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By: Wesley Ringer
Office of the City Attorney



**City of
Norfolk**

Prescribed Date: 6/15/09

By: Elizabeth Williams
City Manager/Director of Public Safety

Departmental General Order OPR-750
Norfolk Police Department

Subject: Field Command

Office of Preparation: Strategic Management Division

Supersedes:

1. G.O. OPR-750, dated May 14, 2009
2. Any previously issued directive conflicting with this order

Related Documents:


1. G.O. ADM-210: Internal Complaints
2. G.O. OPR-110: Firearms
3. G.O. OPR-310: Accident Investigation
4. G.O. OPR-410: Deadly Force Incidents
5. G.O. OPR-530: Federal Law Enforcement Agencies
6. G.O. OPR-610: Incident Command
7. G.O. OPR-640: K-9 Patrol and Explosive Detector Dogs
8. City of Norfolk Substance Abuse and Drug-Free Work Place Policy, Issued 1/2004
9. Norfolk Police Department Emergency Action Plan (EAP)

Order Contents:

- I. Duties and Responsibilities
- II. Staffing and Relief
- III. Critical Incident Duties and Responsibilities
- IV. Civil Disturbances – Requesting State Assistance
- V. Administrative Contacts
- VI. Employee Substance Abuse Procedures
- VII. Post Accident Testing Procedures
- VIII. Relief of Personnel From Duty

Attachments:

- A. City of Norfolk Substance Abuse and Drug-Free Work Place Policy
- B. Code References
- C. Employee Substance Abuse Testing Information Sheet


Bruce P. Marquis
Chief of Police

BPM/sm

Purpose

To define the duties and responsibilities of sworn personnel assigned to field command duties.

I. Duties and Responsibilities

- A. Unless otherwise designated for particular circumstances, field command responsibilities will be carried out by sworn personnel with the rank of lieutenant or above under the authority of the Chief of Police. Field Commanders will:
1. Be assigned specific rotating shifts which provide continuing supervision of the department on a twenty-four hour basis.
 2. Report directly to the Assistant Chief, Field Operations Bureau.
 3. Be afforded the full cooperation and assistance of all members of the department.
 4. At the beginning of their shift, notify the Emergency Communications Center (ECC) of their employee number, call number (car 8), and Relief. They will remain in radio contact with the ECC at all times, or notify the ECC of their location in all instances in which the use of radio contact is not feasible, e.g. court, meetings, etc. To ensure constant ECC contact, the Field Commander will provide auxiliary phone numbers such as cell phone number.
 5. Ensure that a thorough investigation is or has been conducted whenever an officer discharges a firearm. If the incident includes officer involved use of deadly force, procedures outlined in G.O. OPR-410: Deadly Force Incidents, will be followed.
 6. Upon notification, respond to or ensure that a supervisor responds to all police vehicle accidents and reportable vehicular accidents involving off-duty sworn personnel in private vehicles occurring within city limits.
 7. Continually monitor the investigative radio sub-fleet and other police sub-fleets as necessary.
 8. Approve the use of K-9 dogs to disperse an unlawful or riotous crowd after the crowd has ignored an officer's lawful command to disperse. The Field Commander will supervise such actions on-scene.
 9. Undertake other responsibilities assigned by the Chief of Police or designee.
 10. Notify the senior police executive on call (defined in Section V. B) of all critical and/or significant events.

11. Submit their daily activity report by way of email directed to the PD-FC REPORT mailing list. This list is available in the Outlook Address Book under the Global Address List. The email report must contain the following information:
 - a. In the subject line type, "Field Command Report" with the appropriate date and relief worked.
 - b. To verify submitting authority, include submitting Field Commander's name.
 - c. Significant events and notations with starting and ending times should be included in the text area.
- B. In the event the network (email) is down, a copy of the Field Command Report will be faxed or delivered to the Word Process Center for dissemination. The Word Process Center will route the Field Command Report to each command, the Assistant Chiefs, the Chief and the Chief's Administrative Assistant/Chief of Staff.
- C. Field Commanders will wear the Class A uniform.

II. Staffing and Relief

The Assistant Chief, Field Operations Bureau is responsible for the regular staffing of field command. He or she has the authority to assign personnel to relief duties within field command.

- A. On Monday through Friday B-Relief (0800-1600), the commanding officers of the patrol divisions will handle field command responsibilities in their respective geographical areas.
- B. For day shifts of weekends and holidays, the Assistant Chief, Field Operations Bureau will designate a Field Commander. All captains will be scheduled to address these responsibilities on a rotational basis, as described in Section II. (items C.1 and G).
- C. Field Commanders will observe the schedule as outlined below:
 1. Captains will be scheduled to work field command Saturdays, Sundays and holidays 0800-1600. The schedules addressing assignment dates and relief will be disseminated as necessary through memoranda.
 2. Lieutenants will be scheduled to work field command as one week shifts Monday through Sunday, either 1600-2400 or 2400-0800 in a regular, equitable rotation. The schedules addressing assignment dates and relief will be disseminated as necessary through memoranda.

- D. In the event the Field Commander scheduled to work an assigned shift requests leave, he or she must give adequate notice to the Assistant Chief, Field Operations Bureau, or designee.
- E. In the event a Field Commander scheduled to work is sick and a replacement is not available, the Assistant Chief, Field Operations Bureau or designee will arrange for a replacement.
- F. Once a replacement is approved, the Captain or Lieutenant requesting the change will notify Crime Analysis.
- G. Captains assigned to field command on weekends and holidays may be authorized leave as follows:
 - 1. Captains requesting annual or holiday leave may arrange for replacement during the assigned shift by another captain and notify the Assistant Chief, Field Operations Bureau.
 - 2. Captains requesting sick, funeral, family sick, or emergency leave, etc., will contact the senior police executive on-call who will arrange for a replacement.
- H. Lieutenants working field command C Relief or A Relief may be authorized leave as follows:
 - 1. Subject to the approval of the Assistant Chief, Field Operations Bureau, and affected commanding officers, lieutenants may share field command work schedules within their rank.
 - 2. Lieutenants will coordinate in advance for replacement by another lieutenant before requesting annual or holiday leave. Substitutions for leave requests must be approved by the Assistant Chief, Field Operations Bureau, via the chain of command.
 - 3. Lieutenants requesting sick, funeral, family sick or emergency leave, etc., will call their commanding officer who will designate a supervisor with the rank of either lieutenant or sergeant as a replacement Field Commander.
 - 4. When there is no lieutenant or sergeant available to replace the Field Commander in his/her command, the commanding officer for the designated Field Commander will contact the other divisions to arrange a replacement.
 - 5. Once the replacement Field Commander has been designated, the commanding officer will notify the Assistant Chief, Field Operations Bureau.

