

**EXECUTIVE ORDER NO. 94**

**TO: All City Agencies**

**FROM: Wellington E. Webb  
MAYOR**

**DATE: October 29, 2002**

**SUBJECT: CITY and COUNTY of DENVER EMPLOYEES' ALCOHOL and DRUG POLICY**

**PURPOSE:** As an employer, the City and County of Denver (City) is required to adhere to various federal, state, local laws and regulations regarding alcohol and drug use. The City also has a vital interest in maintaining a safe, healthy and efficient environment for its employees and the public. Being under the influence of, subject to the effects of, or impaired by alcohol or a drug on the job may pose serious safety and health risks to the user, the user's co-workers and the public. Additionally, the possession, use or sale of an illegal drug in the workplace may pose an unacceptable risk to the safe, healthy and efficient operation of the City.

The City maintains the Mayor's Office of Employee Assistance, provides Department of Safety psychologists and some outside contractors, who offer help to employees who seek assistance for alcohol and/or drug use and other personal or emotional issues.

**RESPONSIBLE AUTHORITY(S):** City Attorney

This executive order, effective on the above date, establishes and confirms the policy of the City concerning the problem of drug and alcohol use in the workplace. On the date it becomes effective, this executive order supersedes all previously enacted alcohol and drug executive orders.

**I. PROHIBITIONS FOR ALL CITY EMPLOYEES INCLUDING CLASSIFIED MEMBERS OF THE POLICE AND FIRE DEPARTMENTS.**

**A. Alcohol**

Employees are prohibited from consuming, being under the influence of, or impaired by alcohol while performing City business, while driving a City vehicle or while on City property.

**There are three exceptions to this prohibition.** (1) An employee is not on duty **and** attending an officially sanctioned private function, e.g., an invitation-only library reception. (2) An employee is not on duty **and** at a City location as a customer, e.g., playing golf on a City course. (3) An employee is a member of the Police Department **and** as a part of the employee's official duties, consumes alcohol in accordance with Police Department procedures.

The alcohol levels defined by the state legislature that may be amended from time to time for defining "under the influence of alcohol" and "impaired by alcohol" are adopted here for purposes of this executive order.

Employees holding Commercial Driver's licenses (CDL) are **also** subject to the alcohol levels defined by the Department of Transportation (DOT) regulations that may be amended from time to time for "under the influence" which are adopted here for purposes of this executive order.

Current alcohol level definitions are contained in the Addendum to this Order. If there is a conflict between the state legislature and the DOT regulation, alcohol level definitions and the ones contained in the Addendum to this Order, the state legislature and DOT regulation definitions will take precedence.

As part of official duties, members of the Police Department according to established procedures may consume alcohol. However, it is grounds for discipline, up to including immediate dismissal, if members of the Police Department consume alcohol in violation of their department procedures.

## **B. Legal Drugs**

1. It is the responsibility of the employees who work in positions operating vehicles or dangerous equipment or positions affecting the health or safety of co-workers or the public to advise their supervisors that they are taking prescription medication that may affect their performance.
2. Employees who work in positions operating vehicles or dangerous equipment or positions affecting the health or safety of co-workers or the public are prohibited from consuming, being under the influence of, subject to the effects of or impaired by legally obtained prescription drugs while performing City business, unless the following two determinations have been made:
  - a. It is determined by both the employee's supervisor **and** either the employee's Human Resource Specialist or Safety Officer, after consulting with the Occupational Health and Safety Clinic (OHSC) personnel, that the employee's job performance will not be affected **and** that the employee does not pose a threat to his/her own safety.
  - b. It is determined by both the employee's supervisor **and** either the employee's Human Resource Specialist or Safety Officer, after consulting with the OHSC personnel, that the employee will not pose a threat to the safety of co-workers or the public, **and** the employee will not disrupt the efficient operation of the agency.

If appropriate, the OHSC personnel may contact the employee's personal physician. Prior to making contact with the employee's personal physician, the OHSC personnel should obtain a medical release from the employee.

Employees may be required to use sick leave, take a leave of absence or comply with other appropriate non-disciplinary actions determined by the appointing authority until the above determinations can be made.

