

AN ORDINANCE AMENDING AND RE-ENACTING SECTION TWENTY-NINE (29) OF THE CITY CODE OF THE CITY OF DICKINSON, NORTH DAKOTA, RELATING THE CITY'S DRUG AND ALCOHOL POLICY

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF DICKINSON, NORTH DAKOTA, AS FOLLOWS:

Section 1: Section 29.08.04130 of the City Code of the City of Dickinson is hereby amended and re-enacted as follows:

Section 29.08.04130 Drug and Alcohol Policy

City of Dickinson's Commitment to Drug and Alcohol Free Workplace

The City of Dickinson has a strong commitment to its employees to provide a safe, healthful, and productive work environment and to promote high standards of employee health. Consistent with the spirit and intent of this objective the City will act to eliminate any substance and alcohol abuse which could impair an employee's ability to safely and effectively perform a particular job and which increases the potential for accidents, absenteeism, sub-standard performance, and tends to undermine public confidence in the City's work force. The City's goals are to establish and maintain a work environment that is free from the effects of alcohol and drug abuse and to maintain the reputation and integrity of the City of Dickinson by preventing unacceptable behavior by its employees that discredits the City and its employees.

While the City has no intention of unreasonably intruding into the private lives of its employees, the City expects employees to report for work in a condition ready to perform their duties, make the work environment safe for other employees, and represent a proper image to the citizens. It is clear that employee off-the-job, as well as on-the-job, involvement with drugs and alcohol can have an impact on the City's goals.

North Dakota has laws allowing for the medical use of marijuana. The City, as an employer, is committed to providing a safe work environment and reducing accidents and injuries, to ensuring the safety and protections of the public served by the employees of the City, and to complying with all relevant federally mandated laws, including all Drug-Free Workplace requirements and federally mandated drug and alcohol testing for Regulated employees.

The use of marijuana, whether it is for recreational or medical purposes, has physiological effects that can include sedation, disorientation, impaired judgment, lack of concentration and slowed fine motor skills. The City recognizes that the impairing effect of such use while at work creates workplace performance and safety issues that the City ~~wishes~~wants to avoid.

Furthermore, marijuana is a controlled substance under the federal Drug Abuse Prevention and Control Act. Its possession and use are prohibited in the workplace under federal Drug-Free Workplace regulations. The City relies on federal funding for

many of its critical services and programs and failure to comply with the Drug-Free Workplace requirements could jeopardize that federal funding. It is the City's position and intent that this Medical Marijuana Policy shall meet or exceed all requirements of the federal Drug-Free Workplace laws, 41 USC §§ 8101, et. seq., as amended

It is the policy of the City of Dickinson that all employees are strictly prohibited from possessing, using, ingesting, or being under the influence of medical marijuana while on City premises, while operating City vehicles and equipment, while engaged in the performance of job duties or while otherwise representing the City of Dickinson in any capacity and during off-site lunch periods or breaks when an employee is expected to return to work or on call for work. (Code 1696 § 1)

23.0 Definitions

The following terms shall have the following means throughout this Section:

1. "49 CFR Part 40." Federal Procedures for Transportation workplace drug testing programs. These rules are available for review in the [Human Resource Risk Management](#) Department. (Code 1696 § 1)
2. "Actual knowledge" for safety sensitive personnel means actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a Commercial Motor Vehicle (CMV) while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use, except as provided in § 382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under § 382.307. As used in this section, "traffic citation" means a ticket, complaint, or other document charging driving a CMV while under the influence of alcohol or controlled substances.
"Actual knowledge" for non-DOT non-safety sensitive personnel means actual knowledge by an employer that an employee has used alcohol or controlled substances based on the employer's direct observation of the employee, or an employee's admission of alcohol or controlled substance use. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing.
3. "City Premises" Any and all property, facilities, land, structures, and vehicles owned, leased, or under the control of the City.
4. "Designated Employer Representative" or ~~-(“DER”)~~ is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the City. (Code 1696 § 1)
5. "Illegal/Unauthorized Drug" Any drug which is not legally obtainable under both state and federal laws, any drug which is legally obtainable but has been illegally obtained, and/or is not being used for its prescribed purpose or in the prescribed manner.
6. "Legal Drug" Except for Medical Marijuana, any prescribed drug or over the counter drug which has been legally obtained and is used for the purpose for which it was prescribed or manufactured.

7. "Medical Marijuana" means marijuana used as authorized by the North Dakota Department of Health and the distribution, possession and use of the marijuana are in compliance with all laws and regulations authorized by North Dakota law.
8. "Medical Review Officer" or "MRO." A licensed physician responsible for receiving and reviewing laboratory results generated by this policy, who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate positive test results together with an employee's history and any other relevant biomedical information.
9. "Monitored Collection." The monitor should be the same gender, unless the monitor is a medical professional (nurse, doctor, physician assistant, technologist, or technician, licensed or certified to practice in the jurisdiction). Secure the room being used for the monitored collection so no one else can enter until after the collection has been completed. A monitor does not watch the employee urinate into the collection container. If the monitor hears sounds or makes other observations indicating an attempt to tamper with a specimen, there must be an additional collection under "direct observation."
10. "Off Duty". Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable him to use the time effectively for his own purposes depends upon all of the facts and circumstances of the case.
- 9.11. "Possession." Actual or constructive care, custody, control or immediate access to.
- 10.12. "Reasonable Suspicion." When a supervisor has reason to believe the appearance and/or conduct of an employee are indicative of the use of alcohol, drug(s) (including Medical Marijuana), or a combination thereof.
13. "Refusal To Test." (1) failure to appear for a test in specified time frame as set forth in the Federal Motor Carriers Safety Administration or City's guidelines or any third party guidelines (excludes pre-employment) (2) once test is underway, failure to remain at the testing site until the process is completed, (3) failure to provide volume of breath or urine without valid medical explanation, (4) failure to undergo a medical examination to verify insufficient volume, (5) failure to permit the observation or monitoring of specimen donation when so required, (6) failure to take an additional test required by the employer or collector, (7) failure to cooperate with any part of the testing process, (8) a drug test result that is verified by the MRO as adulterated or substituted, (9) possess or wear a prosthetic or other device that could be used to interfere with the collection process, (10) failure to sign the certification on Step 2 of the Alcohol Test Form (11) admit to the collector or MRO that you adulterated or substituted the specimen (12) tampering, adulterating, or substituting specimen (13) leaving the scene of an accident without just cause prior to submitting to a test.
- 11.14. "Safety-sensitive." An employee who is required to hold a commercial driver license (CDL) or commercial learners permit (CLP) to operate a commercial vehicle is considered to perform safety-sensitive functions.
- 12.15. "Substance Abuse Professional" or "SAP." Evaluates employees who have violated a drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up care and aftercare. Must be a licensed physician (M.D. or D.O.) or a licensed or certified psychologist, social worker, employee assistance professional,

