

**TAB 1**

## City of Palmetto Background Check Policy

### 1. PURPOSE AND INTENT

The purpose of this policy is to provide uniform procedures for performing criminal background checks on potential and current employees of the City. The policy is intended to provide the City with a means of ensuring that no potential or current employees pose a threat to public safety or security, and that potential and current employees are properly qualified for the positions they hold with the City. This policy shall apply to employees of the City of Palmetto Police Department except as expressly stated herein.

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### 2. AUTHORITY

This policy is adopted by City Commission pursuant to and consistent with sections 166.0442 and 112.011, Florida Statutes.

### 3. DIRECTION

The Human Resources Director and the appropriate Department Head will review all background checks.

**Deleted:** and seek counsel from the City Attorney when he or she deems it to be appropriate.

### 4. METHOD OF OPERATION

Level 2 criminal background checks, as defined by section 435.04 of Florida Statutes, as amended, shall be conducted on all applicants for employment with the City and on current employees as a term and condition of continued employment. In addition, all employees must notify their Supervisor or Department Head within two (2) working days of a conviction of any crime, or of an arrest for any of those crimes listed on Exhibit A, attached hereto and incorporated herein. (For purposes of this policy, conviction includes pleading guilty, or nolo contendere, regardless of adjudication.) Failure to comply will result in disciplinary action, up to and including termination. When considering an employee's failure to comply, the Department Head shall take into account whether the employee was incarcerated or otherwise unable to provide timely notification. The Department Head shall immediately notify the Human Resources Director of the conviction or arrest for a crime listed in Exhibit A, attached hereto and incorporated herein.

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The initial determination of whether a conviction may affect initial or continued employment will be made by the Human Resources Director and appropriate Department Head. Each conviction will be considered on an individual, case-by-case basis, with attention being given to the nature and seriousness of the crime, the time elapsed from the conviction date, relevance to the applicant's or employee's job duties, job location, and the term and nature of an employee's service to the City.

**Comment (M1):** Commission has suggested that this information be placed elsewhere in the personnel policy. Note that section 4.06 of the personnel policy already requires notification of any arrest relating to drugs, and of certain arrests relating to alcohol. Staff will review this section of the policy to expand the requirements for notification of alcohol related offenses.

Any action recommended by the Human Resources Director and the appropriate Department Head shall be reviewed by the City Attorney and approved by the Mayor.

Employees convicted of any crime listed on Exhibit A may be suspended without pay in accordance with the procedures provided in Section 5.02 of the Personnel Policy Manual until the City's determination of final action. Final action taken by the City shall be evinced in writing and provided to the employee.

5. GUIDELINES

The below general guidelines shall be used to evaluate whether and to what an extent conviction of a crime impacts an employee's qualification for service with the City.

A. Positions that involve close contact with private property, children, or individual members of the public

In furtherance of public security and recognition of the fact that certain staff positions within the City (1) provide employees with access to private property, (2) place employees in proximity to children, and (3) require employees to work in locations or on shifts where there is little or no supervision, employees serving in the following position may be disqualified from employment if they have pled guilty, or nolo contendere, or been adjudicated guilty of any of the crimes listed on **Exhibit A**, attached hereto and incorporated herein, provided that the crime is classified, or was classified at the time of offense, as a felony or first degree misdemeanor. Disqualification may result in action including but not limited to demotion, job change or termination.

B. Positions that handle money or negotiable instruments

Employees serving in the following positions may be disqualified from employment if they have been convicted of any of the following crimes, provided that the crime is classified, or was classified at the time of offense, as a felony or first degree misdemeanor. Disqualification may result in action including but not limited to demotion, job change or termination.

1. Possession, sale, manufacture, or delivery of a "controlled substance" as defined in Chapter 893, Florida Statutes
2. Theft
3. Robbery
4. Fraud

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Building Department¶  
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**Comment [M2]:** This provision B was included in the draft policy from Orlando. Staff, however, questions whether the crimes are indicative of a threat to public security or safety. Manatee County and other jurisdictions have chosen NOT to include similar provisions in their policies.

5. Embezzlement
6. Any other felony or first degree misdemeanor evidencing dishonesty (uttering a forged document, etc.)

C. Positions that require a valid driver's license or operation of a City vehicle

Employees serving in the following positions may be disqualified from employment if they have been convicted of any of the following crimes, provided that the crime is classified, or was classified at the time of offense, as a felony or first degree misdemeanor. Disqualification may result in action including but not limited to demotion, job change or termination.

1. Driving under the influence
2. Leaving the scene of a crash involving a death or personal injury
3. Any other felony or first degree misdemeanor resulting in suspension or forfeiture of one's driver's license.

D. Positions that have access to sensitive information

Employees with access to sensitive information may be disqualified from employment if they have been convicted of any of the following crimes, provided that the crime is classified, or was classified at the time of offense, as a felony or first degree misdemeanor. Disqualification may result in action including but not limited to demotion, job change or termination. For purposes of this subsection "sensitive information" includes social security numbers, bank account numbers, information protected by HIPPA, criminal background reports, and any other information determined by the City Clerk and to be critical to the safety and welfare of individuals or the general public. All such determinations must be in writing.

1. Theft
2. Robbery
3. Fraud
4. Embezzlement
5. Any other felony or first degree misdemeanor evidencing dishonesty (uttering a forged document, etc.)

