Drug Testing Policy
Adopted by the City Council of Saco: December 6, 2004

A. Policy Statement

The procedures as set forth in this policy shall be the methodology for drug/alcohol testing for the City’s non-union employees. It is prohibited to use, consume, possess or sell alcoholic beverages, illegal drugs or drugs or controlled substances not medically authorized, or any other substances which impair job performance or pose a hazard to the safety and welfare of the employee, the public or other employees on City property or on City time or City business. Employees are prohibited from reporting to work, working or being on City property (1) with any illegal drugs or drugs or controlled substances not medically authorized in his/her system; or (2) under the influence or impaired by alcohol, illegal, drugs or controlled substances not medically authorized, or any other substances which impair job performance or pose a hazard to the safety and welfare of the employee, the public or other employees.

Studies indicate that the use and misuse of alcohol or drugs, whether prescribed or illegal impairs the ability of an employee to perform assigned duties, particularly those involved in safety sensitive operations, and may endanger the employee, co-workers, the public, the City, and public and private property. The City seeks to prevent employees from using alcohol and drugs when the use of such is illegal, or in any way endangers the City or the public.

The City has a strong commitment to the health, safety and welfare of its employees, their families, its citizens and the public at large. The City takes pride in its employees who perform critical duties in a professional and effective manner with safety foremost in their mind. This policy is intended to strengthen our commitment to a safe workplace.

B. Definitions

Set forth below are several key terms used throughout this policy. For everyone’s convenience, summary definitions of these terms have been provided. However, the complete definitions contained within the applicable laws and regulations will always control the ultimate interpretation of these terms and their use in this policy.

Adverse Side Effect: Physical effect caused by the use and misuse of alcohol or drugs, whether prescribed, over the counter (OTC) or illegal, which impairs the
ability of an employee to perform the assigned safety sensitive function(s) in a
safe and prudent manner.

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol or other low
molecular weight alcohols including methyl and isopropyl.

Alcohol Use: The consumption of any beverage, mixture, or preparation,
including any medication, containing alcohol.

Alcohol and Drug Testing: A generally accepted and proven test methodology or
methodologies as recommended by the Maine Substance Abuse Testing Law.
This test method determines whether an individual has ingested or otherwise
used the substance in question within a period of time before the test.

Applicant: A person who has applied for a position with the City of Saco,
including past employees eligible for rehire.

Breath Alcohol Technician (BAT): Professional trained and certified in the use of
an evidential breath-testing device (EBTD).

Confirmation Test – Alcohol: A second test, following a screening test with a
result of 0.02 or greater that provides quantitative data of alcohol concentration.

Confirmation Test – Controlled Substances (Drugs): A second analytical
procedure to identify the presence of a specific drug or metabolite which is
independent of the screen test and which uses a different technique and
chemical principle from that of the screen test.

Drugs: Refers to the following controlled substances: Amphetamines, Cocaine,
Opiates, Phencyclidine (PCP) and THC (Marijuana), and any and all illegal
drugs.

Employee Assistance Program (EAP): A confidential out-of-house counseling
program available to all City employees.

Medical Review Officer (MRO): Physician responsible for reviewing all tests
results for confirmation prior to communicating same to the employer. The MRO
must protect the confidentiality of the individual involved.

Negative Test - Alcohol: Test result of less than 0.02 concentration of alcohol.

Negative Test – Controlled Substance (Drug): Test result that does not indicate
the presence of illegal controlled substance(s).

IDA: The National Institute on Drug Abuse.

Positive Test – Alcohol: Test result that meets 0.02 or greater concentration of
alcohol.
Positive Test – Controlled Substance (Drug): Test results that indicate the presence of illegal controlled substance(s).

Legal Drug: Prescription and over-the-counter medications.

Program Administrator: The individual assigned by the City to administer and enforce this policy.

