

**SITKA TRIBE OF ALASKA
TITLE 01 GENERAL PROVISIONS
CHAPTER 05 DRUG AND ALCOHOL FREE WORKPLACE ORDINANCE**

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1.5.1 Purpose

The purpose of this ordinance is to establish a drug and alcohol-free work environment of Sitka Tribe of Alaska (STA) and to establish guidelines to maintain a drug and alcohol-free workplace.

STA is committed to protecting the safety, health, and well-being of all employees and other individuals in our workplace. STA recognizes that alcohol abuse and drug use pose a significant threat to STA's mission. For some services STA offer drug use and alcohol abuse can be risks to public safety. STA has established ~~this a~~ drug-free workplace ordinance ~~to that~~ balances our respect for individuals with the need to maintain an alcohol and drug-free environment. STA is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner.

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

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

1.5.2 Authority and Scope

This ordinance is authorized under STA Tribal Constitution Article VII, Section 1(f) and 1(s).

This ordinance applies to all individuals who conduct business on behalf of STA including STA Tribal Council, all employees (full-time or part-time) within or funded directly by STA, STA contractors, STA volunteers, and other individuals who are representing STA, including but not limited to committee or commission chairpersons or vice-chairpersons, and individuals who travel on behalf of Sitka Tribe of Alaska.

Portions of this ordinance that are not mandated under the authority of USDOT FTA, and are under the sole authority of STA are identified with underlined text.

1.5.3 Definitions

- (a) *Accident*: An occurrence associated with the operation of a vehicle even when not in revenue service, if as a result:
- (1) An individual dies;
 - (2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
 - (3) With respect to an occurrence in which the mass transit vehicle in a bus, electric bus, van, or automobile (including non-FTA funded vehicles) ~~One or more vehicles~~ incur disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle.

For purposes of this definition, *disabling damage* means damage which precludes daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, ~~mirrors~~ or windshield wipers that makes them inoperative.

- (b) *Adulterated specimen*: A specimen that has been altered, as evidence by test results showing either a substance that is not a normal constituent from that type of specimen or showing an abnormal concentration of an endogenous substance ~~A specimen that contains a substance that is not expected to be present but is at a concentration so high that it is not consistent with human urine.~~
- (c) *Alcohol*: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.
- (d) *Alcohol Concentration*: Expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.
- (e) *Direct Supervisor*: Direct Supervisor is an employee's direct supervisor as specified on his or her job description; and in the absence on unavailability of a direct supervisor, another supervisor who has received supervisor training as specified by 4(a)(1)(B) of this ordinance, and has been designated by the direct supervisor as their designee.
- (f) *Drug and Alcohol Program Manager*: An employee of Sitka Tribe of Alaska, designated by the General Manager to be the Drug and Alcohol Program Manager, who is responsible for maintaining records related to the provisions of this ordinance.
- (g) *Evidentiary Breath Testing Device (EBT)*: A device approved by the NHTSA for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations. Approved devices are listed on [ODAPC's web page for "Approved Evidential Breath Measurement Devices" because they conform with the model specifications available from](#) the National Highway Traffic Safety Administration (NHTSA) ~~conforming product list.~~ <https://www.transportation.gov/odapc/approved-evidential-breath-testing-devices>
- (h) *Medical Review Officer (MRO)*: A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who had knowledge of substance abuse disorders and had appropriate medical training to interpret and evaluate an individual's confirmed positive test results, together with his/her medical history, and any other ~~relevant~~ ~~relative~~ bio-medical information.
- (i) *Performing (a safety-sensitive function)*: A safety-sensitive employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.
- (j) *Prohibited drug*: Includes Illegally Used Controlled Substances or Drugs identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C.812), including but not limited to marijuana, cocaine, amphetamines, ~~opiate~~ ~~opioids~~, and phencyclidine, illegal use includes use of any illegal controlled substance or drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgement may be adversely affected must be reported to the safety-sensitive employee's direct supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.