THESE GUIDELINES ARE NOT ALL INCLUSIVE. ALL CONVICTIONS WILL BE REVIEWED BY THE HUMAN RESOURCES DIRECTOR IN CONSULTATION

WITH THE APPROPRIATE DEPARTMENT HEAD, AND CITY ATTORNEY. EACH PLEA OF GUILTY OR NOLO CONTENDERE, OR ADJUDICATION OF GUILT, WILL BE CONSIDERED ON A CASE-BY-CASE BASIS FOR CONFORMANCE WITH FLORIDA LAW AND CONSISTENCY WITH THE BEST INTERESTS OF THE RESIDENTS AND EMPLOYEES OF THE CITY OF PALMETTO.

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EMPLOYEES CONVICTED OF ANY CRIME LISTED ON EXHIBIT A MAY BE SUSPENDED WITHOUT PAY PENDING THE CITY'S DETERMINATION OF FINAL ACTION. FINAL ACTION TAKEN BY THE CITY SHALL BE EVINCED IN WRITING AND PROVIDED TO THE EMPLOYEE.

Adopted by City  
Commission on: \_\_\_\_\_

Last Revised: \_\_\_\_\_

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Background Check Policy

**EXHIBIT A**

The following references are to Florida Statutes, as amended from time to time:

Section 415.111, relating to adult abuse, neglect, or exploitation of aged or disabled persons.

Former section 748.011, relating to assault, if the victim of the offense was a minor.

Section 782.04, relating to murder.

Section 782.07, relating to manslaughter.

Section 782.071, relating to vehicular homicide.

Section 782.09, relating to killing of an unborn child by injury to the mother.

Section 783.03, relating to battery, if the victim of the offense was a minor.

Section 784.021, relating to aggravated assault.

Section 784.045, relating to aggravated battery.

Section 787.01, relating to kidnapping.

Section 787.02, relating to false imprisonment.

Section 794.011, relating to sexual battery.

Former section 794.041, relating to prohibited acts of persons in familial or custody authority.

Chapter 796, relating to prostitution.

Section 798.02, relating to lewd and lascivious behavior.

Chapter 800, relating to lewdness and indecent exposure.

Section 806.01, relating to arson.

Section 812, relating to theft, robbery, and related crimes.

Section 825.102, relating to abuse or neglect of an elderly person or disabled adult.

Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.

Section 825.103, relating to exploitation of an elderly person or disabled adult.

Section 826.04, relating to incest.

Section 827.03, relating to aggravated child abuse.

Section 827.05, relating to negligent treatment of children.

Section 827.071, relating to sexual performance by a child.

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Select Year: 2008

## The 2008 Florida Statutes

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[Title XXXI](#)  
LABOR

[Chapter 435](#)  
EMPLOYMENT SCREENING

[View Entire Chapter](#)

### 435.03 Level 1 screening standards.--

(1) All employees required by law to be screened shall be required to undergo background screening as a condition of employment and continued employment. For the purposes of this subsection, level 1 screenings shall include, but not be limited to, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement, and may include local criminal records checks through local law enforcement agencies.

(2) Any person for whom employment screening is required by statute must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

(a) Section [393.135](#), relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.

(b) Section [394.4593](#), relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.

(c) Section [415.111](#), relating to abuse, neglect, or exploitation of a vulnerable adult.

(d) Section [782.04](#), relating to murder.

(e) Section [782.07](#), relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.

(f) Section [782.071](#), relating to vehicular homicide.

(g) Section [782.09](#), relating to killing of an unborn quick child by injury to the mother.

(h) Section [784.011](#), relating to assault, if the victim of the offense was a minor.

(i) Section [784.021](#), relating to aggravated assault.

(j) Section [784.03](#), relating to battery, if the victim of the offense was a minor.

- (k) Section 784.045, relating to aggravated battery.
- (l) Section 787.01, relating to kidnapping.
- (m) Section 787.02, relating to false imprisonment.
- (n) Section 794.011, relating to sexual battery.
- (o) Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- (p) Chapter 796, relating to prostitution.
- (q) Section 798.02, relating to lewd and lascivious behavior.
- (r) Chapter 800, relating to lewdness and indecent exposure.
- (s) Section 806.01, relating to arson.
- (t) Chapter 812, relating to theft, robbery, and related crimes, if the offense was a felony.
- (u) Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
- (v) Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- (w) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- (x) Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- (y) Section 826.04, relating to incest.
- (z) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- (aa) Section 827.04, relating to contributing to the delinquency or dependency of a child.
- (bb) Former s. 827.05, relating to negligent treatment of children.
- (cc) Section 827.071, relating to sexual performance by a child.
- (dd) Chapter 847, relating to obscene literature.
- (ee) Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if

any other person involved in the offense was a minor.

(ff) Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.

(3) Standards must also ensure that the person:

(a) For employees and employers licensed or registered pursuant to chapter 400 or chapter 429, and for employees and employers of developmental disabilities centers as defined in s. 393.063, intermediate care facilities for the developmentally disabled as defined in s. 400.960, and mental health treatment facilities as defined in s. 394.455, meets the requirements of this chapter.

(b) Has not committed an act that constitutes domestic violence as defined in s. 741.28.

**History.**--s. 47, ch. 95-228; s. 15, ch. 96-268; s. 21, ch. 96-322; s. 3, ch. 98-417; s. 87, ch. 2000-153; s. 45, ch. 2000-349; s. 62, ch. 2001-62; s. 50, ch. 2003-1; s. 4, ch. 2004-267; s. 3, ch. 2005-119; s. 89, ch. 2006-197; s. 61, ch. 2006-227; s. 109, ch. 2007-5; s. 16, ch. 2008-244.

