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26.3 Drug and Alcohol Policy

26.3.1 Purpose


It is the policy of the *Town* and the *Department* to maintain and ensure a drug and alcohol free and safe workplace for all *employees*. All *employees shall* comply with all *Town* policies, *Department* policies, and state and federal laws pertaining to *controlled substances* and the use of alcohol.

26.3.2 Use of *Controlled Substances*

Use, possession, manufacture, transfer by sale or gift, or a positive drug test for, any *controlled substance* not legally prescribed to the *employee* for his/her own use *shall* form the basis for termination of an *employee*. In addition, it *may* result in criminal investigation, *arrest*, and, in the case of *sworn employees*, loss of peace officer certification.


26.3.3 Use or Possession of Recreational or Medical Marijuana Prohibited

- A. Marijuana is an illegal, schedule I dangerous drug under the *Federal Controlled Substances Act*. *Department employees* are prohibited from using, possessing or selling marijuana (except when performing approved law enforcement related duties), or engaging in any other conduct that would violate the *Controlled Substances Act*. *Employees* who wish to use marijuana as permitted under *Arizona law* *may* contact Town Human Resources and seek to transfer to a non-public safety position with the *Town*.
- B. In addition, *Department employees* and their spouses are prohibited from having any ownership interest in, or personal involvement or association with a marijuana dispensary, whether as an owner, agent, cultivator, consultant, or in any other manner except as *may* be necessary when acting as a law enforcement *officer* or public safety *employee*.

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26.3.4 Use or Possession of Cannabidiol (CBD) products

- A. Cannabidiol (CBD) products are legal in Arizona if they have a delta-9 tetrahydrocannabinol concentration of not more than three-tenths percent on a dry-weight basis. This is based on changes to federal and state law:
 1. The 2018 Farm Bill legalized industrial hemp cultivation and removed hemp from Schedule I of the Controlled Substances Act, hemp is no longer an illegal substance under federal law. Hemp is defined as any part or derivative of the Cannabis sativa L. plant that contains less than 0.3% tetrahydrocannabinol (THC) by weight.
 2. Arizona has also legalized the "industrial hemp" in A.R.S. Title 3, Chapter 2, Article 4.1. Industrial hemp is defined in 3-311. 7. "Industrial hemp" means the plant cannabis sativa L. and any part of such a plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths percent on a dry-weight basis.
- B. CBD products are currently not regulated in any context. There is no state or federal regulation of the processing, packaging or labeling of these products. There is no oversight or guarantees that what is printed on the label is accurate or truthful. Therefore;
 1. Employees should be aware that a significant risk exists that the possession, use, production, sale or transportation of CBD products could violate A.R.S. 13-3407.
 2. Any possession, use, production, sale or transportation of a CBD product that contains a delta-9 tetrahydrocannabinol concentration of more than three-tenths percent on a dry-weight basis is a felony under Arizona law.
 3. Any department employee who possesses, uses, produces, sells or transports a CBD product that contains a delta-9 tetrahydrocannabinol concentration of more than three-tenths percent on a dry-weight basis is subject to arrest, discipline up to and including termination, and for sworn employees AZPOST action on their certification.

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26.3.5 Use of Alcohol; Impairment

For purposes of this policy, an *on duty employee* whose blood, breath or urine when tested contains an alcohol concentration of .04% or above is presumed to be impaired by the use of alcohol. *Employees* with an alcohol concentration of less than .04% *may* be considered impaired depending on the circumstances. This presumption is separate from any criminal liability that *may* attach to an *employee* suspected of being under the influence of alcohol or drugs while driving.


26.3.6 Use of Prescription and Over the Counter Medications

- A. In recognition of privacy concerns, the *Department* *will* not solicit information from an *employee* regarding medications that an *employee* *may* be taking absent an indication that the *employee* is impaired or poses a safety hazard.
- B. It is the responsibility of any *employee* who is taking any medication, including those sold without a prescription, which *may* interfere with the safe and effective performance of duties to notify their *supervisor* before beginning work. Disclosure of the specific medical condition or the specific medication to the *supervisor* is not required (it *may* ultimately be required to be made to Town Human Resources or the *Town's physician*). Unless the medication is one that is available over-the-counter, the *employee* *shall* provide documentation from the treating *physician* of any limitations the medication *may* impose on the *employee*. If the limitations are such that the *employee* cannot safely and effectively perform, the *employee* *may* be placed on sick leave and referred to the Human Resources Department for discussion of reasonable accommodation.
- C. It is the *employee's* responsibility to advise the *Department* when the *employee* is no longer using the medication in question.

Any medical documentation *shall* be sent to Town Human Resources for filing in the *employee's* confidential medical file.

26.3.7 Available Resources

The *Town* offers an *employee* assistance program to which *employees* *may* be referred, and which *employees* *may* access without referral, and which *may* provide assistance for *employees* with use or abuse issues. *Town employee* health insurance programs

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may also provide such assistance. *Employees* are urged to take advantage of these resources when appropriate.

