SECTION 7
SUBSTANCE ABUSE POLICY

7.01 Purpose

The City of Tumwater recognizes that its employees are its most important resource in fulfilling its charge of effective public service. The city has promulgated this policy in the interest of the safety and well-being of its employees and the efficiency of its workforce. This document outlines the City of Tumwater policy regarding alcohol and drug abuse and provides guidance to supervisors in addressing substance abuse issues. This policy is intended to comply with the federal Drug Free Workplace Act of 1988 and with federal Department of Transportation regulations governing commercial drivers.

7.02 Scope

This policy applies to all City of Tumwater employees except that employees included in bargaining units are subject to drug testing only if: 1) the labor contract covering them specifically allows for such testing; or 2) the issue of drug testing has been legally bargained to final impasse; or 3) a written agreement between management and the employee's bargaining agent has been signed and executed to provide for drug testing.

All other provisions of this policy, apart from the limits to drug testing as specified above, shall apply to all city employees. In cases where the provisions of this policy conflict with collective bargaining agreements duly agreed upon between the authorized employee organizations or unions and the city, the provisions of the collective bargaining agreements shall govern.

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7.02 Scope

None of the exclusions mentioned in this Section shall waive or in any way diminish the City's Disciplinary Action and Rules of Conduct Policy 4.07.01, "g") which covers all employees.

Neither the provisions nor the exclusions cited in this policy waive or modify the "employment at will" status of any city employee subject to that status either by law or as allowed under a collective bargaining agreement.

7.03 Policy

7.03.01 The City of Tumwater recognizes that alcoholism and drug abuse may have an adverse effect on job performance and it is concerned with this impact.

7.03.02 The City of Tumwater recognizes that alcoholism and drug abuse can be successfully treated, enabling the employee to return to a satisfactory job performance level.

7.03.03 Employees who are concerned about their alcohol and/or drug use are strongly encouraged to voluntarily seek assistance

Supervisors, department managers and the Administrative Services Director are available to all employees as a resource.

7.03.04 It is the employee's responsibility to demonstrate satisfactory job performance.

7.03.05 It shall be the responsibility of supervisors at every level to encourage employees to use the resources available through city employment when deteriorating or unsatisfactory job performance does not respond to usual supervisory actions, or when a specific on-the-job incident is cause for concern. These resources include employer provided health insurance and leave benefits which may be coordinated to enable assistance or treatment for the employee. The supervisor's role is to observe and record behavior and performance of employees. Supervisors should not attempt to medically diagnose an employee's problems.

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7.03 Policy

7.03.06 The employee's compliance with the recommendations of a health care professional is voluntary. Use of a remedial or treatment program does not replace normal disciplinary procedures for unsatisfactory job performance.

7.03.07 The employee's job security and/or promotional opportunities will not be jeopardized by use of a remedial or treatment program. Paid or unpaid leave status during participation in a remedial or treatment program will be determined on a case-by- case basis, depending upon the circumstances involved.

7.03.08 Confidentiality is an essential element of substance abuse treatment. Any employee violating this confidentiality will be subject to disciplinary action.

7.03.09 Reporting to work under the influence of alcohol or drugs, or any substance, legal or illegal, which impairs an employee's mental or physical health will not be tolerated.

When there are reasonable grounds to believe that the employee is under the influence of alcohol or drugs, the supervisor may direct the employee to submit to drug screening and blood alcohol tests. Refusal to submit to such tests can subject the employee to disciplinary action up to and including dismissal.

Under no circumstances will an employee be allowed to operate city equipment or drive a city motor vehicle after a supervisor has established reasonable grounds to believe that the employee is impaired.

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7.03 Policy

Any employee using medication or prescribed drugs which may impair job performance must report this fact to his/her supervisor prior to accepting an assignment which might be adversely affected by the side effects of the medication.

It is the responsibility of employees who are called out to work after regular hours to comply with the provisions of this policy. If the employee called out to work has been involved in activities that may have left him/her in an impaired or intoxicated condition, the employee must inform the person making the call out, so that an alternate can be found.

7.03.10 The unauthorized use, sale, purchase or possession of alcohol or controlled substances at the worksite is prohibited and shall be grounds for discipline up to and including dismissal. The unauthorized use of the employee's position with the city to make, purchase or sell alcohol, controlled substances or illegal drugs is also prohibited and shall be grounds for discipline up to and including dismissal.

