



ADMINISTRATIVE REGULATION

Effective Date: April 8, 2022

Administrative Regulation: 1-39

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Supersedes: April 8, 2022

Approved By: William H. Ashton II, Town Manager

Subject: **Random Substance Abuse Testing Program for Town Police Personnel**

I. Purpose

The purpose of this administrative regulation is to establish the policy and procedure for the administration of random, controlled substance testing of all employees of the town's police department. This administrative regulation outlines responsibilities and procedures relevant to screening of employees for drugs and safeguards the rights of department employees.

II. Policy

It is the policy of the Town of Herndon to maintain a safe work environment conducive to effective town government operations. All personnel, equipment, and operating practices are required to be consistent with the highest standards of health and safety.

The presence of drugs and alcohol in the workplace, and the influence of these substances on employees, is inconsistent with effective government. The Town of Herndon is committed to a drug and alcohol-free workplace to ensure the quality of its services to the public, and this commitment is imperative for the town's police department given the safety-sensitive nature of the department's work.

As a local government, the town has an obligation to hold the public's confidence and is entrusted with the health and safety of its citizens. The department has an obligation to protect the public by ensuring that its' employees are free from substance abuse and dependency and ensure that each employee's fitness for employment is not impaired by substance abuse.

The Town of Herndon requires all employees to report for work and remain in a condition to perform their duties free from the effects of alcohol or drugs.

The Town of Herndon prohibits the following for all employees prior to or during work time, which may cause impairment or observable signs of use while working:

1. Use, sale, purchase, or possession of alcohol or illegal and prohibited drugs and/or illegally obtained prescription drugs;
 2. Abuse of legal prescriptions or over-the-counter medications;
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3. Unauthorized sale, purchase, transfer, or manufacture of prescription drugs; and
4. Presence at work under the influence of any drugs or alcohol.

III. Definitions

Unless otherwise specifically provided, or unless otherwise clearly required by the context in which such words or phrases are used, the words and phrases defined below shall have the meaning indicated when used throughout this administrative regulation:

- A. Drug Test or Drug Screening – An assessment, including providing the necessary sample by the employee to be tested, for the detectable presence of drugs that may be determined to reduce work safety or work efficiency.
 - B. Illegal/Prohibited Drugs - Any controlled substance as defined by 21 U.S.C. Section 802; includes all substances listed on Schedules I through V as they may be revised by 21 C.F.R Section 1308.
 - C. Positive – With respect to the results of a drug test, positive means a finding of the presence of a drug or a drug metabolite in the specimen of an employee at or above laboratory cutoff levels.
 - D. Negative – With respect to the results of a drug test, negative means a test result that does not show a finding of the presence of a drug or a drug metabolite in the specimen of an employee at or above laboratory cutoff levels.
 - E. Pass a Drug Test – The result of the drug test is negative. The test either:
 1. showed no evidence or insufficient evidence of a prohibited drug or drug metabolite; or
 2. showed evidence of a prohibited drug or drug metabolite, but there was a legitimate medical explanation for the result as determined by a doctor.
 - F. Substance Abuse - The use of any illegal and/or prohibited drug, unprescribed medication or the misuse of prescription medication. For the purposes of this policy, use of an illegal and/or prohibited drug is evidenced by a measurable quantity of an illegal and/or prohibited drug in the employee's specimen at or above laboratory cutoff levels.
 - G. Medical Review Officer (MRO) – A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving and reviewing laboratory drug testing results, who
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has extensive knowledge regarding substance abuse and is certified to interpret and evaluate positive drug test results when interviewing the employee.

IV. Random Testing

A designated percentage of employees will be subject to substance abuse testing each year. Selection of employees to be tested shall be done by a scientifically validated, random method which ensures that each employee has an equal chance of being selected each time that selections are made.

- A. Random tests will be conducted periodically on an unannounced basis throughout the calendar year.
- B. An employee selected for random testing will be notified of selection for testing and will be required to report to the collection site immediately to provide an adequate sample for testing. The employee shall remain at the site until called. The time spent in the testing process shall be recorded as regular hours.
- C. If an employee selected for random testing is on leave or other status that would prevent testing, an alternate employee may be chosen by the same random method.
- D. An employee who refuses to provide their sample, fails to proceed directly to the collection site, does not cooperate with the testing process or comply with the collector's instructions, fails to remain at the testing site until the testing/collection process is complete, or who attempts to tamper with or provides an adulterated sample shall be deemed to have refused to test and will be relieved of duty and placed on administrative leave while an investigation is conducted. Such refusal to test or other such tampering with a test will be considered equivalent to a positive test result. The employee will be subject to disciplinary action, up to and including dismissal.
- E. Random tests may be conducted immediately before, during or immediately after the employee's scheduled shift. Employees subjected to random testing will be considered engaged to work during the time spent taking a drug test and will be compensated for such time accordingly.

V. Testing Procedures

The primary testing location will be 397 Herndon Parkway, Herndon Police Department. The Town of Herndon Human Resources Department reserves the right to designate an alternative testing location on an as needed basis. Upon entering the test location, the employee shall be asked to provide positive photo identification to the technician or be identified by their

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accompanying supervisor. The employee and the technician will complete the required forms distributed at the test site and follow required testing procedures.

A certified technician will perform the collection of urine samples for drug testing and will follow established chain-of-custody protocols and documentation.

Providing incomplete information, engaging in conduct that obstructs the testing process or failing to sign the required certifications shall be regarded as a refusal to take the test and shall constitute grounds for disciplinary action.