- (k) *Reasonable suspicion*: Shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse.
- (l) *Safety-sensitive employee*: An employee whose job description requires:
 - (1) The operation of a transit revenue service vehicle even when the vehicle is not in revenue service;
 - (2) The operation of a **non-revenue service** vehicle by an employee when the operation of such a vehicle requires the driver to hold a Commercial Driver's License (CDL);
 - (3) Maintaining a transit revenue service vehicle or equipment used in revenue service;
 - (4) Controlling the movement of a transit revenue service vehicle;
 - (5) **The operation of a boat or firearm.**
- (m) *Safety-sensitive list of employees*: A list of safety-sensitive positions who perform one or more of the above mentioned duties will be developed and maintained by the General Manager. Supervisors are only safety-sensitive if they perform one of the above functions.
- (n) *Substance Abuse Professional (SAP)*: A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed **or certified** marriage and family therapist, or **addiction** drug and alcohol counselor (certified by ~~the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse (ICRC) or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBC~~ **an organization listed at <https://transportation.gov/odapc/sap>**) with knowledge of an clinical experience in the diagnosis and treatment of drug and alcohol related disorders.
- (o) *Substituted specimen*: A specimen with creatinine and specific gravity values that are so diminished **or so divergent** that they are not consistent with normal human urine.
- (p) *Verified negative test result*: A drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use above the minimum cutoff levels, specified in Appendix B of this ordinance, of the identified drug or its metabolite. An alcohol test result reviewed by a medical review officer and determined to have no evidence of alcohol use above below 0.02 BAC.
- (q) *Verified Positive test result*: A verified drug test that indicates the presence of the identified drug or its metabolite at or above the minimum levels specified in Appendix B. A positive alcohol test results means a verified alcohol concentration of 0.04 BAC or greater. A **drug** test is considered verified if it has been reviewed by a medical review officer.

~~1.5.4~~1.5.3 Policy

(a) All positions

(1) Education and Training

- (A) All individuals covered by this ordinance will receive a copy of this ordinance. In addition, all employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment.

(B) All STA supervisors who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical behavioral, speech, and performance indicators of probable drug misuse.

(2) Prohibited Conduct

(A) No individual covered by this ordinance shall use, possess, sell, trade and/or offer for sale prohibited drugs during the individual's work hours, while on STA property or whenever conducting business or representing STA including when an individual is on travel status. STA employees shall not report to work under the influence of a prohibited drug used unlawfully.

(B) No individual covered by this ordinance shall report to work under the influence of alcohol, or consume any alcoholic beverage during the individual's work hours, while on STA property, whenever conducting business or representing STA.

(C) No individual covered by this ordinance may consume alcohol within eight hours following involvement in an accident without first having submitted to post-accident drug/alcohol tests.

(3) Reasonable Suspicion Training Testing

All Sitka Tribe of Alaska employees will be subject to a reasonable suspicion drug and/or alcohol test when their direct supervisor has reasonable suspicion to believe that the employee has violated Section 4(a)(2) of this ordinance. Such drug and alcohol test will be conducted in compliance with STA's regulations implementing this ordinance.

(4) Notification of Convictions

Any Sitka Tribe of Alaska employee who is charged with or convicted of violating a drug or alcohol statute at any time while the individual is employed at STA must report the charge or conviction to his or her direct supervisor within one working day. STA will take appropriate action within 30 days of notification.

(5) Employee Reporting

Any employee who believes that another employee is or has violated the provisions of this ordinance should report such knowledge to their direct supervision without fear of restraint, interference, coercion, discrimination or reprisal. In instances where the direct supervisor is the subject of the report, the report shall be made to the next level supervisor. Such reports shall be investigated in the utmost confidence, and where possible without making known the name of the reporter.

(b) Safety-Sensitive Employees

(1) Education and Training

(A) Every safety-sensitive employee will receive a copy of this ordinance and will have ready access to the corresponding federal regulations. In addition, all safety-sensitive, all safety-sensitive employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment.

(B) All supervisors are safety-sensitive employees who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probably alcohol misuse. All supervisors of safety-sensitive employees will also be trained on how to intervene constructively, and how to effectively integrate an employee back into his/her work group following intervention and/or treatment.