7.04 Assistance Program / Voluntary Referral

The City of Tumwater supports employees who volunteer for treatment of alcohol or drug abuse. Employees are encouraged to seek treatment voluntarily and to utilize the Employee Assistance Program. Any employee who comes forth and notifies the City Tumwater of alcohol or drug abuse problems will be given the assistance extended to employees with any other illness. Any such program, however, may not interfere with the tests required by these rules. For example, a driver may not identify himself/herself as unfit to drive after having been notified of a random or reasonable suspicion test and expect to avoid the consequences for a positive test or a refusal to test. In addition, voluntarily seeking assistance does not excuse any failure to comply with all of the provisions of this policy or other policies of the city.

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7.04 Assistance Program / Voluntary Referral

Sick leave, vacation leave or leave of absence without pay will be granted for treatment and rehabilitation as in other illnesses subject to City policy and / or contract language governing use of leave. Insurance coverage for treatment will be provided to the extent of individual coverage. Confidentiality of information will be maintained as much as possible at all times.

7.05 Compliance with Drug Free Workplace Act

It is the policy of the City of Tumwater to comply with the federal, Drug Free Workplace Act of 1988. Toward that end, the following provisions and procedures shall be in effect:

a) In the event that an employee is convicted of any criminal drug statutory violation for a violation occurring in the workplace, the employee must notify his/her supervisor within 5 working days. The supervisor must inform his/her department manager within 24 hours of the notification. The department manager will notify the City Administrator immediately. If the employee is directly involved in the performance of a contract for which the city receives federal funding, the contracting agency must be informed of the incident in writing within 10 days of the employer's notice. A copy of the notification shall be sent to the Administrative Services Director.

The city is responsible to take appropriate disciplinary action and/or to require the employee to seek approved drug abuse treatment or rehabilitation within 30 days of receiving notice of the employee's conviction.

b) All employees shall receive a copy of this policy. All employees will be required to sign a statement acknowledging that they have received a copy of this policy.

c) The city will make information and education on the prevention of alcohol and drug abuse available to its employees.

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7.06 Compliance with Federal Regulations Applicable to Commercial Drivers

It is the policy of the City of Tumwater to comply with the federal Department of Transportation regulations (Title 49, CFR subtitle B, chapter
382) which mandate prohibited behaviors and employer responsibilities for employee's holding safety sensitive positions which require the possession of a valid commercial driver's license.

7.06.01 Definitions - For purposes of this section, the following terms shall be defined as following:

Accident - Accident means an occurrence involving a commercial vehicle on a public road which results in a fatality or a citation under state or local law for a moving violation and (1) bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; and/or (2) one or more motor vehicles incurring disabling damage requiring the vehicle to be transported away from the scene by a tow truck or other vehicle.

Driver - This term includes all employees whose positions may involve driving a commercial vehicle and that require the possession of a Commercial Driver's License.

Commercial Vehicle - A commercial vehicle is one that either: 1) has a gross vehicle weight of over 26,000 pounds (including combined weight if towed unit weighs over 10,000 pounds); 2) is designed to transport 16 or more persons, including the driver; or 3) is used to transport hazardous materials.

Drugs - For the purposes of Section 7.06, in accordance with the applicable federal regulations, "drugs" refers to the following five substances: marijuana (THC), cocaine, opiates, phencyclidine (PCP), and amphetamines.

Medical Review Officer (MRO) - The Medical Review Officer is the licensed physician responsible for receiving and interpreting laboratory results from the urine drug tests.

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Safety Sensitive Position - For purposes of this policy, these are positions associated with the driving of commercial vehicles.

Substance Abuse Professional (SAP) - A Substance Abuse Professional is a licensed physician, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders. The SAP is responsible for evaluating employees with positive test results.

7.06.02 Prohibited Behaviors. In addition to any other prohibitions on the use of alcohol or controlled substances established through city policy or by contract, the following behaviors by employees whose positions require the possession of a valid commercial driver's license are prohibited:

a) Alcohol Concentration: Reporting to duty and performing safety-sensitive functions while having an alcohol concentration of 0.04 or greater.

b) Alcohol Possession: Unauthorized possession of alcohol while on duty or operating a commercial motor vehicle unless the alcohol is an insignificant ingredient in a medication that is either prescribed or a commonly recognized over-the-counter remedy and notice has been given to the employee's manager in advance.

c) Alcohol Use Following an Accident: Use of alcohol within eight hours following an accident or before undergoing a post-accident alcohol test, whichever occurs first.

d) Alcohol Use on Duty: Use of Alcohol while performing safety-sensitive functions. (This includes alcohol which may be in medications).