state-licensed or certified marriage and family therapist, or a drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or certified 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 (NBCC) with knowledge of and clinical experience in the diagnosis and treatment of alcohol/substance abuse related disorders. Requires completion of qualification training and SAP certification per 49 CFR Part 40

23.1 Drug and Alcohol Abuse Policies

The following are the policies of the City regarding drug and alcohol abuse:

1. The unlawful manufacture, distribution, dispensing, possession or use of controlled drugs or substances, including medical marijuana, or the use of alcohol while on duty, on or off property owned or leased by the City is proper cause for disciplinary action.
2. Any illegal controlled drug or substance, including medical marijuana, possessed while on duty by employees will be turned over to the appropriate criminal justice agencies and may result in criminal prosecution. This does not apply to public safety officers who are in possession of an illegal or controlled drug or substance while acting in the line of duty.
3. It is not permitted for an employee to be under the influence of controlled drugs or substances including medical marijuana or alcohol on the job, except as provided for in this Section 29.08.04130. The use of controlled drugs or substances prescribed by a licensed physician is not prohibited, but employees in positions where side effects of the prescribed medication could affect performance and safety on the job are required to make such use known to their immediate supervisor. Any employee misusing a prescription drug may be disciplined as provided for in Section 23.4 up to and including termination.
4. The illegal use, sale, and possession of alcohol, controlled drugs or substances while off duty and off City premises which results in a criminal conviction is unacceptable. ~~They~~ This may affect the job performance and the confidence of the public in the City's ability to meet its responsibilities. Such off-the-job conduct may be proper cause for disciplinary action as provided for in Section 23.4 up to and including termination.

23.2 Employee Responsibilities

23.2.1 Reporting Off When Alcohol/Drug Impaired

An employee must not report to work while his/her ability to perform his/her job duties is impaired due to on or off duty alcohol or prescription drug use. Employees called in for emergency duty to work outside their work schedule who are impaired by off-duty alcohol or prescription drug use shall be required to decline the offer of work.

23.2.2 Possession of Controlled Substance

An employee must not possess or use alcohol or controlled substance without a prescription or if a doctor determines the prescription medication may endanger the employee during working hours or while subject to duty. This includes medical marijuana.

23.2.3 Reporting Controlled Substance Use

An employee required to operate vehicles or equipment while on the job is required to notify his/her immediate supervisor, before beginning work, when taking any legal medication or controlled substance, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of City equipment.

23.2.4 Reporting Alcohol/Controlled Substance Related Charges and Convictions

An employee, required to operate a motor vehicle as part of his/her job must notify their immediate supervisor of any controlled substance or alcohol related charge which has resulted in the employee losing their driving privileges prior to beginning the next regularly scheduled shift or call-out. An employee must notify their immediate supervisor of any controlled substance or alcohol related criminal statute conviction no later than five (5) days after such conviction. Any violations of the above stated may result in immediate disciplinary action. (Code 1637 § 1; Code 1696 § 1)

23.3 Management Responsibilities and Guidelines

23.3.1 Searches

Any municipally owned property provided to or utilized by an employee during the course of employment with the City is subject to unannounced and unrestricted search to include items contained in and on the same property. These items include but are not limited to: City owned vehicles, offices, desks, lockers and their related contents. Searches of persons and their personal possessions held on or about their person are prohibited. (Code 1637 § 1; Code 1696 § 1)

23.3.2 Notification of Law Enforcement

Supervisors shall notify the police department when they have reasonable suspicion to believe that an employee may have illegal drugs in his or her possession or in an area jointly or fully controlled by the City.

23.3.3 City's Responsibility, Employee Rights

Nothing in this Section shall be interpreted as constituting any waiver of or limitation on the City's responsibility to maintain discipline, or the right to invoke disciplinary measures, nor the employee's right to due process and the processing of appeals concerning such disciplinary measures in accordance with the appeal procedure set forth in Section 29.08.04120. (Code 1637 § 1; Code 1696 § 1;)

23.3.4 After Hours Drug & Alcohol Testing

This policy has been implemented for the handling of after-hours or reasonable suspicion incidents necessitating drug and alcohol testing. Designated certified City Staff members ~~are now entrusted with conducting~~ shall conduct such tests. A centralized telephone number has been established for reporting after-hours incidents, and ~~it is imperative that all~~ supervisors shall input this number into City-owned or leased personal mobile devices.

For the purpose of this policy, "after hours" is defined as any time after 4 pm on

weekdays, any holiday, or weekends. This policy alteration aims to ensure compliance with legal and regulatory standards governing workplace safety and substance testing procedures.