6. The replacement Field Commander will notify the on-call ECC supervisor and ensure that this information is included on the Field Command Report.

III. Critical Incident Duties and Responsibilities

- A. In critical situations, Field Commanders will notify the senior police executive on call of the circumstances as soon as practical. The Chief of Police or designee will decide whether it is appropriate to notify the on-call Assistant City Manager or City Manager.
- B. “Critical Incidents” include but are not limited to:
 1. Active shooter, barricaded or hostage situations involving violent behavior or the threat of violence.
 2. Disasters or significant emergency situations as referenced in the Emergency Action Plan (EAP).
 3. Serious, disabling or life threatening injuries to police personnel.
 4. Homicides: Unless unusual circumstances exist, the notification should be made at 0630 if the homicide occurred between 2330-0600.
 5. Shooting incidents involving police personnel.
 6. Any other significant serious situation, e.g., civil disturbances in which state assistance must be requested (refer to EAP).
 7. Events which may adversely affect the city’s relationship with outside organizations or the city’s revenue or expenditures.
 8. Any incident in which the news media may show an unusual interest.
 9. When circumstances require federal law enforcement assistance in emergency situations, the Field Commander will be responsible for requesting federal assistance according to G.O. OPR-530: Federal Law Enforcement Agencies.
- C. Once on scene at a critical incident as defined above, the Field Commander will become the Incident Commander. The Field Commander will continue in that role until relieved, the situation stabilizes to a point where a lower ranking supervisor can be designated as the incident commander, or another critical incident occurs that requires the Field Commander’s presence and to which he or she is available to respond.

- D. All police personnel at the scene of a critical incident will be governed by the orders of the Incident Commander. Per FEMA (Federal Emergency Management Agency) definition, the incident commander is the individual responsible for all incident activities including development of strategies and tactics and ordering and release of resources. The incident commander has overall authority and responsibility for conducting incident operations and is responsible for management of all incident operations at the site.
- E. If a higher ranking officer arrives at the scene, the Incident Commander is to remain in command unless specified by procedures governing the situation. A higher ranking officer may assume command of the scene only when:
 - 1. The operation, activity, event, etc., would normally fall under the higher ranking officer's jurisdictional or assigned duties and responsibilities.
 - 2. The higher ranking officer has been placed in charge of the operation, activity, event, etc., by either the Chief of Police and/or Assistant Chief.
 - 3. The Incident Commander requests to be relieved of command for good cause.
 - 4. Facts and circumstances indicate that the Incident Commander is unable or unwilling to perform required duties in a proper manner.
- F. When a higher ranking officer assumes command, he or she will remain in command, assume responsibility for the outcome of the operation, and be expected to justify all actions taken regarding the assumption of command.
- G. The Field Commander will report all critical events to the senior police executive on call as soon as possible.
- H. The senior police executive on call will be briefed as soon as possible by the Field Commander on significant events that come to his/her attention between the hours of 0600-2330.
- I. Significant but non-critical events occurring between the hours of 2330-0600 will be reported to the senior police executive on call at 0630 hours by the Field Commander.

IV. Civil Disturbances – Requesting State Assistance

- A. The field commander is responsible for determining if a situation has developed which will require the assistance of the State Police. In such event, the field commander will contact one of the following, in priority listed, and advise that State assistance is required:
1. Senior police executive on call
 2. Bureau Chiefs not designated “on call”
 3. Chief of Police.
- B. The Chief of Police will inform the City Manager (or appropriate Assistant City Manager in the absence of the City Manager) and then contact all of the following:
1. The Governor’s Office.
 2. The State Police office in Chesapeake.
 3. The Superintendent of State Police.
- C. The ECC is prepared to provide space for State Police in their facilities as necessary. If the State Police cannot be contacted using regular phone lines, the National Warning System phone located in the ECC may be utilized to contact State Police Headquarters. Telephone numbers only for city officials, Chief of Police, and Assistant Chiefs of Police can be obtained from the ECC.

V. Administrative Contacts

A. Assistant City Manager Duty Rotation

Assistant City Managers rotate responsibility for availability during after duty hours, as well as holidays. Critical or emergency situations requiring notification to the office of the City Manager can be accomplished through the City paging system.

B. Senior Police Executive on Call

Assistant Chiefs rotate as the Senior Police Executive on call. The period of duty is 0800 hours each Monday through 0759 hours the following Monday. Assistant Chiefs can be reached at the Office of the Chief of Police Monday to Friday from 0800 to 1700 hours. After-hour and emergency contact numbers are published in memos that regularly identify which Assistant Chief has the responsibility for any particular week, and the telephone and cell numbers at which they may be reached.

VI. Employee Substance Abuse Procedures

When there is **reasonable suspicion** that sworn personnel are reporting for duty or are on duty under the influence of alcohol, drugs, and/or other chemical intoxicants, the Field Commander will ensure that the evaluation and disciplinary rules prescribed by the City of Norfolk Substance Abuse and Drug-Free Work Place Policy (Attachment A), as well as State Code requirements (Attachment B, Item 2), are applied.

A. Test Locations:

Locations for administration of substance abuse and post-incident testing are listed on the Employee Substance Abuse Testing Information Sheet, Attachment C.

B. Reasonable Suspicion - Defined

Reasonable suspicion is a belief that can be put into words, based on specific facts and reasonable inferences, such as, but not limited to, patterns of abnormal or erratic behavior, information from reliable sources, direct observation, and/or presence of physical symptoms related to substance abuse.

C. Reasonable Suspicion – General Procedure

Employees for whom there is reasonable suspicion of being under the influence should be tested for drugs or alcohol and relieved of duty pending test results, according to City of Norfolk procedures.

VII. Post Accident Testing Procedures

Accidents involving sworn officers require additional procedures to rule out the possibility of substance abuse as a factor. City policy requires post-accident testing of employees, as follows.