7.06.02 Prohibited Behaviors.

e) Alcohol Use Prior to Duty: Performing safety sensitive functions within four hours after having used alcohol. An on-call employee who consumes alcohol within four hours of being called in must acknowledge the use of alcohol and may not report for duty.

f) Controlled Substance (Drug) Use: Reporting for duty or remaining on duty performing safety-sensitive functions after having used any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. The proper and lawful use of drugs is permitted provided their use does not interfere with the individual's ability to perform the essential functions of his/her job. Any employee taking prescribed medication that may impair his/her ability to work safely and productively must notify his/her manager prior to commencing to work. The manager, in consultation with the employee's physician, if necessary, will make the determination regarding the employee's qualifications to work. Information provided to the manager will be treated as confidential. Disclosure by the City will only be required by law or in the event of a proceeding initiated on behalf of the employee. Failure to notify the manager in advance of commencing to work will be cause for disciplinary action up to and including discharge.

g) Positive Drug Test: Reporting for duty, remaining on duty, or performing safety sensitive functions after having tested positive for a controlled substance.

h) Refusal to Submit to a Required Test: Refusing to submit to a post-accident, random, reasonable suspicion, or follow-up alcohol or controlled substance test as directed pursuant to this policy.

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7.06.02 Prohibited Behaviors.

i) Tampering with a Required Test: An employee may not tamper with, adulterate, alter, substitute or otherwise obstruct any testing process required under this policy.

7.06.03 Mandatory Training for Commercial Drivers

The City shall provide all affected employees with copies of this policy and any other information as required by the federal regulations.

Each driver shall sign a receipt upon having been provided the above referenced information including a copy of this Plan and accompanying procedures for drug testing.

Managers and supervisors designated to determine whether reasonable suspicion exists to require a commercial driver to undergo alcohol or drug testing will receive at least 60 minutes of training on alcohol and 60 additional minutes of training on substance abuse. The training will convey the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

7.06.04 Drug and Alcohol Testing Program for Commercial Drivers

a) Pre-employment Drug Testing: All individuals who are covered by this policy must pass a drug test as a post-offer condition of employment.

b) Reasonable Suspicion Testing: Employees subject to this policy shall submit to a drug and/or alcohol test when the City of Tumwater reasonably suspects that this policy (except the prohibitions against unauthorized possession, transfer or sale of alcohol) may have been or is presently being violated. A referral for testing will be based on contemporaneous, articulable observations. Such referrals

7.06.04 Drug and Alcohol Testing Program for Commercial Drivers

will be made by supervisory personnel who have received training concerning the signs and symptoms of drug and alcohol use.

Alcohol testing for reasonable suspicion may be conducted at any time during working hours. If removed from duty based on reasonable suspicion of alcohol use and an alcohol test is not administered within eight hours, the employee will not be allowed to perform or continue to perform covered functions until:

1) An alcohol test is administered (normally within 2 hours of the determination of reasonable suspicion) and the driver's breath alcohol concentration measures less than 0.02; or

2) 24 hours have elapsed following the determination that there is reasonable suspicion to believe that the employee has violated this policy concerning the use of alcohol.

c) Post-Accident Testing: Following an accident (as defined above) involving a commercial vehicle, the driver is required to submit to alcohol and drug tests when the driver receives a citation under state or local law for a moving traffic violation, or where a fatality occurs as a result of the accident. Testing should occur as soon as possible, but may not exceed eight hours after the accident for alcohol testing and 32 hours after the accident for drug testing.

A driver who is subject to post-accident testing must remain readily available for such testing and may not take any action to interfere with testing or the results of testing. Drivers who do not comply with post-accident testing requirements will be considered to have refused to submit to testing and will be subject to sanctions for refusal to test as provided in this policy.