The OHSC shall keep the medical records that disclose the identity of the legal drug confidential in accordance with state and federal laws.

3. The DOT regulations prohibit employees with CDLs from using marijuana, even for approved medical reasons. If the federal and Colorado laws are in conflict on this issue, the federal law will take precedence. Therefore, a positive marijuana drug test will be treated as an illegal drug use for employees with CDLs, subjecting them to all rules contained herein for illegal drug use even if a physician has prescribed the marijuana for medical reasons.

### C. **Illegal Drugs**

1. Employees are prohibited from consuming, being under the influence of, subject to the effects, of or impaired by illegal drugs while performing City business, while driving a City vehicle or while on City property.
2. Employees are also prohibited from selling, purchasing, transferring or possessing an illegal drug.

**There is one exception to this prohibition.** An employee of the Classified Service of the Police and Fire Departments or the Denver Sheriff's Department as a part of the employee's official duties, may sell, purchase, transfer or possess illegal drugs in accordance with the employee's department procedures. However, it is grounds for immediate dismissal if members of the Classified Service of the Police and Fire Departments or Sheriff Department sell, purchase, transfer or possess illegal drugs at any time other than as a part of their official duties. It is also grounds for immediate dismissal if members of the Classified Service of the Police and Fire Departments or Sheriff Department sell, purchase, transfer or possess illegal drugs in violation of the employee's department procedures.

The illegal drug cut-off levels established by the DOT regulations, that may be amended from time to time, are adopted here for purposes of this executive order. Current illegal drug levels are contained in the Addendum to this Order. If there is a conflict between the DOT regulation, illegal drug levels and the ones contained in the Addendum to this Order, the DOT regulation definition will take precedence.

## II. **DRUG AND ALCOHOL TESTING**

### A. **Pre-Employment/Pre-Placement Testing**

1. The City may implement, with the City Attorney's approval, pre-employment screening practices designed to prevent hiring individuals for job positions:

- a. whose use of illegal drugs may affect the public health or safety and
- b. whose use of alcohol or legal drugs indicates a potential for impaired or unsafe job performance where the public health or safety may be affected.

The Civil Service Commission, Career Service Authority, OHSC or interviewing agency shall inform a job applicant of these pre-employment screening practices prior to such screening.

2. Employees who will be filling jobs defined as safety-sensitive or requiring a CDL, prior to the first time the employee performs a safety-sensitive function, shall be tested for controlled substances and may be tested for alcohol.
3. Refusal by an applicant to submit to a pre-employment test shall result in denial of employment.
4. Pre-employment/Pre-placement test results:
  - a. **Alcohol**

Where alcohol use is detected and it is determined to be a potential safety risk, employment shall be denied.
  - b. **Legal Drugs**
    - i. Where use of a prescription drug is detected, applicants may be required to offer proof that the drug has been prescribed by a physician for the applicant. If the applicant is unable to provide such proof, employment may be denied.
    - ii. Where the applicant's future or continued use of the drug poses a potential safety risk or would impair job performance, employment may be denied in accordance with the applicable state and federal laws.
  - c. **Illegal Drugs**
    - i. Employment shall be denied when the presence of an illegal drug is detected.
    - ii. Employment shall be denied when the presence of a known masking agent is detected.
    - iii. A second direct observation urinalysis test may be required prior to offering employment to an applicant whose drug test evidences the urine sample has been diluted.

**B. Reasonable Suspicion Testing**

1. When a supervisor has reasonable suspicion that any employee is in violation of this policy, after taking appropriate safety measures, i.e. removing the employee from any situation which may pose a safety risk to the employee, co-workers or the public, the supervisor shall immediately consult with his/her Human Resource Specialist, Safety Officer or the City Attorney's Office to determine further actions. However, if immediate consultation is not possible, it is the responsibility of the supervisor to promptly initiate alcohol and drug testing. The supervisor shall initiate testing as follows:

