

**To the Mayor and Members of the City Council****November 1, 2022**

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SUBJECT: DRUG TESTING POLICY AND CBD OIL ADVISORY

This informal report will summarize City of Fort Worth's existing Drug- and Alcohol-Free Workplace policy, testing requirements, and CBD Oil Advisory issued by the Human Resources (HR) Department. The following information applies to general employees and civil service. Consistent with the Drug-Free Workplace Act and the federal regulations issued by the US Department of Transportation (DOT), the City's Personnel Rules and Regulations (PRRs) for general employees in Section 13.8 defines the rules for the City's drug and alcohol program. The PRRs that apply to civil service employees contain similar provisions regarding drug and alcohol testing. Below is a summary of the policy:

City employees are prohibited from possessing or consuming alcohol or illegal drugs in the workplace, or from being under the influence of illegal drugs or alcohol while on duty. The City requires drug testing of employees who operate commercial motor vehicles as regulated by DOT and safety-sensitive positions for public safety, workplace safety, and accountability. Safety-sensitive positions are positions in which duties may involve significant risk of injury to others, to the degree that a momentary lapse of attention could result in disastrous consequences. The City requires drug or alcohol testing of employees in the following situations:

- Pre-employment – Applicants and candidates for positions (involving promotions, demotions, and transfers)
- Random – Monthly random selection program for those in safety-sensitive or DOT positions
- Post-accident (vehicle only) - 1) if a fatality occurs as a result of the accident, 2) if the City driver receives a citation and a vehicle is towed, 3) if the City driver receives a citation and someone is transported via ambulance from the scene.
- Responsible Cause - Employees who, while on duty, exhibit symptoms of being under the influence of drugs or alcohol, as determined by a supervisor who is trained to recognize the symptoms

The controlled substances for which a test may be conducted are marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines/methamphetamines. In addition, the following are prohibited in the workplace or while on duty:

- Alcohol consumption in the workplace (e.g., office, on any City property, in a City vehicle or personal vehicle while on duty, worksite, etc.).
- Being under the influence of alcohol while on duty.
- The use, possession, distribution, dispensation, transportation, sale, or manufacture of illegal drugs that violate state and federal controlled substances acts.
- The illegal use of prescription medicines.
- Being under the influence of prescribed or over-the-counter medication on duty when the use causes impairment of job performance.

In October 2019, after the passage of Texas House Bill 1325 in June 2019 which legalized hemp-derived products, HR issued an advisory on the use of CBD (cannabidiol) oil. The advisory outlines that a City employee is prohibited from being under the influence of Tetrahydrocannabinol (THC) while working. While hemp-derived products ("hemp" cannabis plant containing no more than 0.3% of THC per dry weight) became legal in Texas in June 2019, the City prohibits employees from working while under the

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influence of THC, regardless of the source. Marijuana is a cannabis plant that contains more than 0.3% of THC per dry weight, and its use remains illegal in Texas and prohibited by City policy. CBD products are not currently regulated by the Food and Drug Administration (FDA) and may contain greater amounts of THC than what is advertised on the label. THC is the primary psychoactive component of marijuana and any product, including CBD products, with a concentration of more than 0.3% THC remains classified as marijuana, a Schedule I drug under the federal Controlled Substances Act and a violation of the City's and DOT regulations. Per DOT regulations 49 CFR Part 40, CBD use is not a legitimate medical explanation for a laboratory-confirmed marijuana-positive result (0.3% THC or greater) even if an employee claims they only used a CBD product. DOT and safety-sensitive employees must continue to comply with the underlying regulatory requirements for drug testing policies as specified in 49 CFR part 40.

Any City employee using any CBD product runs the risk that the product may contain more THC than allowed under the new Texas law and therefore, the use of that product, on or off duty, may violate the City's Drug-and Alcohol-Free Workplace policy.

If you have any questions, Dianna Giordano, Human Resources at (817) 392-7783 and Civil Service Director, are available.

David Cooke
City Manager