7.06.04 Drug and Alcohol Testing Program for Commercial Drivers

While awaiting a post accident test, the driver will be in a paid status.

d) Random Testing: Employees covered by this policy will be subject to random, unannounced alcohol and drug testing.

e) Return to Duty Testing: Employees who have violated this policy, including those who have tested positive on a drug or alcohol test, and who under the discipline policy are allowed to return to work, must test negative prior to being released for duty. A return to duty test following alcohol misuse shall be less than an alcohol concentration of 0.02.

f) Follow-up Testing: An employee who is referred for assistance related to alcohol misuse and/or use of drugs is subject to unannounced follow-up testing for a period as directed by a Substance Abuse Professional. The number and frequency of follow-up testing will be based on the recommendation of the Substance Abuse Professional, but will not be less than six tests in the first 12 months following the employee's return to duty.

g) Re-Tests: Employees who test positive for drugs may request a second test of the untested portion of the split sample within 72 hours of notification of a positive test result by the Medical Review Officer.

h) Test Results: Test results will be expressed as positive or negative based on detection of levels of alcohol or controlledsubstances as established by federal Department of Transportation standards.

7.06.04 Drug and Alcohol Testing Program for Commercial Drivers

i) Challenges to Test Results: An employee who wishes to challenge a positive drug test must do so within 72 hours notification of the positive result. The employee must notify the City's medical review officer that he/she wishes to challenge the test and must pay for the retest. The retest must be processed at a DHHS-NIDA-certified laboratory. If the MRO certifies that the second drug test is negative, an employee will be reimbursed for the cost incurred including any lost compensation.

7.06.05 Refusal by a Commercial Driver to Submit to an Alcohol or Drug Test: Refusal to submit to a directed test is a prohibited behavior in section 7.06.02(h) which shall subject the employee to the consequences outlined in section 7.06.07. No employee shall refuse to submit to an alcohol or drug test as directed under this policy. A refusal to submit shall include:

a) Failure to provide adequate breath for testing without a valid medical explanation after an employee has received notice of the requirement for breath testing in accordance with established procedures;

b) Failure to provide adequate urine for controlled substances testing without a valid medical explanation after an employee has received notice of the requirement for urine testing in accordance with the procedures manual; and/or

c) Engaging in conduct that obstructs the testing process.

7.06.06 Securing Information from Previous Employers: If a person is to be hired into a position subject to this policy and during the previous two years has worked as a driver of a commercial vehicle, that person must authorize a request of all employers of the driver within the past two years of information on the following: a) positive alcohol or drug tests; or b) refusal to be tested.

7.06.06 Securing Information from Previous Employers:

The City of Tumwater will make a good faith effort to obtain and review the information from prior employers within 14 days of the person performing safety sensitive duties for the first time.

If the information obtained from previous employer indicates either a positive test or that a refusal to be tested occurred within the past two years, that person will not be permitted to drive commercial vehicles unless subsequent information indicates that an evaluation by a Substance Abuse Professional was made and return to duty testing was administered.

7.06.07 Consequences for Commercial Drivers of Engaging in Prohibited Behaviors and/or of Positive Drug or Alcohol Test Results:

Employees found to have engaged in prohibited behavior as defined in Section 7.06.02 or to have tested positive for drugs shall be subject to discipline up to and including termination from employment.

The following provisions apply to those employees who are not terminated for their policy violations:

a) If an employee tests positive for drugs or has an alcohol test that indicates a breath alcohol level of .04 or greater from a random, reasonable suspicion or post-accident test, or engages in prohibited conduct as outlined in Section 7.06.02, the employee will be immediately removed from duties requiring the driving of a commercial vehicle. The employee will not be permitted to return to work unless he/she:

7.06.07 Consequences for Commercial Drivers of Engaging in Prohibited Behaviors and/or of Positive Drug or Alcohol Test Results:

1. has been evaluated by a qualified Substance Abuse Professional; and,

2. if recommended by a Substance Abuse Professional, has properly followed any rehabilitation prescribed; and,

3. has a verified negative result on a return-to-duty alcohol (<0.02) and/or drug test.

Upon completion of a recommended rehabilitation program and successful return to work, an employee will be subject to follow-up random testing as recommended by the Substance Abuse Professional, with a minimum of six such unscheduled tests within the first twelve months of returning to duty.

b) Employees with a breath alcohol concentration of at least 0.02 but less than 0.04 and who have not engaged in any other prohibited conduct, shall be removed from the duty requiring the driving of a commercial vehicle for at least 24 hours. The time away from work shall be charged to vacation, sick leave, or leave without pay at the employee's option, and will be considered an unscheduled absence.