A. The employee may be tested for drugs or alcohol and relieved of duty pending test results, under the following conditions:

1. If there exists reasonable suspicion of drug or alcohol use, and
2. If involved in an accident while operating a City vehicle, or
3. If involved in an incident where the employee discharges his/her weapon, or
4. If an accident or incident involved loss of life or life-threatening injury, or
5. If the employee operating a city vehicle received a citation under state or local law for a moving traffic violation, or

6. If, as a result of an accident, there is substantial damage to either property or equipment.

B. Mandatory Testing in Specific Circumstances

1. City policy allows supervisors to exercise discretion in deciding whether, under the facts and circumstances of the accident, testing would be appropriate.
2. However, in applying City policy to Police Department vehicle accidents and police shootings, whether accidental or intentional, the Field Commander or a higher authority **will require** any NPD employee operating a City vehicle involved in an accident, or discharging a weapon, to undergo post-accident testing for drugs and alcohol in the following situations:
 - a. Where there is actual or probable loss of life.
 - b. When there exists a reasonable suspicion of drug or alcohol use.

C. In circumstances other than those listed Section VII B. 2 above, the Field Commander or higher authority will determine and document whether or not testing is appropriate. Factors that may be utilized in determining propriety are:

1. If the accident involved an injury requiring medical attention beyond first aid.
2. If the Department employee operating the vehicle received a citation for a moving traffic violation arising from the accident.
3. If, as a result of the accident, there is substantial damage to either property or equipment.

D. After responding to the scene of an accident that requires post-accident testing of an employee, the Field Commander or higher authority will forward a report to the Chief of Police indicating why the employee was or was not tested.

E. Reasonable Suspicion of Alcohol Impairment

If alcohol is suspected as a factor in the accident, these additional procedures will apply:

1. Employees will be required to submit to a sobriety test, the results of which will be reported on PD 664, DUI Arrest Report, and supplemented by a breath test.
2. The lapse of time expressed in minutes between the initial report or observation of the employee's condition and the sobriety test will be accurately recorded by the reporting supervisor. Breath tests will be administered as soon as feasible after initiation of the allegation.
3. The commanding officer or designee will be immediately notified, and, if reasonably practical, will be present while the breath analysis test and/or verbal examination is conducted. However, if any delay would be involved, the available ranking officer will proceed with the examination.

F. All personnel who are required to take a drug screening test for investigative reasons will sign PD 875, City Drug Screening Consent form.

G. Procedures for Blood or Urine Specimen

In accordance with State Code requirements (Attachment B, Item 2), when a blood or urine specimen is taken from a police officer for the purpose of determining whether the officer has used drugs or alcohol (see Attachment C for test sites), the specimen shall be divided and placed into two separate containers.

1. One specimen will be tested while the other is held in a proper manner to preserve the specimen by the facility collecting or testing the specimen.
2. Should the first specimen test positive, the law-enforcement officer shall have the right to require the second specimen be sent to a laboratory of his choice for independent testing in accordance with procedures set forth in State Code (Attachment B, Item 3).
3. The officer shall notify the chief of his agency in writing of his request within ten days of being notified of positive specimen results. The laboratory chosen by the officer shall be on the approved list of the Division of Forensic Science
4. The Field Commander or designee shall notify the officer from whom a blood or urine specimen is taken of his or her rights concerning the sample and procedures to be followed.

VIII. Relief of Personnel from Duty

Any command level officer or on-duty officer acting in the capacity of Field Commander, has the authority to relieve any officer under his/her command from duty until the next business day when it appears that the continued presence of the officer on the job would be a substantial and immediate threat to the welfare of the department or the public.

- A. Based on the circumstances, the command level officer has the option of relieving the officer of his/her gun, badge and I.D. card.
- B. An officer who is relieved from duty will be required to report to his/her commanding officer on the next business day at 0900 hours, unless otherwise directed by such commanding officer or designee.
- C. Immediately after relieving an officer from duty, the relieving command level officer / Field Commander, will submit a written report to the Chief of Police.
- D. All investigations of officers relieved from duty will be given an OPS control number and carried out according to OPS standard operating procedure.

CITY OF NORFOLK PERSONNEL ADMINISTRATIVE POLICIES MANUAL

8.5.1 CITY OF NORFOLK SUBSTANCE ABUSE & DRUG-FREE WORK PLACE POLICY (Issued 1 January 2004)

[Electronic Copy is Placed on NPD R Reference Drive]

- A. Purpose Statement - This Policy is intended to provide guidelines for the detection and deterrence of alcohol and drug abuse. It is the policy of the City of Norfolk to maintain a safe, healthful and productive work environment for all employees. To that end the City will act to eliminate any substance abuse (alcohol, illegal drugs, prescription drugs or any other substance which could impair an employee's ability to safely and effectively perform the functions of the particular job) which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or tends to undermine public confidence in the City's work force. It is further the City's policy that the unlawful manufacture, distribution, possession or use of a controlled substance by City employees in the work place is prohibited. For the purposes of this Policy, the presence in an employee's body of alcohol at the levels described in Section B. below, or of controlled drugs or substances not prescribed for the employee, or of prescribed drugs or substances not disclosed to supervisors (as shown by a test report by the City's testing facility), which might possibly affect an employee's effective performance of duties or operation of City equipment, while the employee is in the work place or on duty, shall constitute a violation of this policy. All employees must comply with this Policy, and violations of this Policy will result in discipline, up to and including termination, or in not being hired.

Employees are reminded that if they are aware of a problem with substance abuse, the City makes professional help available without initial cost through its Employee Assistance Program (EAP). Contacts with and assistance rendered by the EAP staff are kept confidential, except in cases of child abuse and when employees may present a danger to themselves, fellow employees and/or the public. Employees with a problem are encouraged to use this benefit to help themselves before their employment is jeopardized.