23.3.5 Supervisor Training on Drug & Alcohol Abuse

All supervisors are required to undergo one hour of training annually in both drug and alcohol awareness; as well as reasonable suspicion. The drug and alcohol awareness training will equip supervisors with the necessary knowledge to identify signs of substance abuse. Additionally, the reasonable suspicion training will focus on providing supervisors with the skills to recognize the indicators of drug and alcohol impairment in employees.

These training sessions aim to enhance the supervisors' ability to employ reasonable suspicion as a basis for drug and alcohol testing of DOT Safety Sensitive Employees as well as Non-DOT Non-Safety Sensitive Employees. The identification of impairment signs will be in accordance with the criteria outlined in the following sections. This proactive approach is crucial for maintaining a safe and compliant work environment.

Supervisors are expected to fully participate in and complete these training sessions as part of their ongoing commitment to ensuring workplace safety and compliance.

23.4 Forms of Discipline

~~Whenever disciplinary action is used in accordance with this Section, it may include but not be limited to any or all of the following: written reprimand, suspension, demotion or discharge as set forth in Section 29.08.04110.21.3 and/or referral to SAP or EAP as described in Section 29.08.04080.18.10. Should an employee have one offense in a five year period, the employee shall complete a drug and/or alcohol evaluation and shall comply with the recommendations of the SAP. The employee shall pay for all costs associated with the evaluation and treatment as recommended. The employee shall only be permitted to return to duty after meeting SAP requirements for rehabilitation and testing negative on the Return-To-Duty test. The employee will then be required to submit to follow up drug and alcohol testing. A second offense within a five-year period will result in termination.~~ -(Code 1637 § 1; Code 1696 § 1)

23.5 Copies of Access to This Section to be Given to All Employees

Each employee will be given access to a copy of the City's policy on Drug and Alcohol Substance Abuse. (Code 1958 § 9-28; Ord. No. 454 § 2; Ord. No. 1090 § 2; Ord. No. 1163 § 5; Ord. No. 1347 §1 Code 1637 § 1; Code 1696 § 1)

23.6 FMCSA Regulated Employees Drug & Alcohol Policy

23.6.1 Testing for Drugs or Alcohol

This section discusses the Alcohol/Controlled Substance Testing Program for Employees with Commercial Driver's Licenses (CDL) or Commercial Learners Permit (CLP) in Safety Sensitive Positions. In an effort to prevent injuries and deaths due to drug or alcohol-impaired drivers operating commercial vehicles, the United State Congress enacted the Omnibus Transportation Employee Testing Act of 1991 (the Act). This federal law mandates drug and alcohol testing for certain classes of transportation employees. Department of Transportation (DOT) defines the following as safety sensitive positions:

- A city employee who operates a vehicle that is designed to transport 15 passengers or more;
- A city employee who operates a vehicle that weighs 26,001 pounds or more singular or articulated (tractor trailer) and the trailer weight is in excess of 10,000 pounds or more; or
- A city employee who operates a vehicle of any size requiring placards for transporting hazardous materials (hazmat).

Any employee of the city of Dickinson, who, as a requirement of the job, operates a vehicle classified as commercial and has a commercial driver's license or commercial learner's permit, is considered to be in a "safety-sensitive position" and is subject to the Department of Transportation 49 CFR part 40 of the Federal Motor Carrier Safety Administration (FMCSA) regulations. These employees must also be registered with the FMCSA Clearinghouse so that the City can comply with the annual requirement regulations stated in 49 CFR 382.701. Provisions for disciplinary actions are based on the independent authority of the City.

This portion of the Human Resources Manual covers only employees subject to ~~the~~ [these](#) regulations and describes the City's implementation of these regulations. Employees in the safety sensitive positions are subject to the controlled substance requirements of ~~the~~ [these](#) regulations and to this policy at all times when on duty, regardless of the task they are performing.

23.6.1.1 Alcohol Prohibition Employees must:

- Test when required.
- Not use alcohol, in any form, on the job (including mouthwash or cough syrup containing alcohol).
- Not have even one drink fewer than four hours before work duties begin.
- Not work under the influence of alcohol
- Not remain on duty with a confirmed breath-and/or saliva alcohol concentration of 0.02 or greater.
- Not use alcohol within eight hours after an accident or until undergoing a post-accident alcohol test.

The regulations require that covered employees be available to be tested for alcohol while on duty, just prior to, just after, or while performing a safety-sensitive function. Employees who refuse to be tested or to cooperate in testing, ~~or who attempt to alter test results,~~ [will result in the employee being terminated.](#) ~~are subject to disciplinary procedures, which may include termination.~~

23.6.1.2 Controlled-Substance Prohibition Employees must:

- Test when required.
- Not use illegal controlled substances.
- Not use prescription drugs containing controlled substances contrary to a physician's instructions.
- Notify their supervisor if using a prescription containing a controlled substance.

[Safety-sensitive employees must, upon request, provide documentation](#)

demonstrating that the use of a prescription drug does not adversely affect their ability to operate a commercial motor vehicle, as outlined in the regulations. No employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions when using any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner. The medical practitioner must advise the employee that the substance will not adversely affect their ability to safely operate a motor vehicle.

~~The safety sensitive employee must, upon request also provide documentation that use of the drug does not adversely affect the safety sensitive employee's ability to operate a commercial motor vehicle as described in the regulations.~~

Employees who refuse to be tested or to cooperate in testing, or who attempt to alter test results, will result in the employee being terminated. are subject to immediate removal from safety sensitive function and are subject to disciplinary procedures which may include termination.