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## The 2008 Florida Statutes

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[Title XXXI](#)  
LABOR

[Chapter 435](#)  
EMPLOYMENT SCREENING

[View Entire Chapter](#)

### 435.04 Level 2 screening standards.--

(1) All employees in positions designated by law as positions of trust or responsibility shall be required to undergo security background investigations as a condition of employment and continued employment. For the purposes of this subsection, security background investigations shall include, but not be limited to, fingerprinting for all purposes and checks in this subsection, statewide criminal and juvenile records checks through the Florida Department of Law Enforcement, and federal criminal records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies.

(2) The security background investigations under this section must ensure that no persons subject to the provisions of this section have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

- (a) Section [393.135](#), relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- (b) Section [394.4593](#), relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- (c) Section [415.111](#), relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- (d) Section [782.04](#), relating to murder.
- (e) Section [782.07](#), relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- (f) Section [782.071](#), relating to vehicular homicide.
- (g) Section [782.09](#), relating to killing of an unborn quick child by injury to the mother.
- (h) Section [784.011](#), relating to assault, if the victim of the offense was a minor.
- (i) Section [784.021](#), relating to aggravated assault.

- (j) Section 784.03, relating to battery, if the victim of the offense was a minor.
- (k) Section 784.045, relating to aggravated battery.
- (l) Section 784.075, relating to battery on a detention or commitment facility staff.
- (m) Section 787.01, relating to kidnapping.
- (n) Section 787.02, relating to false imprisonment.
- (o) Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- (p) Section 787.04(3), relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- (q) Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.
- (r) Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- (s) Section 794.011, relating to sexual battery.
- (t) Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- (u) Chapter 796, relating to prostitution.
- (v) Section 798.02, relating to lewd and lascivious behavior.
- (w) Chapter 800, relating to lewdness and indecent exposure.
- (x) Section 806.01, relating to arson.
- (y) Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.
- (z) Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
- (aa) Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- (bb) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- (cc) Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a

felony.

(dd) Section 826.04, relating to incest.

(ee) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

(ff) Section 827.04, relating to contributing to the delinquency or dependency of a child.

(gg) Former s. 827.05, relating to negligent treatment of children.

(hh) Section 827.071, relating to sexual performance by a child.

(ii) Section 843.01, relating to resisting arrest with violence.

(jj) Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.

(kk) Section 843.12, relating to aiding in an escape.

(ll) Section 843.13, relating to aiding in the escape of juvenile inmates in correctional institutions.

(mm) Chapter 847, relating to obscene literature.

(nn) Section 874.05(1), relating to encouraging or recruiting another to join a criminal gang.

(oo) Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.

(pp) Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.

(qq) Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.

(rr) Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.

(ss) Section 944.47, relating to introduction of contraband into a correctional facility.

(tt) Section 985.701, relating to sexual misconduct in juvenile justice programs.

(uu) Section 985.711, relating to contraband introduced into detention facilities.

(3) The security background investigations conducted under this section for employees of the Department of Juvenile Justice must ensure that no persons subject to the provisions of this section have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to,

any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

- (a) Section 784.07, relating to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers.
- (b) Section 810.02, relating to burglary, if the offense is a felony.
- (c) Section 944.40, relating to escape.

The Department of Juvenile Justice may not remove a disqualification from employment or grant an exemption to any person who is disqualified under this section for any offense disposed of during the most recent 7-year period.

(4) Standards must also ensure that the person:

- (a) For employees or employers licensed or registered pursuant to chapter 400 or chapter 429, does not have a confirmed report of abuse, neglect, or exploitation as defined in <sup>1</sup>s. 415.102(6), which has been uncontested or upheld under s. 415.103.
- (b) Has not committed an act that constitutes domestic violence as defined in s. 741.30.

(5) Under penalty of perjury, all employees in such positions of trust or responsibility shall attest to meeting the requirements for qualifying for employment and agreeing to inform the employer immediately if convicted of any of the disqualifying offenses while employed by the employer. Each employer of employees in such positions of trust or responsibilities which is licensed or registered by a state agency shall submit to the licensing agency annually, under penalty of perjury, an affidavit of compliance with the provisions of this section.

**History.**--s. 47, ch. 95-228; s. 16, ch. 96-268; s. 22, ch. 96-322; s. 4, ch. 98-417; s. 5, ch. 99-284; s. 88, ch. 2000-153; s. 7, ch. 2001-125; s. 5, ch. 2004-267; s. 4, ch. 2005-119; s. 111, ch. 2006-120; s. 90, ch. 2006-197; s. 110, ch. 2007-5; s. 3, ch. 2007-112.

<sup>1</sup>**Note.**--Repealed by s. 26, ch. 2000-349.

Section 4.06: Drug Free Workplace Program

A. PURPOSE

1. As a part of its commitment to safeguard the health of its employees, to provide a safe place for its employees to work, and to promote a drug free community, the City of Palmetto has established this policy on the use or abuse of alcohol and drugs by its employees. This policy is set up pursuant to the Drug Free Workplace Program under Florida's Workers' Compensation Law. Substance abuse, while at work or otherwise, seriously endangers the safety of employees, as well as the general public, and creates a variety of workplace problems including increased injuries on the job, increased absenteeism, increased health care and benefit costs, increased theft, decreased morale, decreased productivity, and a decline in the quality of products and services provided. We have established this policy to prevent the use and/or presence of these substances in the workplace and to assist employees in overcoming any dependence on drugs and/or alcohol in accordance with the following guidelines.
2. As mentioned above, we are implementing this policy pursuant to the Drug Free Workplace Program under the Florida Workers' Compensation Act. This provides that an employee, who is injured in the course and scope of his employment and tests positive on a drug or alcohol test, forfeits his eligibility for medical and indemnity benefits under Florida's Workers' Compensation. (Refusal to take a drug or alcohol test will result in the employee forfeiting his eligibility for medical and indemnity benefits under Florida's Workers' Compensation Law and automatic termination of the employee.)
3. The purpose of this policy is to communicate our position on drugs and alcohol in the workplace and provide guidance for the implementation of related programs.