- B. Drugs to be Tested for - When drug and alcohol screening is required under the provisions of this Policy, a urinalysis, blood test, or breathalyzer test in the case of alcohol, will be given to detect the presence of the following drug groups:
1. Alcohol (ethyl)
 2. Amphetamines/Methamphetamine (e.g., speed, crystal)
 3. Cocaine
 4. Opiates (e.g., Codeine, Heroin, Morphine, Hydromorphone, Hydrocodone)
 5. Phencyclidine (PCP)
 6. THC (Marijuana)

For the purposes of this Policy, the presence in an employee's body of alcohol at the levels described below, or of controlled drugs or substances not prescribed for the employee, or of prescribed drugs or substances not disclosed to supervisors (as shown by a test report by the City's testing facility), which might possibly affect an employee's effective performance of duties or operation of City equipment, while the employee is in the work place or on duty, shall constitute a violation of this policy. In regard to alcohol, any test result of .04% or greater shall constitute a violation of this Policy. The foregoing test results shall constitute a violation of this Policy, regardless of any visible sign of impairment. Determinations under this section need not be dependent upon test results, and may in fact be based solely on other evidence, but test results alone shall be sufficient to constitute a violation.

While use of medically prescribed medications and drugs is not per se a violation of this Policy, failure by the employee to notify his/her supervisor, before beginning work, when taking medications or drugs which might interfere with the safe and effective performance of duties or operation of City equipment can result in discipline, up to and including termination. In the event there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, the issue will be resolved based upon competent medical evaluation.

- C. Job Applicant Testing - All applicants, both part-time and fulltime, will be required to undergo a drug test upon an offer of employment and prior to their final appointment.
- D. Current Employee Testing - The City may require a current City employee to undergo drug and alcohol testing if there is reasonable suspicion that the employee is under the influence of drugs or alcohol during work hours, or if the nature of the particular employee's duties and responsibilities is such that it is critical that the employee remain drug-free at all times in the performance of his or her duties.
 - 1. **Testing Upon Reasonable Suspicion** - "Reasonable suspicion" means an articulable belief based on specific facts, and reasonable inferences drawn from those facts, that an employee is under the influence of drugs or alcohol. Circumstances which constitute a basis for determining "reasonable suspicion" may include, but are not limited to:
 - a. A pattern of abnormal or erratic behavior (e.g., hyperactivity, unexplained mood swings, paranoia, hallucinations);
 - b. Information provided by a reliable and credible source;
 - c. A work-related accident;
 - d. Direct observation of drug or alcohol use;
 - e. Possession of drugs or drug paraphernalia; or

- f. Presence of the physical symptoms of drug or alcohol use (e.g., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes, needle marks/scar tracks on arms, etc., onset or unusual perspiration or shakes, unusual drowsiness or sluggishness).

Supervisors at every level are responsible for observing and monitoring their employees' behavior for signs or symptoms of drug or alcohol use, and shall promptly report any such observations to the appropriate department head or designee. When a test is based upon personal observation alone, prior to the administration of a drug or alcohol test, the behavior of the affected employee should be observed by at least two supervisory personnel. These two supervisors should concur on the need for a test. In the event that two supervisors are unavailable, the observation of one supervisor shall suffice. However, documentation should be submitted to the department head verifying the unavailability of an additional supervisory person to concur with the need for the administration of a test. The supervisors shall report to the department head or designee the specific facts, symptoms, or observations which form the basis for a belief that reasonable suspicion exists to warrant the testing of an employee, and shall obtain approval from the department head or designee prior to ordering an employee to submit to testing. Department heads will designate a sufficient number of supervisory officials with approval authority that one will be available to subordinate supervisors at all times. Supervisors shall document in writing the specific facts, symptoms, or observations justifying a determination of reasonable suspicion as soon as reasonably practicable, which may be either before or after the testing occurs.

Positive test results will constitute a violation of this Policy to the extent described in Section B. above.

- 2. Random Testing - An employee will be required to participate in random testing, when the duties or responsibilities of his or her position require or include:
 - a. The handling and/or use of firearms; or
 - b. The exercise of independent judgment in the rendering of emergency medical care and/or other emergency assistance; or
 - c. The exercise of independent judgment in emergency situations; or
 - d. The handling and/or use of equipment or materials, which, if mishandled or carelessly handled, could cause serious injury or damage; or
 - e. The confiscation, custody and/or handling of illegal drugs; or
 - f. Access to confidential law enforcement information which, if disclosed to unauthorized persons, could jeopardize the success of law enforcement activities.

Employees in positions that satisfy the foregoing criteria may be tested on a random basis as determined by the City Manager. There will be no prior notification given to employees as to the date, time or location of any random test to be conducted. Positive test results will constitute a violation of this Policy to the extent described in Section B. above.

3. Post-Accident Testing

A. Conditions under which Post-Accident Testing is appropriate

Any City employee operating a City vehicle or equipment (including firearms when required by virtue of the employee's job responsibilities) will be tested for drugs and alcohol after an accident:

- i. If the accident involved the loss of life or injury requiring medical attention beyond basic first aid; or there exists reasonable suspicion of drug or alcohol use, or
- ii. If the City employee operating the City vehicle received a citation under state or local law for a moving traffic violation arising from the accident, or
- iii. If, as a result of the accident, there is substantial damage to either property or equipment.
- iv. Notwithstanding the above, the employee's supervisors shall determine and document whether or not testing for drugs and alcohol is appropriate, depending upon the facts and circumstances of the accident.

B. Alcohol Tests

- i. If an alcohol test required by this section is not administered within two hours following the accident, the immediate supervisor and the department head shall prepare and maintain on file in the division or department's office a record stating the reason why the test was not properly administered. If a test required by this section is not administered within eight hours following the accident, no attempt shall be made to administer an alcohol test; however, the immediate supervisor and the department head shall prepare and maintain a record stating the reasons why the test was not promptly administered.
- ii. No employee tested pursuant to Section (b) who is found to have an alcohol concentration of .02% or greater but less than .04%, shall perform or continue to perform safety-sensitive functions for the City of Norfolk, including driving any City vehicle, or serving as a sworn member of the Departments of Police or Fire- Rescue, or operating any City vehicle, nor shall the City permit the employee to perform or continue to perform safety-sensitive functions until the City receives the results of that

employee's drug screen. If the drug screen results are negative, the employee must undergo a return-to-duty alcohol test and test less than .02% prior to being allowed to return to duty.

- iii. Except as provided for in this section, the City shall not take any actions pursuant to this section against any employee based solely on test results showing an alcohol concentration of less than .02%. This does not prohibit the City from pursuing action where authority is vested independent of this section and otherwise consistent with law.

