuse testing of public safety personnel is on appeal to the Alaska Supreme Court. The Municipality prevailed on the issue in Superior Court before Judge Karen Hunt. However, the IAFF and the APDEA appealed her ruling. Random testing for affected IAFF personnel was stayed by Judge Hunt, pending the outcome of the appeal. The APDEA did not seek such a stay, thus, random testing for Police Department personnel is presently being conducted. The proposed adoption of the substance abuse testing policy's provisions on random testing will not have any immediate effect on IAFF represented fire fighters due to Judge Hunt's stay.

The proposed ordinance before the Assembly, which puts in code form our substance abuse testing policy, has been well researched, drafted and implemented. Few, if any problems with the policy have been attributable to the policies and procedures themselves. Likewise, grievances have been few. Most grievances have been in connection with the "Zero Tolerance" element of the policy which is applicable only to positive tests for drugs. Once the proposed ordinance is adopted by the Assembly, there will be no change to the ability of an employee to grieve or challenge any disciplinary action taken under the policy.

To date, the Municipality has expended in excess of \$250,000 defending our substance abuse policy. This ordinance, when adopted, should significantly minimize future legal expenses in this area.

Future changes to the policy are anticipated to be few, and will be made only after public hearing. This should give employees added comfort in knowing that changes to the policy are only made after thoughtful deliberation and a showing that such changes are necessary and consistent with the Municipality's objective of providing a drug and alcohol free workplace.

Additional materials will follow in the form of a separate Assembly Information Memorandum providing a comparison between the proposed ordinance and the existing substance abuse testing policy, setting forth any changes necessary to convert the policy to code form. An executive summary of the substantive provisions of our proposed substance abuse testing ordinance will also be provided.

2  
3 **Summary.** There is a need for a consistent substance abuse testing policy applicable to all  
4 personnel at the Municipality. Incorporating the policy into the Anchorage Municipal Code will  
5 ensure consistency in the terms and applicability of the substance abuse testing policy.  
6 Individual employees should not receive different treatment because their union has expended  
7 the funds to thwart implementation of a standard substance abuse testing policy or because an  
8 arbitrator, generally from the "lower 48," elects to modify the Municipality's substance abuse  
9 testing policy to fit his or her notions of social justice. The need for all Municipal employees to  
10 be treated the same with respect to substance abuse testing should not be inhibited by the  
11 election of one or more unions to take a different approach to substance abuse testing in terms  
12 of their overall bargaining position.

13  
14 Substance abuse continues to be a plague threatening the vitality of our society. This  
15 Administration has taken the lead in developing the means to effectively combat this threat. We  
16 urge the Assembly to join us in this effort by passing the proposed ordinance.

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19 Passage of AO 98-5 is strongly recommended.

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22 Concur:

Recommended by:

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26 Larry D. Crawford  
27 Municipal Manager  
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31   
32 Thomas C. Tierney  
33 Employee Relations Director  
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35 Respectfully submitted,

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38 Rick Mystrom  
39 Mayor  
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**MUNICIPALITY OF ANCHORAGE**  
**Summary of Economic Effects - General Government**

AO Number **98-5** Title **AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE SUBSECTION 3.70.090 a. TO ELIMINATE THE EMPLOYEE SUBSTANCE ABUSE TESTING POLICY, PROCEDURES AND RULES AS A SUBJECT OF COLLECTIVE BARGAINING AND AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 3.30 TO ESTABLISH THE MUNICIPALITY'S SUBSTANCE ABUSE TESTING POLICY, PROCEDURES AND RULES AS A NEW PERSONNEL RULE 19**

Sponsor **MAYOR**

Preparing Agency **Employee Relations**

Others Affected

**CHANGES IN EXPENDITURES AND REVENUES**

Operating Expenditures	FY 98	FY 99	FY 00	FY 01	FY 02
1000 Personnel Services	-0-	-0-	-0-	-0-	-0-
2000 Supplies					
3000 Other Services					
4000 Debt Service					
5000 Capital Outlay					
<b>TOTAL DIRECT COSTS</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

ADD: 6000 Charge From Others					
LESS: 7000 Charge to Others					
<b>FUNCTION COST</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

<b>REVENUES</b>					
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<b>CAPITAL</b>					
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POSITIONS FT/PT and Temp.	-0-	-0-	-0-	-0-	-0-
Public Sector Economic Effects:  None.					

If further explanation is necessary, a separate page may be attached.

Private Sector Economic Effects

**NO PRIVATE SECTOR IMPACTS**

If further explanation is necessary, a separate page may be attached.

Prepared by:

  
**Greg Edmiston, Labor Relations Manager**

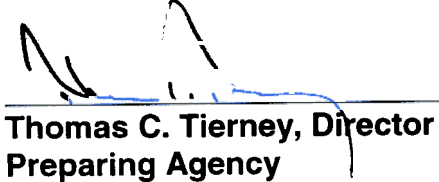
Telephone x4398

Validated by OMB:



Date: 1-9-98

Approved by:

  
**Thomas C. Tierney, Director  
Preparing Agency**

Date: 1/7/98

Concurred by:

  
**Executive Manager**