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Policy No. 408: Alcohol and Drug Policy for

Employees Who Operate Commercial Motor Vehicles

A. Policy

1. The purpose of this Policy is to comply with all applicable federal regulations enacted and enforced by the Federal Motor Carrier Safety Administration (FMCSA) that mandate alcohol and drug testing and establish testing standards for covered, safety-sensitive employees who operate commercial motor vehicles. **This Policy supplements, but does not replace or change, all existing City policies and agreements concerning the use of and testing for alcohol and drugs unless otherwise required by law or regulation.**
2. The FMCSA regulations require the City to provide each covered employee/driver with information explaining the FMCSA requirements and the City's policies and procedures for meeting these requirements. The City is providing the information contained or referred to within this Policy to accomplish this directive.
3. The Director of Human Resources or his/her designee is the person designated by the City to answer employee and supervisor/manager questions about these materials and the City's implementation of the FMCSA regulations; to receive confidential information regarding alcohol and drug testing results; and to receive confidential information from Substance Abuse Professionals. The Director of Human Resources' designees include employees of the Human Resource Department.
4. Employees subject to this Policy are also subject to all other City policies including but not limited to the following policies:
 - Policy No. 401: Safety
 - Policy No. 402: Alcohol and Drug Use
 - Policy No. 405: Medical Examinations
 - Policy No. 407: Employee Assistance Program

Employees shall be held accountable for any violations of these policies to the extent that disciplinary action may be taken against the employee, up to and including dismissal. As such, employees and supervisors should review these policies and any applicable bargaining agreement.

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5. The public is entitled to the best from City employees and should be protected against the costs of absenteeism and the dangers of partial incapacity and impaired judgment. Involvement with drugs and/or alcohol can adversely affect job performance and employee safety. The City's concern is that employees are in a condition to perform their duties safely and efficiently, in the best interests of their fellow workers and the public, as well as themselves. The presence of drugs and/or alcohol on the job and the influence of these substances on employees during working hours is prohibited.
6. Employees who think they may have an alcohol and/or drug usage problem are urged to voluntarily seek assistance from the City's Employee Assistance Program (EAP) or other professional assistance. Assistance can be located through EAP, the medical insurance plan, local yellow pages, local health department or by visiting the U.S. Department of Health and Human Services treatment facility locator at <http://findtreatment.samhsa.gov/>. While the City will be supportive of those who seek help voluntarily, the City will be equally firm in identifying and disciplining those who are, or continue to be, substance abusers and do not seek help.
7. To further our commitment of maintaining a drug and alcohol-free workplace in order to provide a safe work environment for employees and safe service delivery to the public, it is our policy to:
 - a. Ensure that employees who operate commercial motor vehicles are not under the influence of alcohol or any illegal drug and/or controlled substance that impacts their ability to perform their work in a safe and productive manner;
 - b. Conduct drug and alcohol testing as required by FMCSA regulations; and
 - c. Encourage employees to seek professional assistance anytime alcohol and/or drug use adversely affects their ability to perform their work assignments.
8. Under the FMCSA Regulations, a person is not physically qualified to drive a commercial motor vehicle if he or she uses a Schedule I controlled substance such as marijuana. Legalization of marijuana use by States and other jurisdictions, or use that is recommended or prescribed by a licensed medical practitioner does not modify the application of DOT drug testing regulations in 49 Code of Federal Regulations (CFR) Parts 40 and 382. Marijuana, including a mixture or preparation containing marijuana, continues to be classified as a Schedule I controlled substance and has no

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accepted medical use in the United States. Use of any form of marijuana is cause for disciplinary action up to and including dismissal.

Employees are advised that Tetrahydrocannabinol (THC) is the active chemical ingredient in marijuana. Many of the cannabidiol (CBD) products that are marketed for therapeutic use are not regulated by the U.S. Food and Drug Administration (FDA). Therefore, extracts of CBD may be contaminated with THC. In drug testing, use of contaminated CBD oils may trigger a positive drug test.

B. Covered Employees

This Policy applies to all employees who operate a commercial motor vehicle to carry out their job duties for the City of Kettering or who are required as a condition of employment to possess and maintain a commercial driver's license (CDL). Participation in the City's CDL Alcohol and Drug Testing Program is required for these employees and is considered to be a condition of employment.

A commercial motor vehicle is a vehicle that:

1. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
2. Has a gross vehicle weight rating of 26,001 or more pounds; or
3. Is designed to transport 16 or more passengers, including the driver; or
4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations.