Reasonable Suspicion: A belief by the supervisor or other management personnel based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The observations may include indications of the chronic and withdrawal effects of controlled substances. Circumstances, which constitute a basis for determining “reasonable suspicion”, may include, but not be limited to:

1. A pattern of abnormal or erratic behavior;
2. Information provided by a reliable and credible source;
3. Direct observation of drug or alcohol use;
4. Presence of the physical symptoms of drug or alcohol use (i.e. glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes);

Refusal: Refusal to submit and properly participate in a required alcohol and/or controlled substance test is defined as:

1. Failing to provide adequate breath for testing without a valid medical explanation.
2. Failing to provide adequate urine for controlled substances testing without a valid medical explanation.
3. Engaging in conduct that clearly obstructs the process.
4. Failing to report immediately to the identified testing site, once notified, but in no case, more than two (2) hours after notification;
5. Failing to follow proper instructions or participate in the required testing procedure(s).

Safety Sensitive Function: The operation of any City vehicle or machinery or any other activity, which might be impaired by the use alcohol or drugs.

Substance Abuse: The use of alcohol, prescription or over the counter drugs, any of which impairs the ability of an employee to perform the job safely and
effectively, or the use of illegal drugs or other controlled substances without a valid prescription.

Substance Abuse Professional (SAP): 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 controlled substances related disorders.

Third Party Administrator (TPA): Organization selected by the City to provide comprehensive drug and alcohol testing and support services.

C. Testing (Third Party) Administrator

The City will enter into an agreement with a Third Party Administrator (TPA) who can provide all the services necessary to administer the drug and alcohol testing program.

D. Program Objectives

To deter and detect the illegal and unauthorized presence or use of alcohol and controlled substances by employees.

To provide the employees with access to confidential counseling and/or rehabilitation programs.

To reduce opportunities for accidents and injuries and prevent property damage.

To improve productivity, ensure quality and to minimize employee absenteeism and tardiness.

To create a safer work environment for the employees.

E. Scope of Program

This policy will apply to all City employees not covered by a Collective Bargaining Agreement.

F. Responsibility

It is the responsibility of the City to see that supervisors are properly trained and that employees have notice of and is familiar with these drug and alcohol policies and procedures.

It is the responsibility of City supervisors to abide by this policy to assure that alcohol and drug tests are conducted when necessary and appropriate.
It is the responsibility of each employee covered by this policy to abide by this policy and be knowledgeable of its requirements. All unit members must be in compliance with this policy at all times while working for the City.

G. Substance Tested

When chemical drug and alcohol screening is required under the provisions of this policy and other applicable laws and regulations, a breath test and/or urinalysis test will be given to detect the presence of the following drug groups:

1. Alcohol (ethyl)
2. Amphetamines
3. Cocaine
4. Opiates
5. Phencyclidine (PCP)
6. THC (Marijuana)
7. Any other illegal drugs

H. Legal Drug Use

Employees covered by this policy may use legally prescribed or available (over-the-counter) drugs provided:

1. The drugs or their generic equivalent have been prescribed to the employee by an authorized medical practitioner or is a legally available medication.

2. An employee who is directed by an authorized medical practitioner to use the drugs shall ask such practitioner whether the use will affect the employee’s ability to perform safety-sensitive functions.

3. Employees do not consume the drugs more often than is prescribed to the employee by the employee’s physician and/or according to the terms of the directions provided on the container of the drug or medication.

4. Any employee who has been informed that a drug could cause adverse side effects while performing safety-sensitive functions shall inform his/her supervisor prior to performing such functions. The City at all times reserves the right to have a licensed physician determine if use of a drug by an employee produces an adverse effect. If such finding is made, the City may notify the employee’s physician (with permission of the employee) to determine if other medications are available which would not
affect the employee’s ability to work safely. If appropriate substitute drug is not available, the City may have to limit the employees work activities to non-safety sensitive duties.

I. Conducted Prohibited

The following conduct or behavior is determined to be unacceptable and therefore is prohibited under this policy. Violation shall be cause for disciplinary action.

1. Reporting to or remaining on duty with a blood/alcohol concentration of 0.02 or greater.

2. Possessing alcohol on duty except in the lawful performance of duty

3. Use of alcohol on duty, except in the lawful performance of duty.

4. Any use of alcohol within a four (4) hour period immediately preceding the time at which the employee reports to duty.