~~No employee shall report for duty or remain on duty requiring the performance of safety sensitive functions when the employee uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, who has advised the employee that the substance will not adversely affect the employee's ability to safely operate a motor vehicle.~~

23.6.1.3 Alcohol and Controlled-Substance Tests

All applicants and employees who undergo City mandated tests will be notified if the test result is positive by the ~~testing contractor~~ MRO before the City's designated employer representative is notified.

The City or a contractor of the City performing the tests will follow specific procedures if an alcohol-test result is 0.02 or greater. The procedures are required by federal guidelines and are intended to make sure that the test result is 0.02 or greater.

Tests required by the City, except for pre-employment tests and return-to duty tests, are considered a duty assignment. Time for travel and time spent in providing the specimen at the collection site will be with pay.

Any action which indicates a refusal to test will result in the employee being terminated. (Code 1696 § 1)

23.6.1.4 Definition of Positive Alcohol or Controlled-Substance Test

Alcohol concentration is defined by the Federal Department of Transportation Regulations. Alcohol tests will be considered positive if the breath and/or saliva test indicates an alcohol presence of 0.04 or greater. If the test results are positive, the employee and supervisor will be notified before the employee leaves the test site.

If an alcohol test indicates an alcohol concentration of at least 0.02, but less than 0.04, the test is considered negative, but the safety sensitive employee will be

taken out of service for 24 hours. A controlled substance drug test will be considered positive if a controlled substance for which no legitimate explanation is determined by the Medical Review Officer (MRO) is found in the test specimen. (Code 1696 § 1)

23.6.1.5 Testing Responsibilities in Alcohol and Controlled-Substance Testing

If the initial alcohol test results are 0.02 or greater, the City or a contractor of the City performing the tests will wait 15 minutes and then issue a confirmation test. During the 15-minute waiting period before the confirmation test, the employee will be given a set of instructions (for example, no eating or drinking) that must be followed. If the employee does not follow these instructions, it may be considered an attempt to alter the test results. The confirmation test result is used for disciplinary purposes. ~~Controlled-substance tests must use proper laboratory procedures.~~

~~Controlled-substance tests must use proper laboratory procedures.~~ If a controlled substance test is confirmed positive, it will be reviewed by the physician serving as the testing vendor's MRO. The MRO will follow specific procedures required by the federal guidelines. These procedures are intended to make sure that the test result is a true positive. The MRO will call the employee who has tested positive, discuss what might have caused the test result to be positive before calling the City's designated employer representative, and make sure of the result before notifying the City. If the test remains positive, the employee may request, at his/her/their expense, that a second independent analysis be performed on the untested portion of the sample. This is considered a split test. (Code 1696 § 1)

23.6.2 Types of Required Drug Testing

23.6.2.1 Pre-Employment Tests

New employees will be hired for safety-sensitive positions on the condition of a negative controlled substances and breath alcohol test (administered after being chosen but before being hired) and after obtaining a ~~controlled-substances and alcohol testing limited record pre-employment query~~ from ~~previous employers and~~ the FMCSA Clearinghouse that shows the employee has no outstanding violations of the drug and alcohol regulations. ~~been in a random drug and alcohol program for the past 12 months and/or has been selected over the last six months in the time period between the end of their work performance at the previous job and application for the city's position has not exceeded 30 days and they do not have any known violations on the FMCSA Clearinghouse.~~ (Code 1696 § 1)

No employee shall operate a City owned CMV without a laboratory confirmed negative DOT drug test result. This is for all new hires coming on who already have a CDL and those current employees who acquire a commercial learner permit or CDL as required by their job description. Other requirements to drive a City owned CMV also exist, but are not part of the drug and alcohol policy. Please see Risk Management for these additional requirements.

[See Section 23.6.7 City Requirements to Inquire with Previous Employers for more information on the pre-employment hiring process.](#)

23.6.2.2 Random Testing

A minimum number of random alcohol tests, equal to 10 percent of the average number of City safety sensitive employees covered under the regulations will be conducted each year. The City or a contractor of the City performing the tests will select safety sensitive employees using a computerized random-selection program or other random selection method approved by the City. Safety sensitive employees selected will be tested prior to going on duty, while performing safety sensitive functions or just after.

A minimum number of random controlled-substance tests equal to 50 percent of the average number of safety sensitive employees, will be performed each year. Tests may be performed at any time the safety sensitive employee is on or off duty, regardless of the duties being performed at the time of testing. Safety sensitive employees may potentially be tested at any time, even if there is a recent previous test. Once a safety sensitive employee is notified of the testing, ~~he or she~~ [the employee](#) must be escorted immediately to the testing site.
(Code 1696 § 1)

23.6.2.3 Reasonable Suspicion Tests

A safety sensitive employee must undergo alcohol and controlled substance testing when any supervisor who has received the mandatory reasonable suspicion training has reason to believe that the safety sensitive employee has used alcohol or controlled substances in violation of the regulations. An alcohol and/or drug test may be administered just prior, just after, or while the safety sensitive employee is performing a safety-sensitive function.

All supervisors will be given adequate training to make judgments about a reasonable suspicion of controlled substance and alcohol use. The supervisor's judgment must be based on specific observations relating to appearance, behavior, speech, or body odors, including indications of the chronic and withdrawal effects of alcohol and/or controlled substances. The supervisor must document the observations fully notifying the employee that testing is required. Supervisors will be trained regarding physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

All employees, including non-supervisory employees, may call their Supervisor, Department Head, [Human Resources](#), the Risk Management Specialist or the City Administrator to ask any questions about the program, or to state their suspicions about another employee, including a supervisor. The employee who calls must give his/her name, but the names will be kept confidential to the extent possible under the open records law of North Dakota.
(Code 1696 § 1)

[After-hours reasonable suspicion drug and alcohol screening will be conducted by certified City staff at City Hall. For all after hours testing needs for](#)

reasonable suspicion, supervisors should call the After-Hours Incident phone number to have the testing completed. The number is (701) 456-7867.