C. Controlled Substance Tests

- i. If a controlled substance test required by this section is not administered within thirty-two (32) hours following the accident, there shall be no attempt to administer a controlled substance test; however, the immediate supervisor shall maintain on file a record stating the reasons why the test was not promptly administered.
- ii. No City employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions when that employee has used any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely perform that employee's required job functions.

The City requires all employees to inform their department head of any therapeutic drug use.

The results of a breath or blood test for the use of alcohol or urine test for the use of controlled substances, conducted by Federal or State officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to applicable Federal, State, or local requirements, and that the results of the test are obtained by the City of Norfolk.

D. Refusal to Cooperate with Post-Accident Testing

- i. A City employee who is subject to post-accident testing shall remain available for such testing, or may be deemed to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a City employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain emergency medical care.
- ii. An employee who refuses to consent to post accident drug and alcohol testing is subject to disciplinary action, up to and including termination. Any refusal to cooperate fully with the administration of a test, any

behavior which makes testing more difficult, or prevents administration or completion of the test, or in any manner alters or attempts to alter the test result, will be treated as a refusal to consent, regardless of whether a consent form is signed.

- E. Administrative Action Pending Receipt of Test Results
- i. After any post-accident testing, no employee will be permitted to perform any safety-sensitive functions until such time as the test results are known. Safety sensitive functions are defined as the handling and/or use of vehicles, equipment, or materials, which, if mishandled or carelessly handled, could cause death, serious injury, or serious damage to property.
 - ii. Procedures regarding the transportation of employees for testing, and the authority of supervisors over employees with respect to transportation and test administration, have been promulgated and must be followed whenever employees are to be tested under the provisions of this Policy.
- F. Supervisor Training - The City shall develop a program of training to assist supervisory personnel in identifying drug and alcohol use among employees. Such training will be directed towards helping supervisors recognize the conduct and behavior that give rise to a reasonable suspicion of drug or alcohol use.
- G. Prior Notice of Testing Policy - The City shall provide written notice of this drug and alcohol testing policy to all employees and job applicants.
- H. Consent - Before a urinalysis or blood test for drug and alcohol screening is administered, employees and job applicants will be asked to sign a consent form authorizing the test and permitting release of test results to the City. The consent form shall provide space for employees and applicants to indicate current or recent use of prescription or over-the-counter medication.
- I. Refusal to Consent: Applicants - A job applicant who refuses to consent to a drug and/or alcohol test, when requested, will be denied employment with the City. Any refusal or failure to cooperate fully with the administration of a test, any behavior which makes testing more difficult, or prevents administration or completion of the test, or in any manner alters or attempts to alter the test result, will be treated as a refusal to consent, regardless of whether a consent form is signed.
- J. Refusal to Consent: Employees - An employee who refuses to consent to a drug and alcohol test is subject to disciplinary action up to and including termination. Any refusal or failure to cooperate fully with the administration of a test, any behavior which makes testing more difficult, or prevents administration or completion of the test, or in any manner alters or attempts to alter the test result, will be treated as a refusal to consent, regardless of whether a consent form is signed.
- K. Confirmation of Test Results and Employee/Applicant Notification - An employee or job applicant whose drug test yields a positive result shall be given a second test using a

verification test. The second test shall use a portion of the same test sample withdrawn from the employee or applicant for use in the first test. If the second test confirms the positive test result, the employee or applicant shall be notified of the results in writing by the appropriate department head or designee. A portion of the test sample will be retained for six (6) months, and will be furnished to a reputable testing facility selected by an employee or applicant, upon request for a third test at the sole expense of the employee or applicant.

L. Consequences of a Confirmed Positive Test Result:

1. Applicants: - Job applicants will be denied employment with the City if their initial positive test results are confirmed. Applicants shall be informed in writing if they are rejected on the basis of a confirmed positive drug test result.
2. Employees: If an employee's positive test result is confirmed, the employee is subject to disciplinary action up to and including termination. Factors which may be considered in determining the appropriate disciplinary response include the employee's job classification, work history, length of employment, current job performance, the existence of past disciplinary actions, and the employee's action in voluntarily identifying himself/herself as a drug user or alcohol abuser and obtaining counseling and rehabilitation.

M. Disciplinary Actions - if an employee's positive test result has been confirmed and disciplinary action is taken, the employee may grieve or complain of such action, like other disciplinary actions, through the City's established Grievance Procedure or, in the case of sworn members of the Police and Fire-Rescue Departments, through other procedures to which they may be entitled under the City Charter or other statutes.

N. Confidentiality of Test Results - All information from an employee's or applicant's drug and alcohol test is confidential and only those with a need to know are to be informed of test results. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee or applicant. The results of a positive drug test shall not be released until the results are confirmed. The records of unconfirmed positive test results and negative test results shall be destroyed by the testing laboratory.

Disclosures, without an employee's or applicant's consent, may also occur when: (1) the information is compelled by law or by judicial or administrative process; (2) the information has been placed at issue in a formal dispute between the employer and employee or applicant; (3) the information is to be used in administering an employee benefit plan; (4) the information is needed by medical personnel for the diagnosis or treatment of the individual who is unable to authorize disclosure.

O. Laboratory Testing Requirements - All drug and alcohol testing of employees and applicants shall be conducted at medical facilities or laboratories selected by the City, with the exception of alcohol testing by the use of a breathalyzer, which may be conducted by qualified personnel at any site designated by the City. All procedures for

the testing, analysis, labeling, handling, retention and storage shall be in accordance with standards established by the National Institute On Drug Abuse (NIDA).

P. Criminal Convictions (Notification):

- i. It shall be the responsibility of every employee to notify the employee's department head of any criminal drug statute conviction for a violation occurring in the work place no later than five (5) days after such conviction, in writing. Any failure of an employee to provide this notification shall be a separate ground for disciplinary action.
- ii. Any department head who receives notification of a criminal drug statute conviction for a violation occurring in the work place, in addition to other administrative actions directed by this Policy, shall immediately report the same to the Director of Finance & Business Services, who shall determine whether the employee involved was directly engaged in the performance of work pursuant to the provisions of a Federal grant. In such event, the Director of Finance & Business Services shall promptly notify the Federal agency administering the grant of the conviction.