5. Refusal to submit and properly participate in a required alcohol and/or drug test.

6. Reporting to or remaining on-duty after having used, while using, or while impaired by controlled substance, except when such use is under the direct orders of a physician and the physician has informed the employee in writing that the use will not affect the employer’s ability to safely perform safety-sensitive functions. In the case of a written warning by the physician, the employee will report this to his/her supervisor.

7. Reporting to, or remaining on, duty after testing positive for any drugs.

8. Reporting to, or remaining on duty when impaired by over the counter drugs.

J. Test Notice

The City shall provide written notice of its drug and alcohol testing policy to all employees. The notice shall contain the following information:

1. The need for drug and alcohol testing;

2. The circumstances under which testing will be required;

3. The procedures for confirming an initial positive drug test result;

4. The consequences of a confirmed positive test result;
5. The consequences of refusing to undergo a drug and alcohol test;
6. The right to explain a positive test result;
7. The availability of drug abuse counseling and referral services.

K. Test Consent

Before a drug and/or alcohol test is administered, applicants and employees will be asked to sign a consent form authorizing the test and permitting the release of the results to those City personnel with a need to know.

L. Refusal to Test

Failure to submit to testing when required to do so will be considered a verified positive test and the employee will have to follow the procedures outlined in this policy.

Employee Refusal to Consent: An employee who refuses to consent to a drug and alcohol screening test when reasonable suspicion of drug or alcohol use has been identified, is subject to disciplinary action up to and including termination. The reason(s) for the refusal shall be considered in determining the appropriate disciplinary action.

M. Testing Techniques

Drug Testing: Drug testing is accomplished by analyzing the employee’s urine specimen (urinalysis). Specimens will be collected at an off-site facility selected by the City. The testing facility must assure that specimen collection be done in a dignified, professional and confidential manner. Once the employee provides a urine specimen, it is sealed and labeled by a certified/authorized agent of the testing facility. A chain of custody document is completed in the presence of the employee, and the specimen is shipped to a NIDA certified laboratory.

All urinalysis procedures are required to include split-specimen techniques. Each urine sample is sub-dividend into two containers and labeled as primary and split specimens. Both specimens are forwarded to the laboratory. Only the primary specimen is used in the urinalysis. In the event of a confirmed positive test result, the split specimen may be used for a second confirmation test if requested by the employee.

During testing an initial screening test is performed. If the test is positive for drugs, a confirmation test will be performed for each individual drug using gas chromatography/mass spectrometry (GC/MS) analysis. This test ensures that prescription drugs are not reported as positive results.
If the analysis of the primary specimen results in a confirmed positive test, the employee may within 72 hours request that the split specimen also be tested. The second test is at the employee’s expense unless the result is negative, in which case the City would reimburse the employee.

All test results are reviewed by a physician Medical Review Officer (MRO) prior to results being reported to the City. In the event of a positive test result, the MRO will first contact the employee and conduct an interview to determine if there are any alternative legitimate reasons for the positive result (such as prescription drugs). If the MRO determines there is a medical explanation for the presence of drugs, the results will be reported negative.

N. Alcohol Testing: Alcohol testing will be conducted using an evidential breath-testing (EBT) device. The breath test must be performed by a certified Breath Alcohol Technician (BAT).

Two (2) breath tests are required to determine if an individual is over the alcohol concentration limit permitted. Any result of less than 0.02 concentration is considered a negative result. Any result of greater than 0.02 requires a confirmation test. A confirmed test of 0.02 or greater is considered a positive result.

O. Supervisor Training

The City shall provide training to assist supervisory personnel in identifying drug and alcohol use among employees.

P. Testing Required

Pre-Employment Testing:

1. When any City official with hiring authority makes an offer of employment to an applicant for City employment, the offer will be conditional upon test results. He/She will notify the test facility and arrange for pre-employment testing of the applicant. A drug and alcohol-screening test will be conducted at the test facility.

2. The applicant shall be given a copy of this policy, a consent form to complete, sign and take to the test facility, and will be informed of the test appointment.

