

AN ORDINANCE TO AMEND THE CODE OF ATHENS-CLARKE COUNTY, GEORGIA
WITH RESPECT TO **DRUG AND ALCOHOL TESTING**; AND FOR OTHER PURPOSES.

The Commission of Athens-Clarke County, Georgia hereby ordains as follows:

SECTION 1. Chapter 1-13 of the Code of Athens-Clarke County, Georgia, entitled “DRUG AND ALCOHOL TESTING” is hereby deleted in its entirety and the following substituted in lieu thereof:

CHAPTER 1-13. - DRUG AND ALCOHOL TESTING

- Sec. 1-13-1. Drug and alcohol use prohibited.
- Sec. 1-13-2. Employees subject to testing.
- Sec. 1-13-3. Pre-employment drug and alcohol testing.
- Sec. 1-13-4. Employees subject to random drug and alcohol testing.
- Sec. 1-13-5. Drug and/or alcohol screening test based on reasonable suspicion.
- Sec. 1-13-6. Testing after accidents or injury.
- Sec. 1-13-7. Prescription drug use.
- Sec. 1-13-8. List of medications.
- Sec. 1-13-9. Acknowledgement; notification.
- Sec. 1-13-10. Consent.
- Sec. 1-13-11. Refusal to consent.
- Sec. 1-13-12. Testing procedures.
- Sec. 1-13-13. Confidentiality of test results.
- Sec. 1-13-14. Disciplinary and termination policy.
- Sec. 1-13-15. Employee assessment.
- Sec. 1-13-16. Voluntary employee assistance program.
- Sec. 1-13-17. Drug and alcohol criminal charges and dispositions.

Sec. 1-13-1. - Drug and alcohol use prohibited.

Athens-Clarke County employees are a most valuable resource, and it is Athens-Clarke County’s goal to provide a healthy, satisfying work environment which promotes personal opportunities for growth. Athens-Clarke County’s policy is to: (1) assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner; (2) create a workplace environment free from the adverse effects of drug abuse and alcohol misuse; (3) prohibit the unlawful manufacture, distribution, dispensing, possession or use of controlled substances; and (4) encourage employees to seek professional assistance any time personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.

Drug and alcohol use by Athens-Clarke County employees during assigned working hours, in government buildings or on government grounds, or otherwise while on government business, is prohibited. This shall include the use of illegal substances, the abuse of prescription medications and the use of alcohol.

Sec. 1-13-2. - Employees subject to testing.

For the purposes of this chapter, employees shall be divided into the following categories:

Category I. Safety-Sensitive Employees. The following employees are considered to be in safety-sensitive positions:

1. Mechanics, commercial driver's license holders, and other operators of assigned motorized equipment needed to perform daily job duties.

Employees who transport children.
3. Lifeguards, pool managers, assistant pool managers, and lakefront safety supervisors.
4. Ben Epps Airport: All employees whose job duties include any responsibility for maintenance or operation of aircraft, maintenance or operation of flight or ground control communications, handling fuel, or maintenance or operation of fire safety equipment.
5. Water and wastewater treatment: Athens-Clarke County Water Treatment Plant and Water Reclamation Plant personnel who are responsible for the operation and maintenance of water filtration or pollution control equipment.
6. Public Safety:
 - a. Athens-Clarke County Police Department: All sworn personnel, communications officers, and school crossing guards;
 - b. Athens-Clarke County Fire Department: All certified employees;
 - c. Clarke County Sheriff's Office: All sworn personnel;
 - d. Athens-Clarke County Probation Office: All sworn personnel;
 - e. Athens-Clarke County Department of Corrections: All sworn personnel and all personnel having direct contact with inmates or Diversion Center residents;

Category II. For the purposes of this chapter, Category II employees are all employees of Athens-Clarke County to include those in Category I, above. Employees in Category II shall be subject to alcohol and drug testing due to reasonable suspicion and after accidents and/or work related injury requiring medical treatment. Employees in Category II shall be subject to all provisions of this chapter.

Category III. Athens Transit System Employees. For purposes of this chapter, Category III employees are all employees of the Athens Transit System subject to the Athens-Clarke County Transit System Substance Abuse Policy as adopted by resolution of the Commission.

Sec. 1-13-3. – Pre-employment drug and alcohol testing.