26.3.8 Employee Alcohol and Drug Testing

A. *Employees may be tested in the following circumstances:*

1. *Reasonable suspicion testing*

An *employee may* be tested for alcohol or drugs whenever a *supervisor* has *reasonable suspicion* to believe that an *on duty employee* is impaired or under the influence of alcohol, medication (whether prescribed or available over the counter), illegal drugs or *controlled substances*. *Reasonable suspicion* means a suspicion based on specific, articulable observations (*speech*, conduct, odor of alcohol, etc.) of the *employee* or based upon specific and reasonably reliable information indicating that the *employee* has recently engaged in a violation of the drug and alcohol policy. The *Police Chief* or *Chief's* designee *shall* approve all *reasonable suspicion*-based testing.

2. *Post-Collision Testing*

a. *Department employees* who are involved in an *on duty* traffic collision as a driver *shall* in certain circumstances be tested for the presence of alcohol and *controlled substances*. The driver *shall* be tested if the accident involves a fatality. In addition, the driver *may* be tested if she/he receives a citation for a moving violation (or *may* receive one) and the accident involves either an injury to someone that is treated away from the scene or if any vehicle is required to be towed from the scene.

b. A driver who is subject to post-accident testing *must* remain available for testing and *shall* not consume any alcohol for eight (8) hours following the accident, or until all testing is complete, whichever comes first. Failure to remain available or avoid consumption of alcohol or drugs (unless medically required) *will* be considered to be a refusal to test. The on-scene *supervisor* is responsible for ensuring that the appropriate tests are done and documented.



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3. Unit Assignment Testing

Employees assigned to specific units (undercover drug enforcement activities, for example) or who *must* submit to random testing by law (e.g., commercial driver's license holders) *may* also be subject to random testing (or testing as required by statute).

4. Voluntary Testing

If an *employee* wishes to submit to a voluntary drug or alcohol test, the *employee may* do so. A waiver indicating that the test is voluntary *must* be signed and *will* be retained in the *employee's* personnel file.

- B. A refusal to test *shall*, in all circumstances, be treated as a positive test result. In most circumstances, an *employee* who refuses to test *will* be terminated.

26.3.9 Testing Procedures

- A. All non-criminal tests for alcohol or drugs *shall* be done by a qualified medical facility designated by the *Town*. A *supervisor shall* accompany the *employee* through the testing process. The *supervisor* or *commander* who *orders* the testing *shall* complete a *memo* on the incident.
- B. Testing involving possible criminal charges *shall* be conducted in a manner consistent with the applicable investigative protocols. Such testing *will* ordinarily be coordinated by the assigned investigative unit.

26.3.10 Positive Tests; Procedures

- A. An *employee* who is tested and found to be impaired or is in the opinion of the testing *physician* impaired, or who refuses to take a test, *shall* be relieved of duty and escorted home. The testing facility staff *shall* be asked to contact the *Chief of Police* when the test results are available. The decision as to whether or not to allow the *employee* to return to work, and when to do so, *will* be based upon the recommendations of the *physician* examining the involved *employee* and the test results.



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- B. An *employee* who is relieved of duty under these circumstances *may* use available leave (sick leave, vacation or compensatory leave) or be placed on leave without pay until allowed by the *Department* to return to duty. If the *employee* has exhausted all leave balances, the *employee shall* be carried as Leave Without Pay.
- C. If the test results are immediately available and do not reveal an impermissible blood alcohol level, inappropriate levels of medication, or the presence of illegal drugs or *controlled substances*, and the *employee* is not (in the opinion of the *physician*) otherwise impaired or a hazard, the *Chief* or designee *may* permit the *employee* to return to normal duty.
- D. If the use or presence of a substance constitutes a violation of the law, the matter *shall* be referred to a criminal investigator.

26.3.11 Evaluation and Random Testing Following Positive Tests

- A. Without regard to any *disciplinary action* that *may* be taken, *employees* who test positive for alcohol or who are impaired by prescription medications while *on duty shall* be evaluated by a substance abuse professional prior to returning to duty or as soon thereafter as possible.
- B. If an *employee* is found in violation of *Department* policy regarding alcohol or drugs and is not terminated, the *employee may* be *ordered* to participate in mandatory, random follow-up testing. The requirement for such testing and any other conditions required in order for the *employee* to remain employed *shall* be documented and served upon the *employee* prior to their return to work. Copies of this documentation *shall* be retained in the *employee's* personnel file. Results of any random tests *shall* be filed in the *employee's* confidential medical file in Human Resources.
- C. An *employee's* failure to comply with any conditions of continued employment served upon the *employee shall* result in termination.

26.3.12 Off Duty Impairment

If it comes to the attention of the *Department* that an *employee* has been involved in a situation *off duty* involving the use of any illegal or *controlled substance*, or in a criminal



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matter involving the use of alcohol, or controlled or prescribed substances, the *employee shall* be subject to follow-up testing, monitoring and/or *discipline* as *may* be warranted.