3. The MRO will notify the applicant of the test results, and if positive, will give the applicant an opportunity to discuss same prior to release of the information to the City.

4. After the City’s Personnel Officer has received the test results from the MRO or medical facility, he/she will not inform the hiring department of the
test results. This disclosure from the MRO will state whether the test is positive or negative, and if positive which substances were detected, and shall be kept confidential by the City.

5. The Personnel Officer will inform the hiring department head whether or not the applicant is eligible for employment. All test results shall be kept confidential within management.

Q. Reasonable Suspicion Testing:

A supervisor may upon reasonable suspicion and after at least attempting to consult with a higher-ranking supervisor, ask any on-duty employee to submit to an immediate alcohol and drug test. The initiating supervisor's supervisor should be notified as soon as possible.

The supervisor shall complete an “Observed Behavior – Reasonable Cause Record” and submit to his supervisor within 24 hours of the observed behavior or before the results of the controlled substance test are released, whichever is earlier.

The employee’s supervisor shall immediately advise the Department Head or designee of the "determination of reasonable suspicion".

Such notification shall be conducted in a non-slanderous manner noting, “there has been a determination of reasonable suspicion regarding employee X.”

The employee shall be given a “Test Consent Form” to complete and sign.

The supervisor or another supervisor or management employee will immediately take the employee to the appropriate facility for testing.

If the employee is not able to be taken to the appropriate facility for testing, the supervisor shall immediately telephone the agency (any time day or night) and/or call personnel from the primary medical facility and request that they go to where the employee has been taken to acquire the drug and alcohol test samples.

The employee maybe immediately removed from duty with no reduction in pay or benefits, and assisted in getting home after the drug and alcohol test.

When reasonable suspicion is the grounds for requiring a drug/alcohol test, the employee shall be placed on administrative leave (with no reduction in pay or benefits) until the test results are available and a preliminary administrative review has been conducted.

A drug and alcohol test for reasonable suspicion will include the urinalysis test and a breath test.
The laboratory will give results from the alcohol and drug screen test to the MRO who after confirmation, will forward to the City’s Personnel Officer. Return-to-Duty Testing: Any employee returning to duty following a confirmed positive test must be subjected to a return-to-duty test. The test must show a verified negative result prior to the employee returning to duty.

R. Follow-up Testing:

An employee returning to work following a confirmed positive test and period of counseling/rehabilitation will be subject to unannounced follow-up testing for a period of at least 12 months and not more than 60 months. The Substance Abuse Professional (SAP) will recommend the frequency and follow-up testing. A mandatory minimum of 6 tests within the first 12 months is required.

Follow-up tests may be used to determine whether or not the drug is still being used, or if alcohol abuse is still present.

Time involved in reporting to testing and meeting follow-up test requirements will be considered as on-duty time.

S. Applicant Testing

All applicants for employment shall be required to pass a drug and alcohol test as a post-offer prerequisite to employment.

All recruitment announcements will disclose that alcohol and drug tests will be required of the successful applicant.

Employment by the City shall not be deemed to be final.

Nor shall a prospective employee have a right to accept any offer or suggestion of an offer of employment until such time as a drug test evaluation has been received and cleared by the Personnel Officer.

T. Employee Testing

Supervisors are required to document the specific facts, symptoms, or observations, which formed the basis that reasonable suspicion existed or did not exist to warrant the testing of an employee. This documentation shall be forwarded to the appropriate Department Head and the Personnel Officer.

Employees having had a confirmed positive test will be subject to return-to-duty testing and follow-up testing.

U. Confirmation of Chemical Test Results
An employee whose drug test yields a positive result, confirmed by the MRO, may be given a second test. The second test shall use a portion of the same test sample withdraw from the employee for use in the first test.

If the second test confirms the positive test result, the employee shall be notified of the results by the MRO, who will offer the employee an opportunity to discuss the results. The MRO will then notify in writing the City’s Personnel Officer.

V. Consequences of a Confirmed Positive Test Result

Applicants: Applicants will be denied employment with the City if their initial positive test results have been confirmed. Applicants shall be informed in writing if they are rejected on the basis of a confirmed positive test result.