23.6.2.4 Post Accident Testing

Drivers/~~operators~~ are responsible for notifying the City of any commercial motor vehicle ~~or equipment~~ accident while on duty or while driving a City vehicle on off hours. ~~In an accident resulting in a death, the City driver(s)/operator(s) involved must undergo post accident testing. In an accident which does not result in a death, but in which the City driver is cited for a moving traffic violation; or resulted in vehicles involved in the accident being towed from the scene or injuries as a result of the accident being treated away from the scene, the driver must undergo post accident drug and alcohol testing. In the event of a reportable accident as identified under North Dakota law occurs resulting liability of at least \$4,000, the driver/operator shall be tested. As soon as practical following an accident involving a CMV, each surviving employee shall be subject for alcohol and controlled testing when either: (1) the accident involved a fatality; or (2) the employee receives a citation within eight (8) hours of the occurrence under State or local law for a moving violation arising from the accident AND the accident involved: (i) injury requiring medical treatment away from the scene by anyone involved with the accident or (ii) one or more vehicles having to be towed from the scene due to disabling damage.~~

Employees must be tested for controlled substances within 32 hours after all accidents. ~~resulting in a death or where the driver is cited for a moving violation if the accident resulted in injuries needing to be treated away from the scene or vehicles involved in the accident are required to be towed from the scene.~~ If the controlled-substance test is not administered within 32 hours, no test will be given, and the ~~Risk manager~~ Manager must file and maintain records stating the reason for the delay and the lack of testing.

Employees must be tested for alcohol within two hours of the accident. If the alcohol test is not administered within two hours, the ~~Risk manager~~ Manager must file and maintain records stating why. Once documented, the City has six additional hours to perform the test. If an alcohol test is not administered within eight hours of the accident, no test will be given, and the ~~Risk manager~~ Manager must file and maintain records stating the reason for the delay and lack of testing.

Employees must remain at work, ~~but~~ must not perform safety-sensitive or job functions that could endanger themselves or others, until the post-accident alcohol test is administered or eight hours since the accident have lapsed, or an unimpaired adult agrees to pick the employee up from work and transport that employee home.
(Code 1696 § 1)

After-hours post-accident drug and alcohol screening will be conducted by certified City staff at City Hall. All after hours testing needs for post-accident that do not require immediate medical attention, supervisors should call the After-Hours Incident phone number to have the testing completed. The number is (701) 456-7867.

In the case of the employee being incapacitated due to injury so that a urine drug screen and breath alcohol test cannot be administered, a blood draw drug and alcohol screen will be completed once admitted to the medical facility. Results of this screening will be released to the City for documentation and disciplinary purposes.

23.6.2.5 Return-To-Duty Tests

If any test result is positive and the course of treatment recommended by a substance abuse professional (SAP) with the City EAP (or one chosen by the employee from the FMCSA list or one the employee researched who has working knowledge of the FMCSA return-to-duty regulations) has been completed, the ~~safety sensitive~~ employee must submit to return-to-duty alcohol and controlled substance tests prior to resuming duties. The return-to-duty alcohol test must indicate a breath-alcohol concentration of less than 0.02. Controlled-substance test results must be negative, and will be administered under “direct observation” as defined in the FMCSA.

The employee will be required to pay for the return-to-duty testing and will not be paid for time or travel expenses for completing this testing.
(Code 1696 § 1)

23.6.2.6 Follow-up Tests

Unannounced follow-up tests are required ~~for~~ at a minimum of six tests in the first twelve months period or for as ~~high~~ long as 60 months for any safety sensitive employee who, after a positive test result, is determined by a SAP to need help with alcohol or controlled-substance abuse. These tests will be administered under “direct observation” as defined in the FMCSA. The employee shall be responsible for all costs associated with the SAP. The City shall pay for the ~~SAP and~~ follow up test(s).

23.6.3 Test Results-Required Action

ALCOHOL TEST		
Results (Blood <u>Breath</u> Alcohol Concentration)	Employee Status	Required Action
>0.00	applicant	Not hired
0.02-0.039	any <u>s</u> afety sensitive <u>employee</u>	Taken out of service for 24 hours without pay
0.04+	any <u>s</u> afety sensitive <u>employee</u>	Remove from safety sensitive duty and notify employee of EAP program and employee is subject to discipline up to termination

CONTROLLED SUBSTANCE TEST		
Results	Employee Status	Required Action
Positive	Applicant	Not hired
Positive	Safety sensitive	Taken off duty; may be referred to EAP

	Employee	for evaluation and treatment; subject to City discipline, up to and including termination
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OTHER PROHIBITED CONDUCT		
Prohibited Conduct	Employee Status	Required Action
Refusing to be tested	Applicant	Not hired
Refusing to be tested	Safety sensitive employee	Terminated
Possessing or consuming alcohol on the job	Safety sensitive employee	Taken off duty; may be referred to EAP for treatment; Subject to City disciplinary action up to and including termination of employment
Abusing cough syrup, mouthwash, or any other substance containing alcohol while on the job	Safety sensitive employee	Taken off duty; may be referred to EAP for treatment; Subject to City disciplinary action up to and including termination of employment
Possessing or using a controlled substance without a doctor's permission	Safety sensitive employee	Termination
Performing a safety-sensitive function while using a prescription containing a controlled substance when a physician has instructed the employee that the substance may adversely affect the employee's ability to safely operate a motor vehicle	Safety sensitive employee Any Employee	Taken off duty; may be referred to EAP for treatment; Subject to City disciplinary action up to and including termination of employment

(Code 1696 § 1)

23.6.4 Controlled Substances to be Tested

The following drug groups were selected based on the ability of each drug to adversely affect physical/mental performance. All are controlled substances under state and federal law.