(2) Prohibited Conduct

(A) All safety-sensitive employees are prohibited from reporting from duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in Attachment A of this ordinance. Each safety-sensitive employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.42 or greater regardless of when the alcohol was consumed. **An employee with a breath alcohol concentration which measures 0.02-0.039 is not considered to have violated the USDOT-FTA drug and alcohol regulations, provided that employee hasn't consumed the alcohol within four (4) hours of performing a safety-sensitive duty. However, if a safety-sensitive employee has a breath alcohol concentration of 0.02-0.039, USDOT-FTA regulations require the employee to be removed from the performance of safety-sensitive duties until:**

- * The employee's alcohol concentration measures less than 0.02; or
- * The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the rest.

(B) All safety-sensitive employees are prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. **Upon notification,** the safety-sensitive employee will subsequently be relieved of his/her current on-call responsibilities and may be subject to discipline.

(C) No safety-sensitive employee shall consume alcohol within four hours prior to the performance of safety-sensitive job functions.

(D) The direct supervisor of a safety-sensitive employee shall not permit any safety-sensitive employee to perform or continue to perform safety-sensitive functions if the supervisor has actual knowledge that the employee is using alcohol.

(E) Sitka Tribe of Alaska also prohibits the consumption of alcohol all times a safety-sensitive employee is on duty, or anytime a safety-sensitive employee is in uniform.

(F) No safety-sensitive employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.

(3) Pre-employment Testing

All applicants for safety-sensitive positions shall undergo urine drug testing prior to being employee in safety-sensitive position. **Such procedures will be conducted with compliance with STA's regulations implementing this ordinance.**

(4) Reasonable Suspicion Testing

All Sitka Tribe of Alaska safety-sensitive employees will be subjected to a reasonable suspicion drug and/or alcohol test when their direct supervisor has reasonable suspicion to believe that the safety-sensitive employee has used a prohibited drug and/or engaged in alcohol misuse. Such procedures will be conducted in compliance with STA's regulations implementing their ordinance.

(5) Post-accident Testing

- (A) All safety-sensitive employees will be required to undergo urine and breath testing if they are involved in an accident, as defined by this ordinance. Such procedures will be conducted in compliance with STA's regulations implementing this ordinance. This includes all surviving safety-sensitive employees that are operating the vehicle at the time of the accident and any other safety-sensitive employee whose performance could have contributed to the accident.
- (B) Any safety-sensitive employee involved in an accident must refrain from alcohol use for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.
- (C) An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.
- (D) Nothing in this section shall be constructed to require to delay of necessary medical attention for the injured following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

(6) Random Testing

- (A) Upon completing a pre-employment drug and alcohol test, all safety-sensitive employees will be placed in a pool from which employees will be drug and alcohol tested randomly by randomly selected for drug and alcohol testing by STA's contracted drug and alcohol random testing program provider.
- (B) All safety-sensitive employees will be subjected to random, unannounced testing. Such procedures will be conducted in compliance with STA's regulations implementing this ordinance. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees.

(7) Return-to-duty Testing

All safety-sensitive employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by a Substance Abuse Professional before returning to work. The SAP will determine whether the employee returning to duty will require a return-to-duty drug test, alcohol test, or both. For an initial positive drug test a Return to Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return to Duty alcohol test is required and a drug test is allowed.

(8) Follow-up Testing

Safety-sensitive employees who return to duty after previously testing positive on a drug or alcohol test or refused a test will be required to undergo frequent, unannounced drug and/or alcohol testing

following their return-to-duty. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by a SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random; post-accident, reasonable suspicion and return-to-work duty testing.

