

**ADMINISTRATIVE ORDER NO. 135**

**Repeals Administrative Order No. 107**

Pursuant to the authority granted to the City Administrator in BMCC Section 2-300, the following POLICY is hereby established as the City of Billings'

**MET Transit Division**

**Drug and Alcohol Policy**

Dated this 5<sup>th</sup> day of October, 2018.

A handwritten signature in blue ink, reading "Bruce McCandless", is written over a horizontal line.

Bruce McCandless  
City Administrator

## City of Billings - MET Transit Division

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# Drug and Alcohol Policy

Effective as of September 12, 2007

Revised as of September 4, 2018

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## I. Purpose of Policy

*The City of Billings METropolitan Transit (MET) is dedicated to providing safe, dependable, and economical transportation services to our passengers. The MET is committed to a drug- and alcohol-free workplace, which protects our most valuable resource--our employees--as well as the health and safety of the public.*

*To meet these goals, it is our policy to:*

- 1. Assure that employees are not impaired in their ability to perform assigned duties in a safe and productive manner;*
- 2. Create a workplace environment free from the effects of drug abuse and alcohol misuse;*
- 3. Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances;*
- 4. To recognize alcohol and substance abuse as a treatable illness and to encourage employees to seek professional assistance anytime alcohol or drug dependency adversely affects their ability to perform their assigned duties.*

*Neither this policy nor any of its terms are intended to create a contract of employment or to contain the terms of any contract of employment. This policy is effective October 5, 2018 and is in addition to the City of Billings Drug and Alcohol policy as found in City of Billings Employee Handbook .*

This policy complies with 49 CFR Part 655, as amended and 49 CFR Part 40, as amended. Copies of Parts 655 and 40 are available in the Drug and Alcohol Program Coordinator's office and can be found on the internet at the Federal Transit Administration (FTA) Drug and Alcohol Program website <http://transit-safety.fta.dot.gov/DrugAndAlcohol/>.

All covered employees are required to submit to drug and alcohol tests as a condition of employment in accordance with 49 CFR Part 655.

Portions of this policy are not FTA-mandated, but reflect City of Billings - MET Transit Division's policy. These additional provisions are identified by ***bold italicized text***.

In addition, DOT has published 49 CFR Part 32, implementing the Drug-Free Workplace Act of 1988, which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA.

**All City of Billings - MET Transit Division employees are subject to the provisions of the Drug-Free Workplace Act of 1988.**

The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace. An employee who is convicted of any criminal drug statute for a violation occurring in the workplace shall notify a ***MET Transit Management Representative or the Drug & Alcohol Program Coordinator*** no later than five days after such conviction.

## 2. Covered Employees

This policy applies to every person, including an applicant or transferee, who performs or will perform a “safety-sensitive function” as defined in Part 655, section 655.4.

You are a covered employee if you perform any of the following:

- Operating a revenue service vehicle, in or out of revenue service
- Operating a non-revenue vehicle requiring a commercial driver’s license
- Controlling movement or dispatch of a revenue service vehicle
- Maintaining (including repairs, overhaul and rebuilding) of a revenue service vehicle or equipment used in revenue service
- Carrying a firearm for security purposes

See Attachment A for a list of covered positions by job title.

## 3. Prohibited Behavior

Use of illegal drugs is prohibited at all times. All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body at or above the minimum thresholds defined in Part 40. Prohibited drugs include:

- marijuana
- cocaine
- phencyclidine (PCP)
- opioids
- amphetamines

All covered employees are prohibited from performing or continuing to perform safety-sensitive functions while having an alcohol concentration of 0.04 or greater.

All covered employees are prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. If the on-call employee claims the ability to perform his or her safety-sensitive function, he or she must take an alcohol test with a result of less than 0.02 prior to performance.

All covered employees are prohibited from consuming alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

All covered employees are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

***All covered employees will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of an illegal or controlled substance while on transit premises, in transit vehicles, in uniform, or while on transit business. Employees who violate this provision will be subject to***

*disciplinary action up to and including termination. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.*

## 4. Consequences for Violations

Following a BAC of 0.02 or greater, but less than 0.04, the employee will be immediately removed from safety-sensitive duties for at least eight hours unless a retest results in the employee's alcohol concentration being less than 0.02.

Following a positive drug or alcohol (BAC at or above 0.04) test result or test refusal, the employee will be immediately removed from safety-sensitive duty and referred to a Substance Abuse Professional.