- Alcohol
- Amphetamines
- Cocaine Metabolites
- Opioids
- Marijuana Metabolites
- Phencyclidine PCP

(Code 1696 § 1)

23.6.5 Out-of-Service Request

All safety sensitive employees subject to call for emergency duties, who are not actually listed on-call, who have had one or more drink(s) in the four hours prior to an emergency call-out, or suspects that [he/she/they](#) may have a breath-alcohol concentration of 0.02 or above, must take [him/herself themselves](#) out of service. No disciplinary

measures will be taken when the safety sensitive employee, who is not listed as on-call, requests to take [him/herself them self](#) out of service for an emergency call-out.

23.6.6 Required Records and Records Retention

The City, or a contractor of the City performing the tests under this section, will maintain necessary records as required by federal DOT regulations and the reporting regulations to the FMCSA Clearinghouse, either at City Hall, the primary contractor's place of business or on the Clearinghouse website for each driver. In all cases, information must be available at the City within 24 hours if requested by officials of the U.S. Department of Transportation responsible for the testing program.

The City, as an employer of individuals placed in safety-sensitive positions, is required to run a limited query of the FMCSA Clearinghouse for each employee at least once annually according to 49 CFR 382.701(b). The City will ask each safety-sensitive employee to sign a consent form to run a limited query of their Clearinghouse at least once annually. Employees who refuse to sign the limited query [consent form](#) must be removed from their safety-sensitive position, which could lead to disciplinary action up to and including termination.

If the limited query shows [the individual is "Prohibited" due to](#) DOT drug and alcohol infractions ~~are-being~~ present in the individual's Clearinghouse account, the City (as the employer) is required to electronically submit a request to the individual's Clearinghouse account to access the detailed information report within 24 hours of the limited query being accessed. The employee must approve the request by the City's representative to run a full query check for the details of the infraction(s). If the employee refuses access or has not consented to allow the full query to be accessed within the 24-hour time line, the employee must be removed from and not allowed to perform job duties for a safety-sensitive position. If the employee refuses access to the full query detailed information, they will be subject to disciplinary action up to and including termination. (Code 1696 § 1)

23.6.7 City Requirements to Inquire with Previous Employers

~~The City must inquire with previous employers before hiring someone to fill a safety sensitive position. Prior to being hired by the City, applicants must sign a release of information allowing the City to inquire with previous employers about the applicant's controlled substance and alcohol testing history during the previous three years. The applicant must also be registered with the FMCSA Clearinghouse and approve the electronic [permission-consent](#) request submitted by a City representative to run a [full limited pre-employment](#) query of their background through the Clearinghouse as required by 49 CFR 382.701(a)(1) & (2). [A pre-employment Clearinghouse query satisfies the requirement to investigate a prospective driver's previous drug and alcohol program violations, as set forth in 49 CFR 391.23\(e\) \(4\) and 382.413\(b\).](#)~~

[If a prospective employee is listed as "prohibited" with the Clearinghouse, the City has the right to request permission \(in writing\) from the prospective employee to run a full background query to obtain specific information about their violations which prohibit them from driving a commercial motor vehicle.](#)

If the prospective employee has a CDL/CLP but was not required by their previous employer to register with the Clearinghouse, the City must inquire with previous employers before hiring someone to fill a safety-sensitive position. Prior to being hired by the City, applicants must sign a release of information allowing the City to inquire with previous employers about the applicant's controlled substance and alcohol testing history during the previous three years.

Information that may be requested includes:

- Previous test dates.
- Positive test results.
- Refusals to test.
- Evaluation and rehabilitation results. (Code 1696 § 1)

23.6.8 Release of Information to Prospective Employers

All testing information about individual employees is confidential and is not in the public domain. Such information may not be released except as required by law or expressly authorized by 49 CFR 382.405.

If requested in writing and proper release of information is provided, the City will disclose the following information to any potential future ~~employees~~employers:

- Alcohol tests with a result of 0.04 or higher alcohol concentration;
 - Verified positive drug tests;
 - Refusals to be tested (including verified adulterated or substituted drug test results);
 - Other violation of DOT agency drug and alcohol testing regulations;
- Documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests).

23.7 Non-DOT Non-Safety Sensitive Employees Drug & Alcohol Policy

23.7.1 Testing for Drugs and Alcohol

This section discusses the Alcohol/Controlled Substance Testing Program for Non-DOT Non-Safety Sensitive Employees. Because Non-DOT Non-Safety Sensitive Employees have a greater right to privacy than FMCSA Regulated Safety Sensitive Employees they are not subject to random drug screens and will not be placed in a random selection employee pool. These employees however are subject to certain testing requirements if specific criteria are met.

All information from an employee's controlled substance and/or alcohol test is confidential, and only the City's DER will be informed of the test results. Positive test results shall only be shared with City management so that appropriate disciplinary actions may be imposed. Disclosure of test results to any other person, agency, or organization outside of the City is prohibited unless written authorization is obtained from the employee. (Code 1696 § 1)

23.7.1.1 Employees must:

- Test when required after specific criteria has been met

- Not use illegal controlled substances and/or alcohol, in any form, on the job
- Not work under the influence of alcohol
- Not remain on duty with a confirmed breath alcohol concentration of 0.02 or greater.
- Not use alcohol within eight hours after an accident or until undergoing a post-accident alcohol test.
- Not use prescription drugs containing controlled substances contrary to a physician's instructions.
- Notify their supervisor if using a prescription containing a controlled substance that could alter their ability to work safely or hinder their ability to interact with the general public

The employee must, upon request, provide documentation demonstrating that the use of a drug will not adversely affect their ability to work safely or hinder their ability to interact with the general public. No employee shall report for duty or remain on duty when using any controlled substance, except when the use is pursuant to the instructions of a-the same licensed medical practitioner. The -medical practitioner must advise the employee that the substance will not adversely affect their ability to work safely or hinder their ability to interact with the general public.