~~1.5.5~~ **1.5.4 Enforcement of Policy (Disciplinary Action)**

- (a) Any individual who has violated this ordinance or any employee who tests positive for prohibited drugs or alcohol in violation of this ordinance
 - (1) will be subject to disciplinary action that may include suspension or termination of employment; and
 - (2) will be referred to a substance abuse professional for assessment and recommendations and required to successfully complete recommended rehabilitation including continued care, as a condition of continued employment with STA.
- (b) Any safety-sensitive employee that has a verified positive drug or alcohol test will be removed from his/her safety-sensitive position, and referred, in writing, to a Substance Abuse Professional (SAP) for assessment. No employee will be allowed to return to duty requiring the performance for safety-sensitive job functions without the approval of the SAP and the Drug and Alcohol Program Manager.
- (c) Any supervisor who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to employees, shall be subject to disciplinary action, up to and including termination.
- (d) Refusal to submit to a drug/alcohol test shall be considered a positive test result. A test refusal includes the following circumstances:
 - (1) A safety-sensitive employee who leaves the scene of an accident without a legitimate explanation prior to submission to drug/alcohol tests.
 - ~~(2) Any employee who provides false information in connection with a drug test.~~
 - ~~(3)~~ (2) Any employee who provides an insufficient volume of urine specimen or breath sample without a valid medical explanation. The medical evaluation shall take place within five days of the initial test attempt.
 - ~~(4) Any employee who makes a verbal or written declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test within the specified time frame.~~
 - ~~(5)~~ (3) Any employee whose urine sample has been verified by the MRO as substitute or adulterated.
 - ~~(6)~~ (4) Any employee fails to appear for any test (except pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer
 - ~~(7)~~ (5) Any employee fails to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
 - ~~(8)~~ (6) Any employee fails to provide a urine or breath specimen for any drug or alcohol test required by this ordinance. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
 - ~~(9)~~ (7) Any employee fails to permit the observation or monitoring of a specimen collection;
 - ~~(10)~~ (8) Any employee fails or declines to take a second test the employer or collector has directed the employee to take;

- ~~(11)~~ (9) Any employee fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process or as directed by the DER as part of the “shy bladder” or “shy lung” procedures.
- ~~(12)~~ (10) Any employee fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupt the collection process).
- ~~(13)~~ (11) Any employee fails to sign step two of the alcohol testing form.
- ~~(14)~~ (12) Failure to follow the observer’s instructions during an observed collection including instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if there is any type of prosthetic or other device that could be used to interfere with the collection process.
- ~~(15)~~ (13) Processing or wearing a prosthetic or other device that could be used to interfere with the collection process.
- ~~(16)~~ (14) Admitting to the collector or MRO that the employee adulterated or substituted the specimen.

1.5.6 1.5.5 **Grievance**

Any employee who is aggrieved by a decision made under this ordinance may appeal the decision as a grievance under STA’s employee handbook, but the consequences specified by the USDOT drug and alcohol regulations (49 CFR Part 40.149 (c), as may be amended from time to time) for positive of test refusal are not subject to arbitration or negotiation.

1.5.7 1.5.6 **Information Disclosure**

- (a) Drug/alcohol testing records shall be maintained by the Sitka Tribe of Alaska Drug and Alcohol Program Manager and, except *as* provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.
- (b) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Safety-sensitive employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP referrals and follow-up testing plans.
- (c) Records of a verified positive drug/alcohol test shall be released to the Drug and Alcohol Program Manager, and the employee’s direct supervisor as a need to know basis.
- (d) Records will be released to a subsequent employee only upon receipt of a written request from the employee.
- (e) Records of an employee’s drug/alcohol tests shall be released to the adjudicator in a grievance initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the proceeding. The information will only be released with a binding stipulation from the decision maker that the decision will make available only to parties in the proceedings.
- ~~(e)~~ (f) Records will be released to the appropriate federal agency with oversight responsibility during an accident investigation, if such federal agency has jurisdiction over the matter.

- ~~(f)~~ (g) Information will be released in a criminal or civil action resulting from an employee’s performance of safety-sensitive duties, in which a court of component jurisdiction determines that

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the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding. If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of 49 CFR Part 40, as amended, necessary legal steps to contest the issuance of the order will be taken.

~~(g)~~ (h) Records will be released if requested by a Federal, state or local safety or regulatory authority over Sitka Tribe of Alaska or the employee.