**a. Alcohol**

- i. Document in writing the specific reasons for the decision to initiate testing based on specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odors.
- ii. When possible, have a second supervisor confirm the specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odors.
- iii. Advise the employee that the supervisor is ordering the employee to go to the testing site for testing.
- iv. Escort the employee to the testing site as soon as possible. However, if the supervisor is unable to escort the employee, the supervisor should have another individual escort the employee for testing. The individual selected to escort the employee shall be of a higher grade/rank than the employee being tested.
- v. Require the employee to bring a picture identification card and proof of the employee's Social Security or employee number to the testing site.
- vi. If the employee refuses to go to the testing site, or refuses to participate in the testing process, the supervisor or the escort should tell the employee that the testing request is a direct order and that refusal to comply with the direct order might subject the employee to discipline, up to and including dismissal.
- vii. After the initial test results are known, the supervisor shall contact the appointing authority for further guidance. If the appointing authority is unavailable and the supervisor has a reasonable doubt about the employee's ability to satisfactorily and safely meet job requirements, the supervisor shall place the employee on investigatory leave pending results of testing or other administrative determination.

- viii. No supervisor or escort should allow an employee to drive to or away from the testing or the work site. However, if the employee does drive off, notify the Police Department immediately and provide them pertinent information, i.e., employee's car make; model and color; license plate number; direction of travel and reason for ordering the alcohol and/or drug testing.

During regular OHSC hours, the testing shall be conducted at one of the OHSC testing sites. After regular hours, the supervisor shall page the OHSC alcohol and drug testing personnel to arrange for immediate testing.

Testing should be administered within two (2) hours of making a reasonable suspicion determination. If this two (2) hour time frame is exceeded, the supervisor should document the reasons the test was not promptly administered. Supervisors who do not test employees within this established time frame may be subject to discipline, up to and including dismissal.

Supervisors and escorts shall keep the employee's name and identifying information restricted to persons who "need to know."

**b. Legal drugs**

- i. Document in writing the specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odors that provide reasonable suspicion that the employee's use of, or being under the influence of, subject to the effects of, or impaired by a legal drug poses a potential safety risk or would impair job performance.
- ii. When possible, have a second supervisor confirm the specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odors.
- iii. Advise the employee that the supervisor is ordering the employee to go to the OHSC for evaluation.
- iv. Escort the employee to the evaluation site as soon as possible. However, if the supervisor is unable to escort the employee, the supervisor should have another individual escort the employee for evaluation.
- v. If the employee refuses to go to the evaluation site, the supervisor or the escort should tell the employee that the testing request is a direct order and that refusal to comply with the direct order might subject the employee to discipline, up to and including dismissal.

- vi. If the clinic personnel determine that the employee's use of, being under the influence of, subject to the effects of, or impaired by a legal drug poses a potential safety risk **or** would impair job performance; the supervisor shall contact the appointing authority for further guidance.
- vii. If the appointing authority is unavailable and the supervisor has a reasonable doubt about the employee's ability to satisfactorily and safely meet job requirements, the supervisor shall place the employee on investigatory leave pending such consultation. However, no supervisor or escort should allow an employee to drive to, or away from, the evaluation site. If the employee does drive off, the supervisor or escort shall notify the Police Department immediately and provide them pertinent information, i.e., employee's car make; model and color; license plate number; direction of travel; and reason for ordering the evaluation.
- viii. If the clinic personnel determine that the employee's use of, being under the influence of, subject to the effects of, or impaired by a legal drug **does not** pose a potential safety risk **and does not** impair job performance, have the employee return to work.

**c. Illegal drugs**

Follow the steps listed above in Section B.1.a.

However, testing for illegal drugs should be administered within eight (8) hours of making a reasonable suspicion determination. If this eight-hour (8) time frame is exceeded, the supervisor must document the reasons the test was not promptly administered. Supervisors who do not test employees within the established time frame may be subject to discipline, up to and including dismissal.

The police **shall be** contacted when a supervisor has reasonable suspicion that an employee appears to be in possession of, selling or transferring illegal drugs.