Employees who refuse to be tested or to cooperate in testing, or who attempt to alter test results, are subject to immediate removal from their job functions and are subject to disciplinary procedures which may include termination. shall be terminated.

23.7.1.2 Alcohol and Controlled-Substance Tests

All applicants and employees who undergo City mandated tests will be notified if the test result is positive by the testing contractor before the City's designated employer representative is notified.

The City staff or a contractor of the City performing the tests will follow specific procedures if an alcohol-test result is 0.02 or greater. The procedures are required to maintain conformity in testing and are intended to make sure that the test result is 0.02 or greater.

Tests required by the City, except for pre-employment tests and return-to-duty tests, are considered a duty assignment. Time for travel and time spent in providing the specimen at the collection site will be with pay.

Any action which indicates a refusal to test will result in the employee being terminated. (Code 1696 § 1)

23.7.1.3 Definition of Positive Alcohol or Controlled-Substance Test

Alcohol tests will be considered positive if the breath and/or saliva test indicates an alcohol presence of 0.04 or greater. If the test results are positive, the employee and supervisor will be notified before the employee leaves the test site.

If an alcohol test indicates an alcohol concentration of at least 0.02, but less

than 0.04, the test is considered negative, but the employee will be taken out of service for 24 hours. A controlled substance drug test will be considered positive if a controlled substance for which no legitimate explanation is determined by the Medical Review Officer (MRO) is found in the test specimen. (Code 1696 § 1)

23.7.1.4 Testing Responsibilities in Alcohol and Controlled-Substance Testing

If the initial alcohol test results are 0.02 or greater, the City staff or a contractor of the City performing the tests will wait 15 minutes and then issue a confirmation test. During the 15-minute waiting period before the confirmation test, the employee will be given a set of instructions (for example, no eating or drinking) that must be followed. If the employee does not follow these instructions, it may be considered an attempt to alter the test results. The confirmation test result is used for disciplinary purposes.

Controlled-substance testing will initially use quick screen cups and if the quick screen sample shows the presence of a controlled substance, the sample will be sent to the contracted laboratory for confirmation of the positive test result. The individual will be removed from duty until the laboratory results are finalized. If a drug screen test is confirmed positive, it will be reviewed by the physician serving as the testing vendor's MRO. The MRO will follow specific procedures required to maintain conformity in the testing process. These procedures are intended to make sure that the test result is a true positive. The MRO will call the employee who has tested positive, discuss what might have caused the test result to be positive to ensure it is a true positive result before contacting the City's designated employer representative. (Code 1696 § 1)

23.7.2 Types of Required Drug Testing

23.7.2.1 Pre-Employment Drug Testing

All prospective applicants are required to pass a pre-employment drug and alcohol test as a condition of employment. (Code 1696 § 1)

23.7.2.2 Reasonable Suspicion Testing

Any employee may be asked to submit to breath alcohol and urine testing by City Staff or the City's drug and alcohol contractor at the City's expense. ~~The City may request that the employee undergo drug and alcohol testing~~ if there is a "reasonable suspicion" that the employee is under the influence of drugs or alcohol during work hours. "Reasonable suspicion" means an articulated belief based on specific facts and reasonable inferences drawn from those facts that an employee is under the influence of controlled substances and/or alcohol. ~~Supervisors who have received reasonable suspicion training acknowledge that because non-DOT safety sensitive employees have a greater right to privacy than DOT safety sensitive employees,~~ The supervisor must observe significant indicators prior to ordering testing. Circumstances which constitute a basis for determining reasonable suspicion may include, but are not limited to:

- A pattern of abnormal or erratic behavior which is so unusual that it warrants summoning another employee, a supervisor, a police

officer or other individual for assistance.

- Information provided by a reliable and credible source with personal knowledge.
- Direct observation of drug or alcohol use.
- Presence of the physical symptoms of drug or alcohol use; (i.e. glossy or blood-shot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes). (Code 1637 § 1; Code 1696 § 1)

The supervisor who has received reasonable suspicion training is required to document in writing, the specific facts, symptoms, or observations which led to the reasonable suspicion. Risk Management shall place this documentation in the employee's medical personnel file only if confirmed by a positive controlled substance and/or alcohol test.

After-hours reasonable suspicion drug and alcohol screening will be conducted by certified City staff at City Hall. For all after hours testing needs for reasonable suspicion, supervisors should call the After-Hours Incident phone number to have the testing completed. ~~The number is (701) 456-7867.~~

Any action which indicates a refusal to test will result in the employee being terminated. A positive result from the controlled substance and/or alcohol test confirming the reasonable suspicion will result in disciplinary action ~~up to termination~~ as set forth in Section 23.4.

23.7.2.3 Vehicle Accidents Post Accident Testing

~~Drivers/operators are responsible for notifying the City of any vehicle or equipment accident while on duty or while driving a City vehicle on off hours. In an accident resulting in a death, the City driver(s)/operator(s) involved must undergo post-accident testing. In an accident which does not result in a death, but in which the City driver is cited for a moving traffic violation or resulted in vehicles involved in the accident being towed from the scene or injuries as a result of the accident being treated away from the scene, the driver must undergo post-accident drug and alcohol testing. In the event of a reportable accident as identified under North Dakota law occurs resulting liability of at least \$4,000, the driver/operator shall be tested. As soon as practical following an accident involving a City owned vehicle and/or equipment, each surviving employee shall be subject for alcohol and controlled testing when either: (1) the accident involved a fatality; or (2) the employee receives a citation within eight (8) hours of the occurrence under State or local law for a moving violation arising from the accident AND the accident involved: (i) injury requiring medical treatment away from the scene by anyone involved with the accident or (ii) one or more vehicles having to be towed from the scene due to disabling damage.~~

Employees must be tested for controlled substances within 32 hours after all accidents, ~~resulting in a death or where the driver is cited for a moving violation if the accident resulted in injuries needing to be treated away from the scene or vehicles involved in the accident are required to be towed from the scene.~~ If the controlled-substance test is not administered within 32 hours, no test will be given,

and the manager must file and maintain records stating the reason for the delay and the lack of testing.