- A. All job applicants being considered for employment in Category I and Category III positions shall be required to pass a drug and alcohol screening test as the final step prior to being hired. All job applicants shall be informed in advance that said testing shall be required.
- B. For purposes of administering drug and alcohol testing for Category I and Category III positions, pre-employment testing may be required not only for new hires but also for the employment actions of promotion, demotion, and re-employment to a safety sensitive position, unless the requirement is waived by the Human Resources Director because the employee has passed a drug and alcohol test within the last 30 days.

Sec. 1-13-4. - Employees subject to random drug and alcohol testing.

- A. Only those employees set forth in section 1-13-2, Category I and Category III, shall be subject to random testing for drugs and alcohol. A statistically valid computer-based random selection method will be used to select employees for random drug and alcohol testing, thus allowing each employee in a Category I and Category III position to have an equal chance of being tested.
- B. Random testing shall be done just before, during, or just after scheduled duty hours. The testing dates and times shall be with unpredictable frequency throughout the year. Category I and Category III employees hired during the year shall be added to the selection pool during the month following their hire. Some Category I and Category III employees may be tested more than once a year; some may not be tested at all depending upon the random selection. All Category I and Category III employees remain in the random selection pool at all times, regardless of whether they have been previously selected randomly for testing. Employees are to receive no prior notification of the random testing. Employees shall report to the designated testing facility for testing within two (2) hours of receipt of the notification form from their supervisor.

Sec. 1-13-5. - Drug and/or alcohol screening test based on reasonable suspicion.

- A. *Reasonable suspicion.* Reasonable suspicion testing shall be conducted when there are reasonable and specific grounds to believe that an employee's poor performance or unsafe acts are due to drug or alcohol use by the employee. Specific observations shall be made of appearance, speech, behavior, and/or body odor.

Situations that may give rise to a conclusion that an employee is under the influence of drugs and/or alcohol include, but are not limited to, the following:

1. An employee is involved in a physical or verbal altercation on the job.

2. An employee has an accident on the job, or he or she does not exercise reasonable care which causes potential for, or actual damage to a person or property.
 3. An employee exhibits unusual behavior such as slurred speech or unsteady walking or movement on the job.
 4. An employee has an odor of alcohol on his or her person on the job.
 5. An employee is in possession of alcohol or drugs on the job that indicate recent use.
- B. An employee shall be required to submit to alcohol and/or drug testing when there is reasonable suspicion he or she is under the influence of alcohol and/or drugs during assigned working hours or while otherwise on government duty or in control of government property. If testing cannot be done within a two-hour window, the supervisor must document the reason.
- C. Supervisors who suspect that an employee is under the influence of drugs and/or alcohol shall immediately report the incident to their division manager and department director.
- D. The determination of whether reasonable suspicion exists shall be made by the department director or by the highest ranking supervisory staff on duty at the time. The facts underlying the determination of reasonable suspicion shall be disclosed to the employee at the time the demand to submit to testing is made, and written confirmation of behaviors shall be provided to the employee.
- E. Following the determination that reasonable suspicion exists, the employee shall immediately be transported to and from the testing site by the employee's supervisor or a designee. If an employee is found to be in violation of these regulations, then following the testing procedure, the person transporting the employee shall make appropriate arrangements to transport the employee home.
- F. Supervisors shall be required to document in writing, within the next 24 hours, the specific facts, symptoms or observations that formed the basis for their determination that reasonable suspicion existed to warrant the testing of an employee. All documents created in connection with the determination of reasonable suspicion shall be forwarded to the ACCUG Safety and Risk Manager.
- G. Athens-Clarke County shall conduct a training program to assist supervisory personnel in identifying drug and alcohol use by employees. Such training shall be directed toward helping supervisors to recognize the conduct and behavior giving rise to a reasonable suspicion of drug or alcohol use.

Sec. 1-13-6. - Testing after accidents or injury.

Whenever any employee of Athens-Clarke County has been involved in a work-related accident, or receives a work-related injury, alcohol and drug testing shall be conducted within two (2) hours of the accident or incident when:

- A. There is vehicle/equipment damage or bodily injury; or
- B. There is a fatality; or
- C. Driver is cited with a traffic violation; or
- D. There is reasonable suspicion to believe that the employee's behavior or appearance may indicate alcohol or drug use; or
- E. When an employee sustains a work-related injury requiring medical treatment; or
- F. If an employee, within the scope of his or her employment, is engaged in the use of force and causes serious bodily injury or death to another person.

Sec. 1-13-7. - Prescription drug use.