Employees: If an employee’s positive test result has been confirmed, the City will remove the employee from the safety sensitive functions and refer the employee to the City’s Employee Assistance Program (EAP). The EAP will provide the employee with counseling and a referral to the Substance Abuse Professional (SAP). The SAP will arrange for up to 6 months in a rehabilitation program designed to enable the employee to avoid future substance abuse. If the employee chooses not to participate in a rehabilitation program, they will be subject to disciplinary action up to and including termination in accordance with the collective bargaining agreement and the drug and alcohol abuse policy. No disciplinary action may be taken against an employee who voluntarily participates in a rehabilitation program. Thereafter, the employee must refrain from violating the City’s drug and alcohol abuse. In the event of a subsequent violation of the City’s drug and alcohol policy, discipline, up to and including termination may be imposed.

1. Second Confirmation Test:

   The applicant or employee may request from the MRO a second confirmation test of the sample within 72 hours of notice that the first test was positive.

   The applicant or employee must pay the cost of the second confirmation test in advance. If the test is negative, the City shall reimburse the applicant or employee for the cost of the test.

   The second confirmation test will be performed by a NIDA certified Laboratory selected by the MRO.

2. Second Offense:

   Any subsequent second offense positive test will result in immediate suspension without pay and possible termination after being notified of a second confirmed (MRO certified).
3. Discussions with Employees

The applicant will be provided an opportunity to meet with the MRO to comment and provide input regarding the results of a positive test and seek a second confirmation test as provided above.

In the case of a second offense, if an employee’s positive test result has been confirmed by the MRO, the employee is entitled to a pre-disciplinary hearing, in accordance with the collective bargaining agreement, before any disciplinary action resulting in suspension or discharge may be taken by the City.

4. Employee Assistance Program (EAP) Referral

Upon the first confirmed determination that an employee is under the influence of drugs or alcohol, the City will refer the employee to an Employee Assistance Program (EAP) for assessment, counseling, and referral for rehabilitation. The employee or his/her insurance carrier will pay for counseling and/or rehabilitation services.

5. Confidentiality of Test Results

All information from an employee or applicant’s drug and alcohol test is strictly confidential. Disclosure of test results to any person, agency or organization is prohibited unless written authorization is obtained from the employee. The results of a positive drug test shall not be released by the MRO to the City until confirmed. The records of unconfirmed positive test results and negative test results should be destroyed by the testing laboratory. All positive test results will be maintained by the MRO, and reported to the City, where they will be kept on file.

Exceptions to these confidentiality provisions are limited to a decision maker in arbitration, litigation, or administrative proceedings arising out of a positive drug or alcohol test or other violation of these rules.

6. Privacy in Chemical Drug Testing

Urine samples shall be provided in a private rest room stall or similar enclosure so that employees may not be viewed while providing the sample. Employees may be required to disrobe and will be given hospital gowns to wear while they are providing test samples in order to ensure that there is no tampering. Street clothes, bags, briefcases, purses and other containers may not be carried into the test area. The water in the commode, if any, shall be colored with dye to protect against dilution of test samples.
An employee may waive the right to privacy and provide the urine sample in the presence of witnesses (of the same gender) and not be required to disrobe and wear a hospital gown.

7. Laboratory Testing Requirements

All chemical drug and alcohol testing of employees and applicants shall be conducted at medical facilities or laboratories selected by the City or a Third Party Administrator. To be considered as a testing site, a medical facility or lab must submit in writing a description of the procedures that will be used to maintain test samples. Factors to be considered by the City or its Third Party Administrator in selecting a testing facility include in addition to NIDA certification:

a. Testing procedures which ensure privacy to employees and applicants consistent with the prevention of tampering;

b. Methods of analysis which ensure reliable test results, including the use of gas chromatography/mass spectrometry to confirm positive test results;

c. Chain-of-Custody procedures which ensure proper identification, labeling and handling of test samples; and

d. Retention and storage procedures, which ensure reliable results on confirmatory tests of original samples.