**C. Post-Accident Testing**

- 1. As soon as practicable following a driving or other workplace accident, the supervisor shall ensure that driver-employee is tested for alcohol and drugs when the accident:
  - a. may have been the fault of the employee **and** the accident involves a fatality;
  - b. may have been the fault of the employee **and** any individual was injured severely enough to receive medical treatment immediately away from the scene of the accident;
  - c. may have been the fault of the employee **and** the accident resulted in disabling damage to any vehicle or any equipment; or,

- d. there is reasonable suspicion to test the employee.
2. Post-accident alcohol and drug testing should be administered within two (2) hours following the accident. Supervisors who do not test employees within the established time frames may be subject to discipline, up to and including dismissal.
3. "Disabling damage" for a vehicle accident is defined as precluding the departure of the vehicle from the scene of an accident in its usual manner. Vehicle damage that can be remedied temporarily at the scene without special tools or parts, i.e., replacing a tire with the spare, taping over a headlight or tying down the hood of a car, are not considered disabling.
4. "Disabling damage" for a workplace accident is defined as precluding the use of the equipment from its usual operation. Equipment that can be remedied temporarily at the scene without special tools or parts is not considered disabling.

**D. Return to Duty Testing**

If an employee has violated the prohibited conduct listed in Sections I (A) or I (C) of this Order, the employee shall not return to work unless the employee has taken an alcohol and drug test at the OHSC and both tests were verified negative.

**E. Unannounced Testing**

If an employee has been placed on a Stipulation and Agreement in accordance with this executive order, as a part of that Stipulation and Agreement, the employee may be tested for alcohol and/or drugs by the agency without prior notice of the testing date or time for at least 36 months from the last date in time that the stipulation and agreement is signed by the parties.

**F. Random Testing**

The City may implement, with the City Attorney's approval, random alcohol and drug testing for employees deemed to perform safety-sensitive functions for the City or any of its agencies.

**G. Commercial Driver's License Testing**

For those positions requiring a CDL, the City shall implement drug testing pursuant to applicable DOT regulations, as may be amended from time to time **in addition to** the testing described in Sections II (B), II (C) and II (D) of this Order.

**1. Pre-Employment Testing**

Prior to the first time a driver performs safety-sensitive functions for the City or any of its agencies, the driver shall be tested for illegal drug usage in compliance with the DOT and state regulations, as may be amended from time to time.

**2. Reasonable Suspicion Testing**

**a. Alcohol**

The procedures described in Section II (B)(1)(a) of this Order shall be followed.

**b. Legal Drugs**

The procedures described in Section II (B)(1)(b) of this Order shall be followed.

**c. Illegal Drugs**

The procedures described in Section II (B)(1)(c) of this Order shall be followed.

**3. Post-Accident Testing**

- a. As soon as practicable following an accident, the supervisor shall ensure that driver-employee is tested for alcohol and drugs when:
- i. the accident occurred while the vehicle driver was performing safety-sensitive functions with respect to the vehicle **and** the accident involved the loss of human life;
  - ii. the vehicle driver was cited under the state or local law for a moving violation arising from the accident **and** an individual was injured severely enough to receive medical treatment immediately away from the scene;
  - iii. the vehicle driver was cited under the state or local law for a moving violation arising from the accident **and** one or more of the vehicles involved in the accident sustained disabling damage. "Disabling damage" is defined in Section II (C)(2) and (3) in this Order;
  - iv. there is reasonable suspicion to test the employee.
- b. If the supervisor does not initiate alcohol testing within eight (8) hours of the accident or drug testing within thirty-two (32) hours of the accident, the supervisor shall cease attempts to administer the tests and shall state in writing for the record the reasons for not administering the tests. Supervisors who do not test employees within the established time frames may be subject to discipline, up to and including dismissal.

**4. Random Testing**

**a. Alcohol**

Pursuant to the DOT regulations, random alcohol testing shall be conducted annually on 25% of the average number of City commercial driver's license positions in existence. This percentage may be amended from time to time by the DOT. Alcohol testing shall be conducted on a random, unannounced basis just before, during or just after the employee performed safety-sensitive functions.

**b. Illegal Drugs**

Pursuant to the DOT regulations, random drug testing shall be conducted annually on 50% of the average number of City commercial driver's license positions in existence. This percentage may be amended from time to time by the DOT. Drug testing shall be conducted on a random, unannounced basis. There is no requirement that this testing be conducted in immediate time proximity to performing safety-sensitive functions.

**5. Return to Duty Testing**

**a. Alcohol**

If an employee has violated the prohibited conduct listed in Section I (A) of this Order, the employee shall not return to perform safety-sensitive duties unless the employee has completed a successful return to duty alcohol test.