- A. While on the job, employees shall adhere strictly to the medical directions as listed on their prescription medication. It is the employee's responsibility to notify the prescribing physician of the duties required by the employee's position and to ensure that the physician approves the use of the prescription medication(s) while the employee is performing his or her duties. The employee shall be responsible for notifying his or her supervisor of any restrictions that may affect or prevent the safe performance of the required duties.
- B. An employee who tests positive for a prescription medication that was not prescribed to him or her shall be suspended for three (3) days with pay pending termination.
- C. The abuse of legally prescribed drugs is prohibited. Any employee whose job performance or attendance deficiencies result from such abuse shall be suspended for three (3) days with pay pending termination. If an employee's behavior and/or job performance gives rise to a reasonable suspicion as determined under the standards set forth in Section 1-13-5 that the employee is abusing prescription drugs, the employee may be required to submit to drug testing and must not be permitted to return to duty in accordance with section 1-13-5.

Sec. 1-13-8. - List of medications.

Employees and job applicants shall at the time of testing provide a list of those prescriptions and over-the-counter medications that he or she has recently used. The list of medications shall be kept confidential until test results are available. The list of medications shall be disclosed only to the medical review officer who will determine whether the positive result was due to the lawful use of any of the listed medications.

Sec. 1-13-9. - Acknowledgement; notification.

Every employee subject to alcohol and drug testing shall be required to sign a form issued by the employee's supervisor acknowledging the date, time and location of his or her test.

Sec. 1-13-10. - Consent.

Before a drug and/or alcohol test is administered, employees and job applicants shall be asked to sign a consent form authorizing the test and permitting release of test results to the employer and the medical review officer. The consent form shall provide a space for employees and job applicants to acknowledge that they have been notified of the requirements of this chapter.

Sec. 1-13-11. - Refusal to consent.

- A. *Job applicants.* Any applicant for a Category I job with the Athens-Clarke County Government who refuses to consent to a drug and alcohol test shall be denied employment.
- B. *Employees.* Any employee who refuses to sign the consent form referenced in section 1-13-10, or to submit to a drug and alcohol test as required herein shall be suspended for three (3) days with pay pending termination.
- C. *Failure to appear.* Employees who fail to appear without justification (absent emergency circumstances) at the designated collection site within the designated time to be tested when so directed shall be considered to have refused testing and shall be suspended for three (3) days with pay pending termination.
- D. Additional employee actions that are considered as refusals for which the employee shall be suspended for three (3) days with pay pending termination include:
 - 1. Failure to provide sufficient quantities of breath or urine to be tested without a valid medical explanation and after sufficient time has been allowed to provide such samples; or

2. Tampering with or attempting to adulterate a testing specimen or the collection procedure; or
3. Leaving the scene of an accident without a valid reason before the tests have been conducted.

Sec. 1-13-12. - Testing procedures.

- A. All testing procedures shall be administered and accounted for by an approved Department of Health and Human Services (HHS) laboratory and/or medical facility that is operated in compliance with the Substance Abuse and Mental Health Services Administration (SAMHSA) guidelines in accordance with 49 CFR Part 40. These procedures and guidelines shall be available for inspection by contacting the Athens-Clarke County Safety and Risk Manager.
- B. In accordance with HHS and SAMHSA guidelines, all urine drug testing specimens must be collected as "split" specimens. The term "split" specimen means that one urine specimen will be divided into two (2) separately sealed specimen bottles for submission to the laboratory – one bottle (primary to be split with one half used for initial screening and the other half for the confirmation screening) and a secondary bottle for split sample testing if it is requested.
- C. Whenever an initial test is found to be positive, an automatic confirmation test will be performed. If result is positive, then that employee has 72 hours to request from the medical review officer that the secondary bottle for split sample testing be sent to a second lab.
- D. If the employee does not contest the results, or if the secondary bottle of the split sample also tests positive, then the employee shall be suspended for three (3) days with pay pending termination. If the secondary bottle produces a negative result, or for any reason the secondary bottle is not available, then the test shall be considered negative, and no sanctions shall be imposed on the employee.
- E. Breath Alcohol Test (BAT). If results of BAT are positive, then a confirmation test must be conducted at least 15 minutes, but not more than 20 minutes, after the completion of the initial test.
- F. Following administration of a drug test as prescribed in this chapter, the analysis of samples shall be performed by a laboratory and/or medical facility that is certified by the Department of Health and Human Services (HHS) and the Substance Abuse and Mental Health Services Administration (SAMHSA) to determine the presence of drugs described hereinafter. A DOT or Non-DOT test will be administered as applicable based upon the safety-sensitive category of the employee, and/or if the test is required by current FTA/DOT standards.