Q. Searches - The City reserves the right to search, without employee consent, all areas and property over which the City maintains joint control with an employee, or full control. Such areas and property include, but are not limited to desks, closets, bookcases, lockers, file cabinets, and/or City vehicles, and the allowance of employee security measures against third parties shall not divest the City of its authority to search. Warrants shall be obtained, if necessary, to search areas or property over which the City has no control. A department head or designee must consult with the Director of Human Resources or designee before any search is undertaken.

R. Educational Program - The City will establish a drug free awareness program to inform employees about the dangers of drug abuse, the City's Policy, any available drug counseling, rehabilitation and employee assistance programs, and the penalties which may be imposed upon employees for drug abuse violations in the work place and elsewhere.

S. Severability - the provisions of this Policy are severable and if any court of competent jurisdiction shall hold any of its provisions unconstitutional or otherwise invalid, the decision of such court shall not affect or impair any of the remaining provisions. Federal law requires that some action be taken within 30 days, when a conviction is reported.

8.6 GUIDELINES FOR ACTION ON SUBSTANCE ABUSE VIOLATIONS

A. The following administrative procedures are to be followed upon a determination of substance abuse by a City employee.

1. **Supervisory and Employee Responsibilities:** 1. **Supervisory Responsibilities** - supervisors must realize that they are responsible for identifying and documenting instances of unacceptable work performance, patterns of inadequate or deteriorating work performance, and abnormal behavior suggesting that an employee may have a drug or alcohol problem regardless of whether an employee has or is believed to have sought help from the EAP.

When a supervisor identifies conduct or behavior which he/she reasonably suspects is caused by a drug or alcohol problem, appropriate corrective action shall be taken, which may include, but need not be limited to, counseling of the employee, consultation with departmental supervisors, disciplinary action, and/or independent physical or psychological evaluation of the employee by a professional retained by the City (not EAP staff). Such supervisor's action will not be dependent upon whether an employee has sought or intends in the future to seek the help of the EAP.

Supervisors who fail to take appropriate action to detect and/or properly deal with substance abuse by employees under their supervision will themselves be subject to disciplinary action, up to and including termination.

2. **Employee Responsibilities** – employees who have a substance abuse problem are encouraged to seek assistance and are at liberty to do so privately. However, an employee whose substance abuse problem or impairment poses the slightest risk of harm or damage to himself/herself, fellow employees, the public or City or private property, is obligated to notify his/her supervisor immediately. Employees whose positions involve the handling and/or use of firearms, the rendering of emergency medical care, the handling of emergency situations, the operation of City motor vehicles, the handling and/or use of equipment or materials which, if mishandled, could cause serious injury or death, the confiscation, custody and/or handling of illegal drugs, or access to confidential law enforcement information must accept relief from duty until it is medically certified that they are fit for duty without impairment, regardless of whether they have sought or are receiving assistance for a substance abuse problem.

B. **Voluntary Admissions** – the following procedures are to be utilized when an employee voluntarily identifies himself/herself as a drug or alcohol abuser.

1. When an employee makes a voluntary admission of drug or alcohol abuse, the supervisor should obtain basic information as to the nature and extent of the drug or alcohol use, its frequency, and its effect on the employee's work performance.

2. The employee's department head is to be informed of the employee's voluntary admission immediately and authorize a drug and/or alcohol test.
3. Regardless of the employee's classification, he/she will be relieved of duties until such time as the test results are known and until the department head or his/her designee has the opportunity to determine what course of action should be taken. The employee will be allowed to take either annual or sick leave or approved leave without pay, to cover this absence from work. If the employee refuses to take leave, he/she will be suspended for such time until the test results are known, in accordance with Section F of these procedures.
4. The employee's supervisors will meet as soon as possible with their department head and a representative of the Department of Human Resources to determine whether the option of rehabilitation should be offered to the employee or whether disciplinary action is warranted. The criteria contained in Section L, (Consequences of a Confirmed Positive Test Result), of the City's Substance Abuse Policy ("Factors which may be considered in determining the appropriate disciplinary response include the employee's job classification, work history, length of employment, current job performance, the existence of past disciplinary actions, and the employee's action in voluntarily identifying himself/herself as a drug user or alcohol abuser and obtaining counseling and rehabilitation") are to be used in determining the appropriateness of extending a rehabilitation opportunity to an employee.
5. Refer to Section D (Evaluation and Decision on Action to be Taken) for further processing information.

C. Reasonable Suspicion or Random Testing:

1. Reasonable Suspicion – whenever an employee is ordered to be tested under the "reasonable suspicion" section of the City's Substance Abuse Policy, the employee will be subject to suspension in accordance with Section F of these procedures. If the employee is suspended, a Suspension Conference Form will be completed at the time of suspension, and the form will be immediately forwarded to the Department of Human Resources. The Suspension Conference Form will list as the reason for the suspension, "pending results of a (insert type of test) test."

Note: In those cases when an employee is tested for being under the influence of alcohol while at work, and the test results are confirmed, the employee will be suspended in accordance with Section F of these procedures. A Suspension Conference Form will be completed at the time of suspension, and the form will be immediately forwarded to the Department of Human Resources. The Suspension Conference Form will list as the reason for the suspension "reporting to work under the influence of intoxicants."

2. Random Testing – whenever an employee is required to be tested under the random selection section of the City’s Substance Abuse Policy and the test results are positive, the employee will be suspended in accordance with Section F of these procedures. A Suspension Conference Form will be completed at the time of suspension, and the form will be immediately forwarded to the Department of Human Resources. The Suspension Conference Form will list as the reason for the suspension, “positive results of random testing.”
3. If a positive result is obtained from either reasonable suspicion testing or random testing, and while the employee’s suspension is continued, the employee’s supervisors will meet with their department head to determine disciplinary action is warranted or whether the option of rehabilitation should be offered to the employee.

The criteria contained in Section L, (Consequences of a Confirmed Positive Test Result), of the City’s Substance Abuse Policy (“Factors which may be considered in determining the appropriated disciplinary response include the employee’s job classification, work history, length of employment, current job performance, the existence of past disciplinary actions, and the employee’s action in voluntarily identifying himself/herself as a drug user or alcohol abuser and obtaining counseling and rehabilitation”) are to be used in determining the appropriateness of extending a rehabilitation opportunity to an employee.