**b. Illegal Drugs**

If an employee has violated the prohibited conduct listed in Section I (C) of this Order, the employee shall not return to perform safety-sensitive duties unless the employee has been cleared by a Substance Abuse Professional and has completed a successful return to duty drug test.

**6. Follow-Up Testing**

**a. Alcohol**

- i. The number and frequency of the follow-up alcohol tests shall be directed by the Substance Abuse Professional and shall consist of at least six (6) tests in the first twelve (12) months following the employee's return to work.
- ii. Follow-up testing shall be unannounced and shall be conducted just before, during or just after the employee performed safety-sensitive functions.

**b. Illegal Drugs**

- i. The number and frequency of the follow-up drug tests shall be directed by the Substance Abuse Professional and shall consist of at least six (6) tests in the first (12) twelve months following the employee's return to work.
- ii. Follow-up testing shall be unannounced. There is no requirement that this testing be conducted in immediate time proximity to performing safety-sensitive functions.

**H. Members of the Classified Service of the Police and Fire Departments and Deputy Sheriffs Testing**

For those employees who are members of the Classified Service of the Police and Fire Departments or Deputy Sheriffs, the City may implement drug testing pursuant to their respective department procedures, as may be amended from time to time **in addition to** the testing described in Sections II (A), II (B), II (C), II (D), II (E), II (F), and II (G) of this Order.

**III. EXECUTIVE ORDER 94 TRAINING**

**A. All City Employees**

All new City employees should be trained on this Order during their first year of employment. Training, at a minimum, should include study of the Order and instruction on the recognition of drug and alcohol impairment and use. Additionally, a copy of this Order should be given to each employee with each employee acknowledging, in writing, receipt of the policy and the training.

**B. All Employees With Supervisory Duties**

1. All employees with supervisory duties should be trained on this Order during the first six months following their promotion. This training, at a minimum, should include study of the Order, instruction on the recognition of drug and alcohol impairment and use, the proper documentation of the supervisor's reasonable suspicion, and the supervisor's responsibility for escorting employees to the testing sites and through the testing process.
2. Supervisors shall ensure that all drug and alcohol tests are accomplished immediately after the justification for testing is established. Timeliness for testing is outlined in this Order and its Addendum. Further, once a supervisor has reasonable suspicion that an employee appears to be under the influence of alcohol or drugs, the agency cannot condone the employee's driving of a motor vehicle. If the employee drives off in his/her own or a City vehicle, the Police Department must be notified immediately. Supervisors whom elicit the use of another individual to escort an employee to testing or evaluation sites shall educate the individual on the duties of the escort as provided herein prior to allowing that individual to escort the employee.

3. Supervisors are subject to discipline for failing to fulfill the responsibilities set forth for supervisors in this Order. However, although a supervisor's failure to fulfill his/her responsibility may result in disciplinary action being taken against the supervisor, up to and including dismissal, such failure does not, in any way, excuse the employee's violation of this Order or negate the agency's disciplinary action against the employee.

**CAUTION:** No physical force may be used against an employee to enforce any order under this policy. The employee must be advised that noncompliance with a supervisor's order will be viewed as refusal to obey the order of a supervisor and subject to discipline, up to and including dismissal.

**CAUTION:** Supervisors are to restrict communications concerning possible violations of this policy to those persons who are participating in the evaluation, investigation or disciplinary action and who have a "need to know" about the details of the drug/alcohol evaluation, investigation and disciplinary action. This restriction includes not mentioning the names of employees who are suspected of, or disciplined for, violating this policy.