Employees must be tested for alcohol within two hours of the accident. If the alcohol test is not administered within two hours, the ~~Risk M~~anager must file and maintain records stating why. Once documented, the City has six additional hours to perform the test. If an alcohol test is not administered within eight hours of the accident, no test will be given, and the ~~Risk M~~anager must file and maintain records stating the reason for the delay and lack of testing. Employees must remain at work, but must not perform job functions that could endanger themselves or others, until the post-accident alcohol test is administered or eight hours since the accident has lapsed, or an unimpaired adult agrees to pick the employee up from work and transport that employee home. (Code 1696 § 1)

Should the accident occur outside the geographical limits of the City making testing by the City or its contractor(s) impracticable, the City shall rely on the report and results of the investigating law enforcement agency conducting the investigation in the jurisdiction where the accident occurred.

After-hours post-accident drug and alcohol screening will be conducted by certified City staff at City Hall. All after hours testing needs for post-accident that do not require immediate medical attention, supervisors should call the After-Hours Incident phone number to have the testing completed. The number is (701) 456-7867.

Any action which indicates a refusal to test will result in the employee being terminated. A positive result from the controlled substance and/or alcohol test confirming impairment will result in disciplinary action up to termination as set forth in Section 23.4.. Risk Management shall place this documentation in the employee's medical personnel file only if confirmed by a positive controlled substance and/or alcohol test

23.7.2.4 Return to Duty Testing and Follow Up Tests

If any test result is positive and the course of treatment recommended by a substance abuse professional (SAP) with the City EAP (or one chosen by the employee) has been completed, the employee must submit to return-to-duty alcohol and controlled substance tests prior to resuming duties. The return-to-duty alcohol test must indicate a breath alcohol concentration of less than 0.02. Controlled-substance test results must be negative, and will be administered under direct observation.~~“direct observation” as described in the definitions section at the beginning of this policy.~~

~~The employee will be required to pay for the return-to-duty test.~~

Unannounced follow-up tests are required ~~for at~~ a minimum of six tests in the first twelve months period ~~or for~~ as high-long as 60 months for any employee who, after a positive test result, is determined by a SAP to need help with alcohol or controlled-substance abuse. The employee shall be responsible for all costs associated with the SAP. The City shall pay for the follow up test(s). ~~The City shall pay for the SAP and follow up test(s).~~

23.7.3 Test Results-Required Action

ALCOHOL TEST		
Results (Blood-Breath Alcohol Concentration)	Employee Status	Required Action
>0.00	applicant Applicant	Not hired
0.02-0.039	Any non-safety sensitive	Taken out of service for 24 hours without pay
0.04+	Any non-safety sensitive	Remove from safety-sensitive duty and notify employee of EAP program and employee is subject to discipline up to termination

CONTROLLED SUBSTANCE TEST		
Results	Employee Status	Required Action
Positive	Applicant	Not hired
Positive	Non-Safety sensitive	Taken off duty; may be referred to EAP for evaluation and treatment; subject to City discipline, up to and including termination

OTHER PROHIBITED CONDUCT		
Prohibited Conduct	Employee Status	Required Action
Refusing to be tested	Applicant	Not hired
Refusing to be tested	Non-safety sensitive employee	Terminated
Possessing or consuming alcohol on the job	Non-safety sensitive employee	Taken off duty; may be referred to EAP for treatment; Subject to City disciplinary action up to and including termination of employment
Abusing cough syrup, mouthwash, or any other substance containing alcohol while on the job	Non-safety sensitive employee	Taken off duty; may be referred to EAP for treatment; Subject to City disciplinary action up to and including termination of employment
Possessing or using a controlled substance without a doctor's permission	Non-safety sensitive employee	Termination

Performing a safety-sensitive job function while using a prescription containing a controlled substance when a physician has instructed the employee that the substance may adversely affect the employee's ability to safely operate a motor vehicle complete their job duties	Non-safety sensitive employee Any Employee	Taken off duty; may be referred to EAP for treatment; Subject to City disciplinary action up to and including termination of employment
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(Code 1696 § 1)

23.7.4 Controlled Substances to be Tested

The following drug groups were selected based on the ability of each drug to adversely affect physical/mental performance. All are controlled substances under state and federal law.

- Alcohol
- Amphetamines
- Cocaine Metabolites
- Opioids
- Marijuana Metabolites
- Phencyclidine PCP

(Code 1696 § 1)

23.7.5 Required Records and Records Retention

The City shall be responsible for maintaining the necessary records as required by federal regulations for a minimum of three years. In all cases, information must be available at the City within 24 hours if requested by written formal request.

Section 2: Repeal of Ordinances in Conflict. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

Section 3: Severability. In the event any section of this Ordinance is held invalid by court of competent jurisdiction, the invalidity shall extend only to the section affected, and other sections of this Chapter shall continue in full force and effect.

Section 4: Effective Date: This Ordinance shall be in full force and effect from and after final passage.

Scott Decker, President
Board of City Commissioners

ATTEST

Dustin Dassinger, City Administrator

First Reading:
Second Reading:
Final Passage:

DRAFT