4. If the test results indicate the employee was not under the influence of either drugs or alcohol, and there is no other evidence of substance abuse, all records of the suspension shall be removed from the employee’s personnel records and the employee will be reimbursed for any time lost from work due to that suspension.
5. Refer to Section D (Evaluation and Decision on Action to be Taken) for further processing information.

D. Evaluation and Decision on Action to be Taken:

1. If the test results are positive, or is there is other evidence establishing substance abuse, the employee will meet with his/her department head and a representative of the Department of Human Resources in order to review the situation personally with the employee, to determine whether a rehabilitation opportunity is to be offered to the employee, or other appropriate action is to be taken.
2. If it is decided not to extend a rehabilitation opportunity to an employee, other administrative options include, but are not limited to, disciplinary action, or a medical and/or psychological evaluation to determine the employee’s fitness for continued duty.
3. If it is decided to extend a rehabilitation offer to the employee, the department head will provide the employee with an Alcohol/Drug Rehabilitation Opportunity (ADRO) form and explain to the employee possible available resources for treatment programs (e.g., the employee’s primary care physician, the Employee

Assistance Program, the Community Services Board, etc.). Both the Employee Assistance Program and the Community Services Board have agreed to give priority to City employees seeking assistance for drug/alcohol abuse. The employee will be instructed that it will be his/her responsibility to complete the ADRO form satisfactorily and return it to the department head within ten (10) workdays of the meeting.

4. The department head, in consultation with the Director of Human Resources, or their designees, will decide if the employee will be allowed to return to work during this ten (10) workday period. If it is decided that the employee will be allowed to return to work, the department must forward that decision to the Department of Human Resources. If it is decided that the employee will not be allowed to return to work, the employee will be allowed to take either annual or sick leave, or approved leave without pay, to cover this absence from work. A leave card must be completed and signed by the employee at this time. (Note: If the completed ADRO form is not returned to the department head within ten (10) workdays, any continued absence without notification to the department head or bureau superintendent will be considered unauthorized leave. Any such absence of five (5) or more consecutive workdays will be considered abandonment of the employee's position). In making this decision, a written statement by a physician or other qualified health care provider that he or she is aware of the nature of the employee's work and that the employee's continued service will pose no risk of harm to the employee or others will be considered, if presented, but will not be determinative.
 5. When the employee returns a completed ADRO form to his/her department head, the form is to be reviewed by the department head and a representative of the Department of Human Resources for completeness. The proposed rehabilitation program must be identified and described in detail. This material may be attached to the ADRO form.
 6. If the ADRO form is complete, the department head will sign and forward it to the Department of Human Resources, along with a memorandum advising of the employee's current work status.
 7. The Department of Human Resources is to forward the ADRO form to the City Manager's Office for review and approval.
 8. The decision of the City Manager's Office will be forwarded to the Human Resources Department, which in turn will notify all of the participants of that decision.
- E. Offers of Rehabilitation Opportunity – this alternative will be at the employee's sole expense. Programs are currently available through employee health insurance plans made available by the City providing both inpatient and outpatient medical care for substance abuse problems. The rehabilitation provider and the program, as provided above, will

have to be approved by the City. The employee, at his/her option, may Board, and/or other agencies or resources, for assistance in formulating a rehabilitation plan.

1. The employee will be required to sign a form:
 - a. Admitting the use of illegal drugs or alcohol (but containing language precluding its use for any criminal purpose); and
 - b. Specifically requesting the opportunity to rehabilitate himself/herself; and
 - c. Requesting to take a leave of absence if necessary for the purpose of obtaining rehabilitation treatment, and agreeing to provide evidence of satisfactory completion of such treatment approved by the City, and a negative drug test result from a facility approved by the City; and
 - d. Agreeing that if he/she fails to satisfactorily complete a program of substance/alcohol abuse rehabilitation approved by the City or to provide written evidence of satisfactory completion of the same, disciplinary action or further disciplinary action will be taken (i.e., acknowledging understanding that the rehabilitative opportunity offered is not a waiver of the City's right to discipline); and
 - e. Agreeing to voluntarily submit to random testing at any time requested within twelve (12) months after reinstatement to duty, with any refusal to constitute grounds for termination.
2. The employee will also be required to execute a comprehensive authorization allowing the City to review any and all medical and hospital records pertaining to his/her rehabilitation program or treatment, and to discuss it and them with any doctor or other person involved. Any information obtained by the City pursuant to such authorization will be kept confidential to the extent permitted by law or not necessary to defend the City's interests, and will not be released unless required by subpoena, court order, discovery proceeding or the City's interest.
3. The employee will be allowed to use his/her accrued annual leave and/or sick leave for any period of absence, and will be granted leave without pay for whatever period of absence is not covered by accrued annual and/or sick leave.

F. Suspensions

1. Immediate Action – any employee, whose work capability is believed to be impaired to any extent, is to be immediately suspended (or, in the case of a voluntary admission of substance abuse, to be allowed to take leave). No employee who is believed to be impaired to any extent by alcohol or an illegal substance may be allowed to remain on duty. Disciplinary Rule C. (2) (e) allows immediate suspension by an immediate supervisor for up to two (2) days, subject to department head approval.
2. Suspension Pending Evaluation of Alternatives – disciplinary Rule C(2) (f) allows “investigatory” suspension by the City Manager for up to 30 days (if additional time is needed to clarify evidence or to receive test results). The City manager, by the promulgation of this policy, is generally authorizing department heads to suspend employees by his/her authority under this rule, in substance abuse situations, for periods not exceeding 30 days, which are necessary to obtain test results, to evaluate the propriety of disciplinary action or rehabilitation, and to determine the appropriate action. This authority may only be exercised after consultation with and concurrence by the City Attorney and the Director of Human Resources, or their designees.
3. Return to Duty – if there is no clear evidence of impairment, an employee may, at the discretion of his or her department head, be allowed to return to work pending the receipt of test results or collection of other evidence (i.e., where substance abuse is reasonable suspected but a provable case has not yet been documented, and the nature of the work poses no hazard to the employee, to fellow employees, to the public, or to City property). In the event of any uncertainty, however, an employee holding a position in any of the occupational categories for which random testing is permitted should not be permitted to return to duty, even temporarily, unless he or she first furnishes a completed Certification of Fitness of Duty form, signed by a licensed physician.