#### IV. DISCIPLINARY ACTIONS

- A. If it is determined after the appropriate predisciplinary meeting that any of the following situations apply; the employee shall be dismissed even for the first offense for the following conduct.
  1. Members of the Classified Service of the Police and Fire Departments or Deputy Sheriffs that violate their respective departments' prohibitions regarding illegal use of controlled substances;
  2. Safety-sensitive members of the Department of Aviation that violate their department's prohibitions regarding alcohol or drug use;
  3. The employee has endangered the lives of others, or foresee ably could have endangered the lives of others;
  4. The employee refuses to submit to any testing under this Order including, but not limited to, pre-placement, reasonable suspicion, random, post-accident, return to duty, follow-up or unannounced testing;
  5. The employee uses, or attempts to use, a masking agent to alter the sample and/or drug and/or alcohol test results;
  6. The employee's disciplinary history compels dismissal as a matter of progressive discipline;
  7. The employee has refused to enter into a Stipulation and Agreement;
  8. The employee has violated the Stipulation and Agreement;

9. The employee violates Executive Order 94 for the second time in the employee's career with the City and County of Denver and/or its agencies.
- B. A first time violation of this policy, which does not result in a dismissal pursuant to Section IV (A) of this Order shall result in a lesser disciplinary action in conjunction with a Stipulation and Agreement for treatment.
1. Employee Assistance Counselors of the Mayor's Office of Employee Assistance, or such other substance abuse professional(s) as may be designated, shall conduct an assessment of the employee and create a treatment plan.
  2. Each such agreement shall be in writing and approved by the City Attorney's Office. The City shall offer no employee more than one such agreement during his or her employment with the City.
  3. Employees who participate in a supervisor-approved inpatient treatment plan shall be allowed to take one (1) day per month sick leave or vacation leave, or allowed to work one (1) day per month but not in safety-sensitive positions, to assure continued health coverage.

## V. MISCELLANEOUS PROVISIONS

### A. Driver's License

It is the responsibility of employees required to drive as part of their assigned duties or job specifications to report to their appointing authority any loss of a driver's license or the restriction of driving privileges, no later than the beginning of the employee's next scheduled shift. Every employee who is required to drive, as part of their assigned duties or job specifications, shall certify that they have a current valid driver's license in accordance with Executive Order 25 as may be amended from time to time.

### B. Searches

1. Before any search is conducted, supervisors shall contact the City Attorney's Office for guidance.
2. Management has the right to search City-owned property, e.g., a desk, storage cabinet or City vehicle, when the search is necessary for a non-investigatory work-related purpose such as retrieving a needed file. Additionally, management may search City-owned property, e.g., a desk, file cabinet, locker, or City vehicle, when predicated by reasonable suspicion that evidence of misconduct will be found. Finally, management may search an employee's personal property, e.g., their personal vehicle parked on City property, lunch boxes, briefcases, purses, tool kits, and backpacks, upon consent of the employee.

3. Clearly posted notices explaining the City's right to carry out search activities should be displayed in appropriate locations throughout the work area. The posted notices should contain the language listed above in paragraph V (B) (2) of this Order. Any deviation from this language must be approved by the City Attorney's Office prior to posting.

C. Contracts

1. This Executive Order is applicable to contract personnel. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring contract personnel from City facilities or from participating in City operations.
2. All City contracts shall inform contractors doing work for the City about this Executive Order.

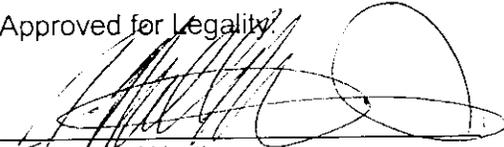
D. Mayor's Office of Employee Assistance and Department of Safety Psychologists

The City maintains the Mayor's Office of Employee Assistance (MOEA) and provides Department of Safety psychologists who offer help to employees who suffer from alcohol or drug use or other personal or emotional issues. It is the responsibility of each employee to seek help from the MOEA, Department of Safety psychologist or other appropriate health care professionals before alcohol and drug use leads to disciplinary actions.

E. Memorandum to this Order

The City Attorney shall have the authority to amend definitions and drug testing cut-off levels contained in the Order's Memorandum, from time to time, consistent with Colorado statutes and the DOT regulations, without obtaining signatures of the Mayor or City Council. For purposes of this Executive Order, all references to Agency head, Department head or appointing authority will also include the designee of the Agency head, Department head or appointing authority.