A. Controlled Substances Testing

1. Controlled substance testing will be conducted as defined by 21 U.S.C. Section 802; includes all substances listed on Schedules I through V as they may be revised periodically by 21 C.F.R Section 1308.
2. Under these regulations, all testing will be conducted from urine specimens administered by qualified contractor personnel. An employee subject to testing under this policy will be permitted to provide specimens in private.
3. Established chain of custody protocols shall be followed and a chain of custody form will be completed and will accompany the specimen to the lab.

If the employee is unable to provide the specified quantity of urine, the employee shall drink not more than 40 ounces of fluid and given a maximum of two hours to provide another sample. If a complete sample still cannot be provided, the employee will return to the work site but will not be permitted to return to active duty until the town has consulted with the Medical Review Officer (MRO).

The information about the incomplete test will be sent to the MRO. The designated employer representative (DER) will consult with the MRO regarding referral of the employee for a medical evaluation to determine if the inability to provide a specimen is genuine. If the evaluation determines that the inability to provide a specimen is not genuine, then he/she will report the findings to the DER. This will be treated as a refusal to test.

B. Controlled Substances Test Results

1. If the result of the test is negative, the results will be forwarded to the DER who will notify the employee of the negative results of the test.
 2. If the result of the test is POSITIVE (as defined), a confirmatory test will be performed on the same specimen.
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3. If the confirmatory test is also positive, the laboratory will forward positive results to the MRO for review.
 4. The MRO shall review and interpret confirmed POSITIVE test results. The MRO shall attempt to notify the employee of the positive test result and attempt to conduct a phone interview with the employee to determine if there is legitimate medical justification for the laboratory's results. If the sample is suspected of adulteration, it will be treated the same as a positive result.
 5. The MRO shall afford the employee the opportunity to discuss a POSITIVE test result with the MRO before reporting the result to the DER.
 6. If the MRO determines that there is a legitimate medical explanation for a positive test result, the MRO shall report the results as negative.
 7. After contacting the employee, the MRO shall provide the DER with the following information:
 - a. The controlled substance test being reported;
 - b. The name of the employee for whom the test results are being reported;
 - c. The date of the test collection;
 - d. The identities of the persons or entities performing the collection, analyzing of the specimens, and serving as the MRO for the specific test; and
 - e. The verified results of a controlled substance test, either positive or negative, and, if positive, the identity of the controlled substance(s) for which the test was verified positive.
 8. If the MRO is unsuccessful in their attempts to contact the employee, the MRO shall report the result to the DER as non-contact positive. The DER shall direct the employee to contact the MRO before returning to duty or within twenty-four hours, whichever is earlier.
 9. If the employee contacts the MRO with legitimate prescription information, the MRO may determine that the test result can be changed to negative. To the extent THC is part of the random drug testing panel, if the employee tests positive for THC and claims it is due to the use of CBD oil, the employee must show proof of the (i) employee's valid written certification issued by a practitioner for the treatment or to
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eliminate the symptoms of the employee's diagnosed condition or disease pursuant to Virginia law; (ii) specific product used and obtained; (iii) and a receipt showing the date it was lawfully purchased. Employees are cautioned to use only independent, accredited, third-party lab tested CBD oil to comply with law.

10. The DER will notify the Town's Chief of Police if the test results are positive. If a positive result is confirmed, procedures in Section VI, Positive Test Results, shall be followed. If the MRO determines that there is a legitimate medical explanation for a positive test result, the MRO shall report the results as NEGATIVE.

VI. Positive Test Results

If a test result is positive, the employee may be assigned to an administrative position or placed on paid administrative leave until an investigation is conducted and a determination based on an individualized assessment is made regarding discipline, medical treatment, or both.

1. If a positive drug test is not the result of a prescribed medication and the results of the confirmation test are positive for a controlled substance or drug as defined, the Chief of Police will be notified.
2. If no valid reason is apparent for the positive result, then the Chief of Police may continue an investigation, which shall include an opportunity for the subject employee to review the positive drug test results and respond with information pertinent to the Chief's investigation. The investigation shall comply with the Virginia Law Enforcement Officers Procedural Guarantee Act.
3. Any disciplinary action shall be taken shall be in accordance with Administrative Regulation 1-27, Discipline.
4. Prior to returning to duty, the employee may be referred to the Employee Assistance Program (EAP) or other medical or clinical counselors as a condition of continued employment as determined by the Director of Human Resources or DER.

VII. Legal and Passive Contact with Controlled Substances

The town recognizes that as part of their duties, officers will collect controlled substances for evidence and destruction. During an investigation, search, and/or handling of property, an employee may passively inhale or accidentally come in contact with controlled substances. In an effort to eliminate false positive findings and as a safeguard for employees, the pass/fail level of the screening tests are set to reflect active ingestion. However, the following shall apply:

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- A. Pursuant to policy, officers shall properly document collected controlled substances in an incident report, supplemental report, or property voucher. All safety protocols and measures concerning the collection and handling of such controlled substances shall be observed.
- B. Any health issue or concern that arises from a contact with a controlled substance must be reported immediately after the occurrence, or as soon as possible, through the Workers Compensation injury reporting process.

VIII. Test Records

Information regarding the testing and results will be treated as confidential in accordance with the requirements of law governing the privacy of employee records and medical records. The information shall be maintained by the Department of Human Resources in medical files that are maintained separately from employee personnel files. Access to these records shall be limited to designated staff.

Both positive and negative drug test information shall be maintained by the Department of Human Resources. Positive test results must be maintained for five years, and negative test results must be maintained for one year in a confidential file separate from personnel records.

IX. Supervisory Responsibilities

All supervisors are prohibited from revealing any information to anyone which could alert an employee that his/her name has been randomly selected for alcohol and/or controlled substance testing. Any supervisor who is responsible for revealing such information shall be subject to disciplinary action, up to and including dismissal.



William H. Ashton II
Town Manager