Following are the list of drugs tested for in the Non-DOT and DOT screenings:

- A. NON-DOT/11- panel drug screen testing/checks specific gravity & creatinine
 - Amphetamines (speed, uppers – to include MDMA - Ecstasy)
 - Methamphetamines
 - Barbiturates
 - Benzodiazepine (valium, xanax)
 - Cocaine
 - Methadone
 - Opiates (Lortab, codeine, morphine – to include 6-Acetylmorphine – Heroin-specific metabolite)
 - Oxycodone (Percocet)
 - Phencyclidine (PCP)
 - Propoxyphene (Darvocet)
 - THC (marijuana)
- B. DOT/5 panel drug screen testing
 - Amphetamines (speed, uppers – to include MDMA - Ecstasy)
 - Cocaine
 - Opiates (Lortab, codeine, morphine – to include 6-Acetylmorphine – Heroin-specific metabolite)
 - Phencyclidine (PCP)
 - THC (marijuana)

DOT testing shall be performed for drivers holding a Georgia Commercial Driver's License (CDL) when:

- a) An accident involves a human fatality, whether or not the CDL driver receives a citation.
- b) An accident involves bodily injury with immediate medical treatment away from the scene (to any party), when the CDL driver has been issued a citation.
- c) There is disabling damage to any motor vehicle requiring tow away, when the CDL driver has been issued a citation.

Sec. 1-13-13. - Confidentiality of test results.

All information from an employee's or job applicant's drug and alcohol test shall be confidential and only available to the department director, human resources director, safety and risk manager and those with a need to know, as determined by the human resources director, for compliance with state and federal law concerning confidentiality of medical records. Disclosure of test results to any other person, agency, or organization

is prohibited unless written authorization is obtained from the employee or job applicant, or pursuant to a legally-sufficient court order or subpoena.

Sec. 1-13-14. - Disciplinary and termination policy.

Immediate termination. Any of the following actions shall be grounds for termination of an employee:

1. Being in possession of or distributing controlled substances while on the job.
2. Operating a government vehicle or motorized equipment while under the influence of drugs and/or alcohol.
3. Felony conviction for violation of drug laws.
4. Testing positive for drugs or alcohol during assigned working hours.

Employees who test positive for use of an illegal drug, use of a prescription drug for which they do not have a current prescription, or for abuse of a legally prescribed drug (Sec. 1-13-7) shall be suspended for three (3) days with pay pending termination.

Any employee who has been terminated for violation of this chapter may be reconsidered for rehire after two years from termination date.

Sec. 1-13-15. - Employee assessment.

Employees who have been terminated under the provisions of this chapter shall be provided with the names, addresses and telephone numbers of substance abuse professionals, counseling, and treatment programs that can determine what assistance, if any, the employee may need to help him or her resolve any problems associated with substance abuse. Athens-Clarke County shall not be responsible to pay for such evaluation, treatment, rehabilitation, or counseling for said employee.

Sec. 1-13-16. - Voluntary employee assistance program.

Voluntary participation in an employee assistance program prior to an employee being requested to submit to a test is encouraged and such participation shall be kept confidential. No disciplinary action shall be implemented because an employee volunteers to participate in such a program. Employees who, prior to being requested to take a drug and/or alcohol test, voluntarily identify themselves as a drug user or alcohol abuser and obtain counseling and rehabilitation as recommended by the Athens-Clarke County employee assistance program shall not be disciplined for their drug use and/or alcohol abuse if they thereafter refrain from violating the prohibitions of this chapter.

Except as described above in this section, all employees can be disciplined for violation of this chapter.

Sec. 1-13-17. - Drug and alcohol criminal charges and dispositions.

Any employee in Category I or Category III shall be required to report to his or her department director any arrest or citation for alleged violation of a drug or alcohol statute or ordinance. Such report shall be made within five (5) working days of such arrest or citation. Any employee in Category I or Category III shall be required to report any conviction, judicial disposition or entry into a pretrial diversion program related to a criminal drug or alcohol statute or ordinance. Such report shall be made within five (5) working days of such action. The department director shall then investigate and make appropriate recommendation to the human resources director.

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.