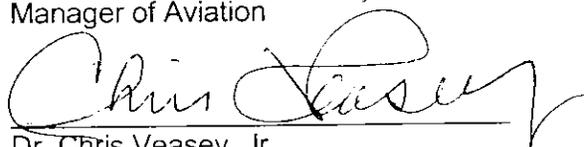
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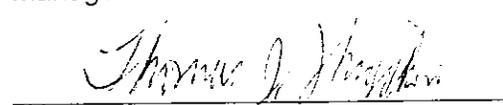
  
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J. Wallace Wortham, Jr.  
City Attorney

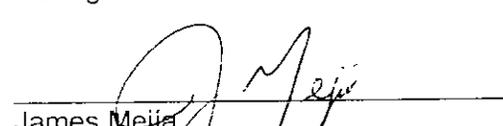
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Wellington E. Webb  
MAYOR

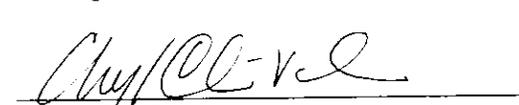
  
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Bruce Baumgartner  
Manager of Aviation

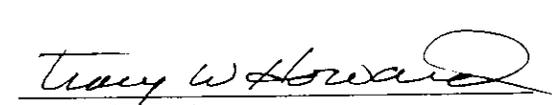
  
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Dr. Chris Veasey, Jr.  
Manager of Environmental Health

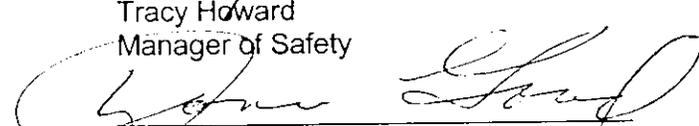
  
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Thomas J. Migaki  
Manager of General Services

  
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James Mejia  
Manager of Parks & Recreation

  
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Stephanie Foote  
Manager of Public Works

  
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Cheryl D. Cohen  
Manager of Revenue

  
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Tracy Howard  
Manager of Safety

  
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Donna Good  
Manager of Human Services

**MEMORANDUM NO. 94A**

**TO:** All Agencies Under the Mayor  
**FROM:** John W. Hickenlooper  
Mayor  
**DATE:** August 26, 2004  
**SUBJECT:** STATUTORY PROVISIONS

This memorandum to Executive Order 94 was originally referred to as an addendum, effective April 10, 1989, amended April 13, 1999, January 10, 2000, March 1, 2000, March 15, 2001 and is hereby continued in effect as amended and retitled as a memorandum this August 26, 2004. This Memorandum shall be attached to and become a part of Executive Order 94, dated, October 29, 2002, subject "City and County of Denver Employees' Alcohol and Drug Policy."

**I. ALCOHOL PROVISIONS**

- A. Under the Colorado statutes, as may be amended from time to time, "impaired by alcohol" is defined as having 0.05 grams of alcohol (per two hundred ten liters of breath or per one hundred milliliters of blood), but less than 0.08 grams of alcohol. Under the "influence of alcohol" is defined as having 0.08 or more grams of alcohol (per two hundred ten liters of breath or per one hundred milliliters of blood).
- B. Under the DOT regulations, as may be amended from time to time, "under the influence of alcohol" is defined as having 0.04 percent alcohol concentration, or more; as prescribed by state law; or in the event of refusal to undergo such testing as is required by the state or jurisdiction.

DOT regulations, as may be amended from time to time, state that post-accident alcohol testing should be administered within two (2) hours following the accident, but must be administered within eight (8) hours following the accident. **These DOT time frames shall also apply to testing under this Executive Order unless otherwise specified within this Order.**

**II. ILLEGAL DRUG PROVISIONS**

- A. Illegal drugs, including controlled substances, are defined in Colorado Revised Statutes §12-22-303.

B. "Subject to the effects of an illegal drug" is to be determined consistent with the confirmation test levels established by the DOT regulations, as may be amended from time to time:

Marijuana metabolites	-----	15 ng
Cocaine metabolite	-----	150 ng
Opiates:		
Morphine	-----	2,000 ng
Codeine	-----	2,000 ng
Phencyclidine	-----	25 ng
Amphetamines:		
Amphetamine	-----	500 ng
Methamphetamine	-----	500 ng

Drug testing shall be administered no later than thirty-two (32) hours after the accident. ***These DOT time frames shall also apply to testing under this Executive Order unless otherwise specified within this Order.***