B. SCOPE

1. All employees are covered by this policy and as a condition of employment, are required to abide by the terms of this policy.
2. Because of state or federal laws and regulations, certain employees may be subject to additional requirements.

C. DRUG FREE WORKPLACE POLICY DISSEMINATION

1. The City will give a general one-time notice to all employees that it is a condition of employment for employees to refrain from reporting to work or working with the presence of drugs or alcohol in his or her body and that a drug-testing program is being implemented. Sixty days will elapse between the notice and the actual drug testing.
2. Prior to testing, all employees or job applicants for employment will be given a summary of the Drug free Workplace policy, a summary of the drugs which may alter or affect a drug test and a list of local employee assistance programs and local drug rehabilitation programs.
3. A notice of drug testing will be included with all vacancy announcements for those positions where drug testing is required (want ads, job postings, etc.). A conspicuous location on city premises and copies of the policies will be made available for inspection during regular business hours by the employee or job applicant in the city personnel office.

D. DEFINITIONS

The definitions of words and terms as set forth in Florida Statutes, § 440.102 (1993), the Florida Workers' Compensation Drug Testing Rules (Fla. Adm. Code, Chap. 38F-9) and the Florida Agency for Health Care Administration, Drug free Workplace Standards (Fla. Adm. Code, Chap. 10E-18) will apply to the terms used in this policy.

E. ALCOHOL USE PROHIBITIONS

1. The consumption of alcohol on city property or while on duty is prohibited and will result in disciplinary action, up to and including discharge.
2. Off-duty abuse of alcohol, which adversely affects an employee's job performance or adversely affects or threatens to adversely affect other interests of the City is prohibited and may result in disciplinary action up to and including discharge.
3. The personal possession (i.e., on the person, or in a desk or locker) of alcohol on City property or on duty will result in disciplinary action, up to and including discharge.
4. The possession of alcohol in a personal vehicle or city-assigned vehicle on city property is not prohibited provided such possession is in compliance with this policy as well as federal, state, and local laws.
5. It is against City policy for an employee to report to work or to work under the influence of alcohol.
6. For the purpose of this policy, an employee is presumed to be under the influence of alcohol if a blood test or other scientifically acceptable testing procedure shows a forensically acceptable positive quantum proof of alcohol usage.
7. An employee who is perceived to be under the influence of alcohol will be removed immediately from the workplace and may be evaluated by medical personnel, if reasonably available. The City will take further action (i.e., removal from service, referral to counseling, and/or disciplinary action) based on medical information, work history, and other relevant factors. The determination of what action is appropriate in each case rests solely with the City.
8. Refusal to submit to, efforts to tamper with, or failure to pass an alcohol test will result in disciplinary action, up to and including discharge.

9. Employees arrested for an alcohol-related incident must immediately notify their supervisor, the City Clerk, or the Mayor of the arrest if the incident occurs:
  - a. During scheduled working hours, or
  - b. While operating a city vehicle on city or personal business, or
  - c. While operating a personal vehicle on City business. Failure to notify an appropriate City official may result in disciplinary action, up to and including discharge.
10. The City may suspend employees without pay under this policy pending the results of an alcohol test or investigation.

F. DRUG OR ALCOHOL USE PROHIBITIONS

1. The use, sale, purchase, possession, manufacture, distribution, or dispensation of drugs or alcohol on City property or during working time is against City policy and is cause for immediate discharge.
2. It is also against City policy to report to work or work under the influence of drugs or alcohol. This includes prescription drugs, which induce an unsafe mental or physical state. Employees who violate this policy are subject to disciplinary action up to and including discharge.
3. For the purpose of this policy, an employee is presumed to be under the influence of drugs or alcohol if a urine test, blood test or other accepted testing procedure shows a forensically acceptable positive quantum of proof of drug usage.

4. Prescription drugs may also affect the safety of the employee or fellow employees or members of the public. Therefore, any employee who is taking any prescription drug, which might impair safety, performance, or any motor functions must advise his supervisor before reporting to work under such medication. A failure to do so may result in disciplinary action. If the City determines that such use does not pose a safety risk, the employee will be permitted to work. If such use impairs the employee's ability to safely or effectively perform his or her job, the City may temporarily reassign the employee or grant a leave of absence during the period of treatment. Improper use of "prescription drugs" is prohibited and may result in disciplinary action. Prescription medication must be kept in its original container if such medication is taken during working hours or on City property.
5. Refusal to submit to or efforts to tamper with a drug or alcohol test will result in discharge.
6. The City may suspend employees without pay under this policy pending the results of a drug test or investigation.

G. TESTING

1. Testing of Applicants
  - a. Applicants considered final candidates for a position will be tested for the presence of illegal drugs as a part of the application process. (Job applicant packet)
  - b. The City may elect to only test applicants who apply for certain classifications or job positions based on a reasonable classification basis. A list of classifications will be developed by the City and kept on file in the office of the City Clerk.
  - c. The City may allow the job applicant to begin work pending the results of the drug test. If the test result is positive the applicant will be subject to immediate discharge.