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7.07 Procedures for Drug or Alcohol Testing of City Employees other than Commercial Drivers

7.07.01 Supervisory Responsibility. If a supervisor has reasonable grounds to believe that an employee is under the influence of alcohol or drugs when reporting for work or during the work shift, the supervisor must verify the employee's condition and relieve the employee of his/her duties until the matter is resolved.

7.07.02 Observation. If a supervisor observes an employee who seems to be under the influence of alcohol or drugs, he/she should, if practical, seek the opinion of at least one additional supervisor, the Administrative Services Director or the department manager.

For purposes of this policy, reasonable grounds to believe that an employee is impaired and/or under the influence of drugs or alcohol include a combination of various factors such as slurred speech, red eyes, dilated pupils, incoherence, unsteadiness on feet, smell of an alcoholic beverage or marijuana emanating from the employee's body, inability to carry on a rational conversation, carelessness, erratic behavior, inability to perform the job, or other unexplained behavioral changes. The supervisor shall document these observations in writing and forward his/her report to the department manager within 24 hours of the incident. A copy of this document will be provided to the employee upon request.

7.07.03 Referral for Testing. If the supervisor determines that reasonable grounds exist to require a drug test, the supervisor shall direct the employee to accompany the supervisor to a testing site designated by the City for a drug screening and blood alcohol test to determine fitness for duty. The department manager shall be notified before the supervisor and employee leave city premises for the drug testing site. The City Administrator shall be notified of the incident, in writing, within 48 hours.

7.07.03 Referral for Testing

The employee should be informed that the tests will be conducted on city time, paid for by the city, and are part of his/her job responsibilities. The employee should be informed that refusal to take the test may result in disciplinary action up to and including dismissal. Additionally, an employee who refuses to take the test should be informed that he/she will be sent home without pay for at least the rest of the work day.

Employees will be required to authorize release of test results to the City's designated test services provider and to the employer. Refusal to authorize release of test results to the city may result in disciplinary action up to and including dismissal. The test services provider will contact the Administrative Services Director with the results.

The supervisor should accompany the employee back to the worksite pending the results. The supervisor shall notify his/her department manager immediately upon returning to the work site.

Tests which are found to be positive will be verified by an additional test. The City's designated test services provider will ensure adequate chain-of-custody for sample collection and testing.

7.07.04 Test Results. Employees who test positive shall be considered unfit for work and shall be relieved from duty that day. It is the responsibility of the Administrative Services Director to notify the employee. The employee should not be allowed to drive to the hospital. The employee shall be advised not to drive home. Employees who comply with the testing procedures of this policy will be on paid leave on "City Business" until the status of the tests and the circumstances surrounding the impairment are determined.

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7.07.05 Discipline / Treatment. If tests determine that the employee is under the influence of alcohol or drugs on the job, the Administrative Services Director shall contact the supervisor within 24 hours of test results notification. The Administrative Services Director and/or the supervisor shall, within 48 hours of receiving the test results, contact the employee to provide the employee an opportunity to respond to the test results.

Following the employee's response opportunity, the Administrative Services Director and the supervisor shall meet to discuss the appropriate level of disciplinary action for recommendation to the department manager. The degree of disciplinary action depends on the factual circumstances and the severity of the infraction.

It is the responsibility of the Administrative Services Director, in conjunction with the immediate supervisor, to evaluate the circumstances and facts thoroughly and objectively.

Any disciplinary action shall be in accordance with provisions of the City Personnel Policies and Procedures Manual. If discipline is necessary, the discipline to be taken, shall be recommended by the department manager to the City Administrator. The City Administrator shall then act on the recommendation.

7.07.06 Sale or Transfer of Drugs. A supervisor who observes an employee using alcohol or drugs; or an unauthorized employee selling, purchasing, transferring, or possessing alcohol or drugs while on the job should take prompt action. Observations about the employee's behavior, as well as the discussions and contacts with him/her, should be documented as soon as practicable. The supervisor should report such observations to his/her own supervisor and appropriate disciplinary action should be taken in accordance with the procedures outlined in this policy.

In cases involving the unauthorized sale, purchase or transfer of illegal drugs or controlled substances at the workplace, the supervisor is required to contact the Tumwater Police Department immediately.

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7.08 Confidentiality and Record Retention:

All records related to drug and alcohol testing will be maintained in a secure location with controlled access. These records will be kept separate from records pertaining to all other employees.