8.7 GUIDELINES FOR DISCIPLINARY ACTION ON SUBSTANCE ABUSE VIOLATIONS

It is emphasized that the following are guidelines only, and are not to be understood as restricting the legal authority of Department heads or the City Manager to consider extenuating circumstances in particular cases. In other words, the City Manager at all times retains the full authority to administer disciplinary action according to the individual facts and circumstances of particular cases, and to disregard these guidelines in whole or in part.

A. Management Alternatives:

1. Immediate Action - any employee whose work capability is impaired to any extent, is to be immediately suspended. No employee who is believed to be impaired to any extent by alcohol or an illegal substance may be allowed to remain on duty. Disciplinary Rule C(2) (e) allows immediate suspension by an immediate superior for up to two (2) days, subject to department head approval. Disciplinary Rule C(2) (f) allows “investigatory” suspension by the City Manager for up to 30 days (if additional time is needed to clarify evidence or to receive test results). If there is no clear evidence of impairment, an employee could be allowed to return to work pending receipt of test results or collection of other evidence (i.e., where substance abuse is reasonably suspected but a provable case has not yet been documented, and the nature of the work poses no hazard to the employee, to fellow employees, to the public, or to City property).
2. Evaluation - all of the facts and circumstances relating to the situation and the individual employee should be evaluated. Factors which may be considered in determining the appropriate action include the employee’s job classification, work history, length of employment, current job performance, the existence of past disciplinary actions, and the employee’s action in voluntarily identifying himself/herself as a drug user or alcohol abuser and obtaining counseling and rehabilitation. The evaluation may include examination by a qualified medical professional at the City’s expense.
3. Alternatives - the basic management alternatives are:
 - a. Disciplinary action, up to and including termination; or
 - b. Offer of rehabilitation opportunity.
4. Offers of rehabilitation opportunity - this alternative will be at the employee’s sole expense. Programs are currently available through employee health insurance plans made available by the City providing both inpatient and outpatient medical care for substance abuse problems. The rehabilitation provider will have to be approved by the City. The employee, at his/her option, may consult the EAP Coordinators for assistance in formulating a rehabilitation plan, provided that the described authorization is executed. The employee must submit his or her proposed rehabilitation provider’s name, address, phone number, and treatment proposal to the City no later than three (3) days from the date of offer of rehabilitation opportunity.

- a. The employee will be required to sign a form:
 - i. Admitting the use of illegal drugs or alcohol (but containing language precluding its use for any criminal purpose); and
 - ii. Specifically requesting the opportunity to rehabilitate himself/herself; and
 - iii. Requesting to take a leave of absence for a period not exceeding 45 days for the purpose of obtaining rehabilitation treatment, and agreeing to provide evidence of satisfactory completion of such treatment approved by the City, and a negative drug test result from a facility approved by the City; and
 - iv. Agreeing that if he/she fails to satisfactorily complete a program of substance/alcohol abuse rehabilitation approved by the City or to provide written evidence of satisfactory completion of the same, and/or fails to produce a negative drug test result from a facility approved by the city within 45 days, disciplinary action or further disciplinary will be taken (i.e., acknowledging understanding that the rehabilitative opportunity offered is not a waiver of the City's right to discipline); and
 - v. Agreeing to voluntarily submit to random testing at any time requested within twelve (12) months after reinstatement to duty, with any refusal to constitute grounds for termination.
 - b. The employee will also be required to execute a comprehensive authorization allowing the City to review any and all medical and hospital records pertaining to his/her rehabilitation program or treatment, and to discuss it and them with any doctor or other person involved. Any information obtained by the City pursuant to such authorization will be kept confidential to the extent permitted by law or not necessary to defend the City's interests, and will not be released unless required by subpoena, court order, discovery proceeding or the City's interests.
 - c. The employee will be allowed to use his/her accrued annual leave and/or sick leave for any period of absence, and will be granted leave without pay for whatever period of absence is not covered by accrued annual leave.
5. Disciplinary Action Combined with Offer of Rehabilitative Opportunity - there will be situations in which disciplinary action less than termination may be required even if an employee accepts an offer of rehabilitative opportunity (e.g., supervisory personnel, paramedical personnel, public safety personnel, etc.).

Code References

- Item 1 City's Substance Abuse and Drug-Free Work Place Policy , Sections 8.5-8.7 (Issued 1/2004) of the City of Norfolk Personnel Administrative Policies Manual
- Item 2 State Code 9.1-501(3) Conduct of Investigation
- Item 3 State Code 18.2-268.1. Chemical testing to determine alcohol or drug content of blood; definitions.

EMPLOYEE SUBSTANCE ABUSE TESTING INFORMATION

When a police department employee is to be tested for drugs and/or alcohol, the substance abuse policy in the City of Norfolk Policies and Procedures Manual will be adhered to, and testing conducted by the contracted medical services provider as follows:

- A. Monday through Friday the employee may be taken to the:
 - 1. Office of Dr. A. Cooper, 400 W. Brambleton Ave., Suite 201, from 8:00 a.m. to 5:00 p.m.
 - 2. Nowcare / Bayview, 7924 Chesapeake Blvd from 8:00 a.m. to 8:00 p.m.
 - 3. Nowcare, 6636 Indian River Road, Chesapeake, from 8:00 a.m. to 8:00 p.m.

- B. Saturday the employee may be taken to the:
 - 1. Nowcare/Bayview, 7924 Chesapeake Blvd from 9:00 a.m. to 3:00 p.m.
 - 2. Nowcare, 6636 Indian River Road, Chesapeake, from 9:00 a.m. to 3:00 p.m.

- C. Sunday the employee will be taken to the Nowcare, 6636 Indian River Road, Chesapeake, from 8:00 a.m. to 8:00 p.m.

- D. During hours not listed in A, B, or C, above, supervisors are instructed to call an answering service at 628-5323. The answering service will page the “on duty” collector. The collector will return the supervisor’s call within ten minutes and will be at the collection center in one hour or less. The supervisor and the employee will meet the collector at the office of Dr. A. Cooper, 400 West Brambleton Ave, Suite 201.