- d. Any job applicant who refuses to submit to drug testing, refuses to sign the consent form, fails to appear for testing, tampers with the test, or fails to pass the pre-employment drug test will be ineligible for hire.

## 2. Reasonable Suspicion Drug Testing

- a. Employees must submit to a drug test if reasonable suspicion exists to indicate that their ability to perform work safely or effectively may be impaired. "Reasonable-suspicion testing," means drug testing based on a belief that an employee is using or has used drugs in violation of the City policy, drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon:

1. Observable phenomena while at work, such as direct observation of drug use or of the physical symptoms or manifestations of being under the influence of a drug.
2. Abnormal conduct or erratic behavior while at work, or a significant deterioration in work performance.
3. A report of drug use, provided by a reliable and credible source.
4. Evidence that an individual has tampered with a drug test during his employment with the City.
5. Information that an employee has caused, contributed to, or been involved in an accident while at work. An accident is when there is injury, which requires a report to the Division of Workers' Compensation or a third party injury requiring medical treatment.
6. Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on City premises or while operating the City vehicle, machinery, or equipment.

- b. If a supervisor believes reasonable suspicion exists, the supervisor should report his or her findings and observations to the City Clerk. Upon approval by the City Clerk or an officer of the City, the employee will be asked to submit to a drug test and sign a form acknowledging his or her consent. (Employee packet). Factors, which substantiate cause to test, should be documented by the supervisor on the Substance Abuse Investigation Report Form. This must be done as soon as possible but no later than 7 days after the employee has been drug tested. A copy of this report will be given to the employee upon request and the original documentation will be kept confidentially by the City and retained for at least 1 year.

### 3. Random Testing

- a. Employees in "sensitive" positions will be required to submit to drug testing on a random basis. A list of those job classifications determined to be "sensitive" will be developed by the City and kept on file in the office of the City Clerk and will be periodically updated as needed. Covered individuals will be informed in writing that they are subject to random testing due to the sensitive nature of their jobs.
- b. Selection of employees for random testing will be conducted through the use of a random number generator or other neutral selection process.
- c. When an employee is selected for random testing, both the employee and the employee's supervisor will be notified on the day the test is scheduled to occur.
- d. Testing may be postponed only when an employee's supervisor and the City Clerk agree that there is a compelling need for deferral (i.e., the employee is out on leave or traveling).

- e. An employee whose random drug test is deferred will be subject to an unannounced test within sixty days.

4. Routine Fitness-for-Duty

An employee will submit to a drug test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the City established policy or that is scheduled routinely for all members of an employment classification or group, and approved as a prerequisite by the City.

5. Follow-up Testing

If the employee in the course of employment enters an employee assistance program for drug-related problems, or an alcohol or drug rehabilitation program, the employee must submit to unannounced drug testing as a follow-up to such program, at least once a year for two years after completion of the program. Advance notice of follow-up testing will not be given to the employee being tested. If an employee voluntarily enters a program, the City, at its option, may not require follow-up testing.

6. Return to Duty Testing

An Employee who does not pass a drug test cannot return to work unless:

- a. The City, at its sole discretion, permits the employee to return to work.
- b. The employee passes a drug test administered under this rule.
- c. The employee agrees to participate in and successfully complete any alcohol or drug evaluation, counseling or rehabilitation program required by the City.
- d. The employee agrees to submit to periodic, unannounced drug tests at least once a year for a two (2) year period after completion of the program.

e. Participation in a treatment program, be it either voluntarily or pursuant to this section, will not excuse work rule violations or poor performance and an employee may be disciplined or discharged for such offenses or failure to perform.

7. Additional Testing

Additional testing may also be conducted as required by applicable state or federal laws, rules, or regulations or as deemed necessary by the City.

8. Refusal to Test

Employees who refuse to submit to a drug test forfeit their eligibility for all workers' compensation medical and indemnity benefits and will be terminated from employment or otherwise disciplined as provided in this policy.

H. TESTING PROCEDURE

1. The City may test for any or all of the following drugs:

<b>Alcohol</b>	(booze, drink, distilled spirits, wine, malt beverages, beer, intoxicating liquors, alcoholic beverages, etc.)
<b>Amphetamines</b>	(Binhetamine, Desoxyn, Dexedrine) <sup>2</sup>
<b>Cannabinoids</b>	(marijuana, hashish, hash, hash oil, pot, joint, roach, spleaf, grass, weed, reefer)
<b>Cocaine</b>	(coke, blow, nose candy, snow, flake, crack)
<b>Phencyclidine Methaqualone</b>	(POP, angel dust, hog)
<b>Opiates</b>	(opium, dover's powder, paregoric, parepectolin)
<b>Barbiturates</b>	(Phenobarbital, Tuinal, Amytal)
<b>Benzodiazophines</b>	(Ativan, Azene, Klonopin, Dalmane, Diazepam, Halcion, Librium, Poxipam, Restoril, Serax, Tranxene, Valium, Vertron, Xanax)

<b>Methadone</b>	(Dolophine, Methadose)
<b>Propoxyphene</b>	(Darvocet, Darvon N, Dolene)
<b>Methamphetamines</b>	(Meth, Crank, Ice, Crystal, Crystal Meth)
Metabolites of any substances listed above.	