*Any safety-sensitive employee who is reasonably suspected of a violation of the MET Substance Abuse Policy shall be suspended from job duties pending an investigation and verification of the condition as described in the policy. Employees who fail to pass a drug or alcohol test shall be removed from duty and subject to disciplinary action, up to and including termination; except in cases involving the proper use of legal drugs.*

### Treatment/Discipline

Per City of Billings - MET Transit Division policy, any employee who tests positive for drugs or alcohol (BAC at or above 0.04) or refuses to test will be referred to a Substance Abuse Professional (SAP). *In addition, the employee will be subject to the following disciplinary action defined below:*

*A first offense will require the employee to do the following:*

- *Will be immediately removed from performing a safety-sensitive duty.*
- *Meet with a Substance Abuse Counselor through the City's Employee Assistance Program, prior to returning to work.*
- *Follow all recommendations made by the Substance Abuse Counselor to remain employed by the City of Billings.*
- *Serve a mandatory suspension without pay, of no less than one day, at a date determined by MET Management.*
- *Submit to a drug/alcohol test and have a negative result prior to returning to work. If the employee has continued to use alcohol, or if the MRO determines the employee has continued to use drugs, this would constitute a second confirmed positive test result.*
- *Submit to unannounced follow-up testing for a period of 12-months to 5 years.*
- *A second offense of a confirmed positive drug and/or alcohol test would result in the termination of employment from the City of Billings.*
- *The above documentation of consequences will remain in an employee's file.*

*Employees refusing to provide a specimen or who adulterate or substitute a specimen, will be considered as if they have a confirmed positive specimen (as received by the MRO from a laboratory) and will be declared unfit for duty. The employee will be required to submit to the process as indicated above for a first offense.*

*An initial negative dilute specimen will require a second, immediate, new specimen. If the second specimen is negative, the overall result will be negative. If the second specimen is positive, the overall result is a confirmed positive.*

*If the employee refuses the second test, as stated above, then the overall result will be considered a confirmed positive and the employee will be declared unfit for duty. The employee will be required to submit to the process as indicated above (Section 6.3) for a first offense.*

*Employees who provide a confirmed positive drug or alcohol test for the first time will be required to follow the Substance Abuse Professional's recommendation for treatment. If treatment recommendations are not followed, then the employee will be subject to termination.*

*Any employee who provides a confirmed positive drug or alcohol test during the 12-month to five year follow-up unannounced testing period will be considered to have provided their second confirmed positive drug or alcohol test and will be subject to termination.*

*Any employee who feels that he or she has an addiction or dependence to drugs or alcohol is encouraged to seek assistance through the City's Employee Assistance Program (phone: 237-3585) free of charge or through their own personal physician. Requests for information concerning such assistance will be confidential.*

*An employee seeking assistance for drug or alcohol dependency may be covered under the City's insurance plan. Please review your Plan Document or call EBMS (phone: 1-800-777-3575) to determine coverage issues.*

*Any time away from work as a result of a policy violation will be deducted from the employee's accrual balances in the following order:*

- 1) Sick;*
- 2) Vacation;*
- 3) Compensatory Time (if applicable);*
- 4) Without Pay*

*If eligible for FMLA, the time away will be coded with the applicable FMLA absence code.*

*The cost of any treatment or rehabilitation services will be paid for directly by the employee or, where applicable, their insurance provider.*

## 5. Circumstances for Testing

### Pre-Employment Testing

A negative pre-employment drug test result is required before an employee can first perform safety-sensitive functions. If a pre-employment test is cancelled, the individual will be required to undergo another test and successfully pass with a verified negative result before performing safety-sensitive functions.

If a covered employee has not performed a safety-sensitive function for 90 or more consecutive calendar days, and has not been in the random testing pool during that time, the employee must take and pass a pre-employment test before he or she can return to a safety-sensitive function.

A covered employee or applicant who has previously failed or refused a DOT pre-employment drug and/or alcohol test must provide proof of having successfully completed a referral, evaluation, and treatment plan meeting DOT requirements.

### Reasonable Suspicion Testing

All covered employees shall be subject to a drug and/or alcohol test when City of Billings - MET Transit Division has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing will be made by a trained supervisor or other trained company official on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee.

Covered employees may be subject to reasonable suspicion drug testing any time while on duty. Covered employees may be subject to reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

### Post-Accident Testing

Covered employees shall be subject to post-accident drug and alcohol testing under the following circumstances:

#### Fatal Accidents

As soon as practicable following an accident involving the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee operating the public transportation vehicle at the time of the accident. In addition, any other covered employee whose performance could have contributed to the accident, as determined by City of Billings - MET Transit Division using the best information available at the time of the decision, will be tested.

### Non-fatal Accidents

As soon as practicable following an accident not involving the loss of a human life, drug and alcohol tests will be conducted on each covered employee operating the public transportation vehicle at the time of the accident if at least one of the following conditions is met:

- (1) The accident results in injuries requiring immediate medical treatment away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident
- (2) One or more vehicles incurs disabling damage and must be towed away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident

In addition, any other covered employee whose performance could have contributed to the accident, as determined by City of Billings - MET Transit Division using the best information available at the time of the decision, will be tested.

A covered employee subject to post-accident testing must remain readily available, or it is considered a refusal to test. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

## Random Testing

Random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year. Random testing will be conducted at all times of the day when safety-sensitive functions are performed.

Testing rates will meet or exceed the minimum annual percentage rate set each year by the FTA administrator. The current year testing rates can be viewed online at [www.transportation.gov/odapc/random-testing-rates](http://www.transportation.gov/odapc/random-testing-rates).