2. Job applicants and employees required to submit to drug or alcohol testing will be asked to sign a Consent to Testing form.
3. Because of the potential adverse consequences of positive test results on employees, the City will employ a very accurate testing program. Urine and blood samples will be analyzed by a highly qualified independent laboratory, which has been selected by the City and approved by the Agency for Health Care Administration or the U.S. Department of Health and Human Services.
4. Applicants and employees will be given an opportunity prior to and after testing to provide any information to the Medical Review Officer (MRO) which they consider relevant to the test including listing all drugs they have taken recently, listing prescribed drugs and explaining the circumstances of the use of these drugs in writing or other relevant medical information. This medical information is confidential and should be given only to the MRO. The applicants and employees will also be provided with a notice of the most common medication by brand name or common name, as well as the chemical name, which may alter or affect a drug test. Finally, applicants and employees will receive a summary of this policy and a list of local employee assistance programs and local drug rehabilitation programs.
5. An employee injured at the workplace and required to be tested will be taken to a medical facility for immediate treatment of injuries. If the injured employee is not at a designated collection site, the employee will be transported to one as soon as it is medically feasible and specimens will be obtained. If it is not medically feasible to move the injured employee, specimens will be obtained at the treating facility under the procedures set forth in this policy and transported to an approved testing laboratory.

6. No specimens will be taken prior to the administration of emergency medical care. Once this condition has been satisfied, an injured employee must release to the City the results of any tests conducted for the purpose of showing the presence of alcohol or drugs.

7. Body Specimens

Urine will be used for the initial test for all drugs except alcohol and for the confirmation of all drugs except alcohol. Blood will be used as both the initial and confirmation test for alcohol. The physician will have the discretion to determine whether drawing a blood sample will threaten the health of the injured employee or if the employee has a medical condition unrelated to the accident which may preclude the drawing of the necessary quantity of blood for a testing specimen. Under these circumstances, no inference or presumption of intoxication or impairment will be made.

8. Cost of Testing

The City will pay the cost of initial and confirmation drug tests, which it requires of employees and job applicants. An employee or job applicant will pay the cost of any additional drug tests not required by the City.

9. Collection Site

a. The City will utilize a collection site designated by an approved laboratory which has all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, chain-of-custody procedures, temporary storage and shipping or transportation of urine and blood specimens to an approved drug testing laboratory. The City may also utilize a medical facility as a collection site, which meets the applicable requirements.

- b. Security of the collection site, chain of custody procedures, privacy of the individual, collection control, integrity and identity of the specimen, and transportation of the specimen to the laboratory will meet state and federal rules and guidelines. If the laboratory is certified by Florida Agency for Health Care Administration, Drug Testing/Chain-of-Custody/HRS Form 1806 will be used for each employee or job applicant tested. (See last four pages of Section 6.) If the laboratory is certified by the United States Department of Health and Human Services it will use the chain-of-custody form designated by the Department of Health and Human Services.

10. Collection Site Personnel

A specimen in an amount sufficient for two (2) drug tests will be taken or collected by:

- a. A physician, a physician's assistant, a registered professional nurse, a licensed practical nurse, a nurse practitioner, or a certified paramedic who is present at the scene of the accident for the purpose of rendering emergency service or treatment; or
- b. A qualified person employed by a licensed or certified laboratory who has the necessary training and skills for the assigned tasks.

11. Testing Laboratory

- a. The laboratory used to analyze initial or confirmation drug specimens will be either licensed and approved by the Agency for Health Care Administration using criteria established by the Agency in its Drug free Workplace Standards (Fla. Adm. Code Chap. 10E-18), or the laboratory will be certified by the United States Department of Health and Human Services using criteria established by the Department of Health and Human Services.

- b. All laboratory security, chain-of-custody, transporting and receiving of specimens, specimen processing, retesting, storage of specimens, instrument calibration and reporting of results will be in accordance with state laws and rules established by the Florida Agency for Health Care Administration or the United States Department of Health and Human Services.
- c. The laboratory will provide assistance to the MRO, the employee or job applicant for the purpose of interpreting any positive confirmed test results.

12. Initial Test

The initial screen for all drugs shall be an immunoassay except the initial test for alcohol shall be an enzyme oxidation methodology.

Levels on initially screened urine specimens, which are equal to or exceed the following shall be considered to be presumptively positive and then submitted for confirmation testing.

<b>Amphetamines</b>	1000 ng/mL
<b>Cannabinoids</b>	50 ng/mL
(11 -nor-Delta-9-tetrahydrocannabinol-9-carboxylic acid)	
<b>Cocaine</b>	300 ng/m
(Benzoylecgonine)	
<b>Phencyclidine</b>	25 ng/mL
<b>Methaqualone</b>	300 ng/mL
<b>Opiates</b>	2000 ng/mL
<b>Barbiturates</b>	300 ng/mL
<b>Benzodiazepines</b>	300 ng/mL
<b>Methadone</b>	300 ng/mL
<b>Propoxyphene</b>	300 ng/mL

The only specimen for alcohol testing shall be blood and the initially screened specimen shall be considered presumptively positive and submitted for confirmation testing if the level is equal to or exceeds 0.04g/dL.

### 13. Confirmation Tests

All specimens identified as presumptively positive on the initial test shall be confirmed using mass spectrometry/mass spectrometry (MS/MS) or gas chromatography/mass spectrometry (GC/MS), except that alcohol will be confirmed using gas chromatography. All confirmations shall be done by quantitative analysis. Levels on confirmation testing for urine specimen's, which are equal to or exceed the following shall be reported as positive:

<b>Amphetamines</b>	500 ng/mL
(amphetamine, methamphetamine)*	
<b>Cannabinoids</b>	15 ng/mL
(11 -nor-Delta-tetrahydrocannabinolcarboxylic acid)	
<b>Cocaine</b>	150 ng/mL
(benzoulecgonine)	
<b>Phencyclidine</b>	25 ng/mL
<b>Methaqualone</b>	150 ng/mL
<b>Opiates</b>	
Codeine	2000 ng/mL
Morphine	2000 ng/mL
6-Acetylmorphine **	10 ng/mL
<b>Barbiturates</b>	150 ng/mL
<b>Benzodiazepines</b>	150 ng/mL
<b>Methadone</b>	150 ng/mL
<b>Propoxyphene</b>	50 ng/mL

\* A laboratory shall not report a specimen positive for methamphetamine only. The specimen must contain amphetamine at a concentration equal to or greater than 200 ng/mL, by the confirmation test. If this criterion is not met, the specimen shall be reported as negative for methamphetamine.