The selection of employees for random drug and alcohol testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator. Under the selection process used, each covered employee will have an equal chance of being tested each time selections are made.

A covered employee may only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

Each covered employee who is notified of selection for random drug or random alcohol testing must immediately proceed to the designated testing site.

### Random Testing – End of Shift

Random testing may occur anytime an employee is on duty so long as the employee is notified prior to the end of the shift. Employees who provide advance, verifiable notice of scheduled medical or child care commitments will be random drug tested no later than three hours before the end of their shift and random alcohol tested no later than 30 minutes before the end of their shift. Verifiable documentation of a previously scheduled medical or child care commitment, for the period immediately following an employee's shift, must be provided at least two hours prior to the scheduled random test time.

### Return to Duty Testing

Any employee who is allowed to return to safety-sensitive duty after failing or refusing to submit to a DOT drug and/or alcohol test must first be evaluated by a substance abuse professional (SAP), complete a SAP-required program of education and/or treatment, and provide a negative return-to-duty drug and/or alcohol test result. All tests will be conducted in accordance with 49 CFR Part 40, Subpart O.

### Follow-up Testing

Employees returning to safety-sensitive duty following leave for substance abuse rehabilitation will be required to undergo unannounced follow-up alcohol and/or drug testing for a period of one (1) to five (5) years, as directed by the SAP. The duration of testing will be extended to account for any subsequent leaves of absence, as necessary. The type (drug and/or alcohol), number, and frequency of such follow-up testing shall be directed by the SAP. All testing will be conducted in accordance with 49 CFR Part 40, Subpart O.

## 6. Testing Procedures

All FTA drug and alcohol testing will be conducted in accordance with 49 CFR Part 40, as amended.

### Dilute Urine Specimen

**If there is a negative dilute test result, City of Billings - MET Transit Division will conduct one additional retest.** The result of the second test will be the test of record.

Dilute negative results with a creatinine level greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL require an immediate recollection under direct observation (see 49 CFR Part 40, section 40.67).

### Split Specimen Test

In the event of a verified positive test result, or a verified adulterated or substituted result, the employee can request that the split specimen be tested at a second laboratory. ***The request must be made to the MRO within 72 hours of notice of the verified test result.*** City of Billings - MET Transit Division

guarantees that the split specimen test will be conducted in a timely fashion. *All costs of such testing are paid by the employee unless the result of the split sample test contradicts the result of the original test.*

## 7. Test Refusals

As a covered employee, you have refused to test if you:

- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by City of Billings - MET Transit Division.
- (2) Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
- (3) Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
- (4) In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
- (5) Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
- (6) Fail or decline to take a second test as directed by the collector or City of Billings - MET Transit Division for drug testing.
- (7) Fail to undergo a medical evaluation as required by the MRO or City of Billings - MET Transit Division's Designated Employer Representative (DER).
- (8) Fail to cooperate with any part of the testing process.
- (9) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
- (10) Possess or wear a prosthetic or other device used to tamper with the collection process.
- (11) Admit to the adulteration or substitution of a specimen to the collector or MRO.
- (12) Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
- (13) Fail to remain readily available following an accident.

As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

As a covered employee, if you refuse to take a drug and/or alcohol test, you incur the same consequences as testing positive and will be immediately removed from performing safety-sensitive functions, and referred to a SAP.

## 8. Voluntary Self-Referral

Any employee who has a drug and/or alcohol abuse problem and has not been selected for reasonable suspicion, random or post-accident testing or has not refused a drug or alcohol test may voluntarily refer

her or himself to the ***Drug and Alcohol Program Coordinator***, who will refer the individual to a substance abuse counselor for evaluation and treatment.

The substance abuse counselor will evaluate the employee and make a specific recommendation regarding the appropriate treatment. Employees are encouraged to voluntarily seek professional substance abuse assistance before any substance use or dependence affects job performance.

Any safety-sensitive employee who admits to a drug and/or alcohol problem will immediately be removed from his/her safety-sensitive function and will not be allowed to perform such function until successful completion of a prescribed rehabilitation program.

## 9. Prescription Drug Use

The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to the ***Drug and Alcohol Program Coordinator***. Medical advice should be sought, as appropriate, while taking such medication and before performing safety-sensitive duties.

## 10. Contact Person

For questions about City of Billings - MET Transit Division's anti-drug and alcohol misuse program, contact:

JoLynn Yerger  
HR Associate/Drug & Alcohol Program Coordinator  
City of Billings Human Resources  
210 N. 27<sup>th</sup> St.  
Billings, MT 59101  
(406) 657-3061  
[yergerj@ci.billings.mt.us](mailto:yergerj@ci.billings.mt.us)

## **Attachment A: Covered Positions**

Transit/Paratransit Operator

On Call Transit/Paratransit Operator

Lead Transit Services Dispatcher

Transit Services Dispatcher

Mechanic II

Mechanic I

Transit Service Worker