\*\* Tests for 6-Acetylmorphine when the morphine concentration exceeds 2000 ng/mL.

The alcohol level on confirmation testing for blood, which is equal to or exceeds 0.04g/dL, shall be reported as positive.

## I. TEST RESULTS

### 1. Reporting Results

- a. The laboratory will report all test results (both positive and negative) to the Medical Review Officer (MRO) within seven working days after receipt of the specimen at the laboratory. The Medical Review Officer is employed by the City and not the drug testing laboratory.
- b. The laboratory will report as negative all specimens, which are negative on the initial test or negative on the confirmation test. Only specimens confirmed positive on the confirmation test will be reported positive for a specific drug. A report will not disclose the presence or absence of any drug other than a specific drug and its metabolites listed in this policy.
- c. The laboratory will transmit results in a manner designed to ensure confidentiality of the information. The laboratory and MRO will ensure the security of the data transmission and restrict access to any data transmission, storage and retrieval system.
- d. The MRO will verify that positive and negative test results were properly analyzed and handled according to the Agency for Health Care Administration or U.S. Department of Health and Human Services rules. The MRO will have knowledge of substance abuse disorders and shall also be knowledgeable in the medical use of prescription drugs and in the pharmacology and toxicology of illicit drugs. The MRO shall evaluate the drug test result(s), which is reported by the lab, verify by checking the chain-of-custody form that the specimen was collected, transported and analyzed under proper procedures, and determine if any alternative medical explanations caused a positive test result. This determination by the MRO can include conducting a medical interview with the individual, review of the individual's medical history or the review of any other relevant

bio-medical factors. The MRO shall also review all medical records made available by the tested individual. The MRO may request the laboratory to provide quantization of test results.

- e. The MRO will contact the employee or job applicant of a confirmed positive test result and inquire as to whether prescriptive or over-the-counter medications could have caused the positive test result. The MRO will follow the procedures set forth in the Workers' Compensation Drug Testing Rules and the Agency for Health Care Administration, Drug free Workplace Standards or the rules established by the U.S. Department of Health and Human Services for providing the applicant or employee the opportunity to present relevant information regarding the test results. After following the appropriate procedures, the MRO will notify the City of any verified, confirmed positive test results.
- f. Within five working days after receipt of a positive confirmed test result from the MRO, the City will inform the employee or job applicant in writing of such positive test results, the consequences of such results, and the options available to the employee or job applicant, including the opportunity to contact the MRO and the right to file an administrative or legal challenge.
- g. The City will provide to the employee or job applicant upon request a copy of the test results.
- h. Unless otherwise instructed by the City in writing, all written records pertaining to a given specimen will be retained by the drug testing laboratory for a minimum of five years. The drug testing laboratory shall retain (in properly secured refrigerated or frozen storage) for a minimum period of one

year, all confirmed positive specimens. Within this one year period the City, employee, job applicant, MRO or the Department of Health and Rehabilitative Services may request in writing that the laboratory retain the specimen for an additional period of time. If no such request is received, the laboratory may discard the specimen after one year of storage.

- i. Within seven days for all tests based on reasonable suspicion, the City will detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of the report will be given to the employee upon request. The original report will be kept confidential and retained by the City for at least one year.

## 2. Challenges to Test Results

- a. Within five working days after receiving notice of a positive confirmed test result, the employee or job applicant may submit information to the MRO explaining or contesting the test results, or to the City explaining why the test result does not constitute a violation of this policy. The employee or job applicant will be notified in writing if the explanation or challenge is unsatisfactory. The written notice will be given to the employee or job applicant within fifteen days of receipt of the explanation or challenge, and will include why the employee's or job applicant's explanation is unsatisfactory, along with the report of positive results. All such documentation will be kept confidential and will be retained for at least one year.
- b. When an employee or job applicant undertakes an administrative or legal challenge to the test results, he or she will be responsible to notify the City and laboratory in writing of such challenge and such notice shall include reference to the chain-of-custody specimen identification number. After such notification, the sample shall be retained by the laboratory until the case or administrative appeal is settled.

- c. The Agency for Health Care Administration, the City or the MRO detecting a false positive error shall immediately notify the laboratory and the Department of any such error.

3. Employee Protection

- a. During the 180-day period after written notification of a positive test result, the employee will be permitted by the City to have a portion of the specimen retested, at the employee's expense. Any additional tests, however, must be conducted on the same specimen as the original test. The retesting must be done at a Florida Agency for Health Care Administration (HCA) or United States Department of Health and Human Services licensed and approved laboratory. The second laboratory must test at equal or greater sensitivity for the drug in question as the first laboratory. The first laboratory, which performed the test for the City, will be responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain-of-custody for such transfer.
- b. The drug testing laboratory will not disclose any information concerning the health or mental condition of the tested employee.
- c. The City will not request or receive from the testing facility or the MRO any information concerning the personal health, habit or condition of the injured employee including, but not limited to, the presence or absence of HIV antibodies in the injured worker's body fluids.
- d. The City will not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee of job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a Medical Review Officer.

- e. The City will not discharge, discipline or discriminate against an employee solely upon the employee's voluntarily seeking treatment, while under the employ of the City, for a drug-related problem, if the employee has not previously tested positive for drug use, entered an employee assistance program for drug-related problems, or entered an alcohol and drug rehabilitation program. The City retains the right to select an EAP or drug rehabilitation program when the City pays the cost of the employee's participation in the program.
- f. All authorized treatment of an injured employee prior to reasonable notice of the denial of benefits will be paid to the health care provider by the carrier or self-insurer. Prior to denying medical and indemnity benefits based upon a positive test result, the City workers' compensation carrier or self-insurer will give reasonable notice to all affected health care providers that payment for treatment, care and attendance provided to the employee after a future date certain will be denied.

J. EMPLOYEE ASSISTANCE PROGRAM

The City will maintain an Employee Assistance Program (EAP) to be administered by the office of the City Clerk.

K. INVESTIGATION

1. To ensure that illegal drugs and alcohol do not enter or affect the workplace, the City reserves the right to search all vehicles, containers, lockers, or other items on City property in furtherance of this policy. Individuals may be requested to display personal property for visual inspection upon City request.
2. Searches will be conducted only where the City has reason to believe that the employee has violated the City substance abuse policy.
3. Failure to consent to a search or display personal property for visual inspection will be grounds for discharge or denial of access to City premises.

4. Searches of an employee's personal property will take place only in the employee's presence. All searches under this policy will occur with the utmost discretion and consideration for the employee involved.
5. Individuals may be required to empty their pockets, but under no circumstances will an employee be required to remove articles of clothing or be physically searched.
6. Because the primary concern is the safety of its employees and their working environment, the City will not normally prosecute the employee in matters involving illegal substances. However, the City will turn over all confiscated drugs to the proper law enforcement authorities. Further, the City reserves the right to cooperate with or enlist the services of proper law enforcement authorities in the course of any investigation.

L. ARREST OR CONVICTION FOR DRUG-RELATED CRIME

1. If an employee is arrested for or convicted of a drug-related crime, the City will investigate all of the circumstances; and City officials may utilize the drug-testing procedure if cause is established by the investigation. In most cases, an arrest for a drug-related crime constitutes reasonable suspicion of drug use under this policy. The following procedures will apply:
  - a. During investigation, an employee may be placed on leave without pay. After the investigation is completed, the leave may be converted to a suspension or the employee may be reinstated depending upon the facts and circumstances;
  - b. If convicted of a drug-related crime, an employee will be terminated;

- c. If an employee has been suspended and the case has been dismissed or otherwise disposed of, the City will make a determination as to whether to authorize the employee's return to work based on its investigation. If the employee is authorized to return to work, the employee must agree in writing to unannounced, periodic testing for a period of up to 2 years;
  - d. Because of the seriousness of such situations, the City reserves the right to alter or change its policy or decisions on a given situation depending upon its investigation and the totality of the circumstances.
2. As a condition of employment, an employee will notify the City Clerk of any criminal drug statute conviction for a violation, which occurred on City premises. The employee must give notice to the City within five days of such conviction.

M. CONFIDENTIALITY

All information, interviews, reports, statement memoranda and drug test results, written or otherwise, received by the City as a part of this drug testing program are confidential communications. Unless authorized by state laws, rules or regulations, the City will not release such information without a written consent form signed voluntarily by the person tested. This right to confidentiality does not apply when the information is used by the City as a defense in a civil or administrative matter.

N. RECORDS AND TRAINING

1. The City will maintain a current resource file of providers of employee assistance including alcohol and drug abuse programs, mental health providers, and various other persons, entities or organizations designed to assist employees with personal or behavioral problems. The City will inform employees and new hires about various employee assistance programs that the City may have available. The information shall be made available at a reasonable time convenient to the City and shall be discreetly reviewed by the employees.

2. The City will provide an annual education course to assist the employees in identifying personal and emotional problems which may result in the misuse of alcohol or drugs. This course will also include a presentation on the legal, social, physical and emotional consequences of the misuse of alcohol or drugs.

O. CONCLUSION

The City drug free workplace policy has been prepared so as not to conflict with public policy and, further, not to be discriminatory or abusive. A drug free workplace should be the goal of every employer in America. Drug and alcohol testing is only one of the several steps that must be taken to achieve this objective. When incorporated into a comprehensive anti-drug effort, testing can go a long way in combating drug and alcohol abuse in the workplace.

**THIS POLICY SUPERCEDES ANY INFORMATION PROVIDED TO APPLICANTS AND/OR EMPLOYEES, EITHER WRITTEN OR ORAL. THE EMPLOYER RESERVES THE RIGHT TO CHANGE THE PROVISIONS OF THIS POLICY AND TESTING PROGRAM AT ANY TIME IN THE FUTURE.**

Section 4.07: Harassment Policy

A. Policy

1. The City of Palmetto is committed to providing workplaces that are non-discriminatory and afford equal treatment to all. The City will not condone or tolerate illegal discriminatory behavior. This policy specifically includes sexual harassment and any other type of harassment or discriminatory conduct based on race, color, national origin, religion, gender, marital status, age or disability.
2. Employees shall not engage in conduct which violates this policy at any time during working hours or on City premises while off duty.
3. All administrative and supervisory personnel are expected to abide by the City's commitment to equal opportunity and treatment under the law and to ensure that this policy is fully implemented and enforced.