C. Safety-Sensitive Functions

The FMCSA alcohol and drug rules apply to employees/drivers when performing safety-sensitive functions. Safety-sensitive means all time from the time a driver/employee begins to work or is required to be in readiness to work until the time h/she is relieved from work and all responsibility for performing work. Safety-sensitive functions under these rules include but are not limited to any of the following:

1. All time waiting to be dispatched;
2. All time inspecting, servicing or conditioning any commercial motor vehicle;

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3. All time driving a commercial motor vehicle;
4. All other time spent in or on any commercial motor vehicle;
5. All time loading or unloading a vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
6. All time spent dealing with a commercial motor vehicle accident; and
7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle.

D. Prohibited Conduct

The FMCSA regulations include the following rules on prohibited conduct:

1. No employee/driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater (**see Section I of this Policy on alcohol concentrations of 0.02 or greater but less than 0.04**);
2. No employee/driver shall be on duty or operate a commercial motor vehicle while the driver possesses alcohol, unless the alcohol is manifested and transported as part of an approved shipment;
3. No employee/driver shall use alcohol while performing safety-sensitive functions;
4. No employee/driver shall perform safety-sensitive functions within four hours after using alcohol;
5. No employee/driver shall use alcohol for eight hours following an accident, or until the driver undergoes a post-accident alcohol test, whichever occurs first;
6. No employee/driver shall refuse to submit to a pre-employment/pre-duty alcohol or drug test, a post-accident alcohol or drug test, a random alcohol or drug test, a reasonable suspicion alcohol or drug test, a return-to-duty alcohol or drug test, or a follow-up alcohol or drug test; and
7. No employee/driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the employee/driver:
 - a) Uses any drug or substance identified in 21 CFR 1308.11 Schedule 1;
 - b) Uses any non-Schedule 1 drug or substance that is identified in the other Schedules in 21 CFR part 1308, except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in 382.107, who is familiar with the employee/driver's medical history and has advised the employee/driver that the substance does not adversely affect the employee/driver's ability to safely operate a commercial motor vehicle;

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- c) When an employee is taking prescribed medication, on or off the job, which has the potential to impact his/her ability to perform his/her job safely, the employee shall notify the City as provided for in Policy No. 401: Safety.

E. Supervisor/Manager Responsibilities

Supervisors/managers must not permit an employee/driver to perform safety-sensitive functions and supervisors and employees must report if they have actual knowledge that the employee:

1. Has a blood alcohol concentration of 0.02 or greater; or
2. Has alcohol in their possession; or
3. Is using alcohol on the job; or
4. Has used alcohol within the past four hours; or
5. Refused to submit to an alcohol or drug test required by this Policy; or
6. Has used or is using a controlled substance; or
7. Tested positive for drugs or has adulterated or substituted a test specimen for controlled substances.

F. Alcohol and Drug Testing

A driver is subject to FMCSA mandatory testing for alcohol and drugs under the following circumstances:

1. Pre-Employment/Pre-Duty Testing

An applicant or newly hired employee/driver must be tested for alcohol and drugs before the first time the driver performs any safety-sensitive function for the City (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions). If a driver is removed from a random testing pool for more than 30 calendar days, he/she must again be pre-employment tested.

2. Post-Accident Testing

An employee/driver who is involved in an accident involving a commercial motor vehicle while performing a safety-sensitive function for the City is to alert his/her supervisor immediately. Once notified to report for alcohol and drug testing based on a citation or pending citation for a moving violation, the employee/driver must report without delay to a collection site per the supervisor's instructions.

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An employee/driver must be tested for alcohol as soon as practicable following an accident involving a commercial motor vehicle, if:

- a. The employee/driver was performing a safety-sensitive function with respect to the vehicle, and the accident resulted in the loss of a human life (whether or not the driver caused the accident), or
- b. The employee/driver receives a citation within 8 hours of the occurrence under State or local law for a moving violation arising out of the accident, if the accident involved:
 - i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

An employee/driver must be tested for drugs as soon as practicable following an accident involving a commercial motor vehicle, if:

- a. The employee/driver was performing a safety-sensitive function with respect to the vehicle, and the accident resulted in the loss of a human life (whether or not the driver caused the accident), or
- b. The employee/driver receives a citation within 32 hours of the occurrence under State or local law for a moving violation arising out of the accident, if the accident involved:
 - i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

3. Random Testing

Employees/drivers will be randomly selected for unannounced alcohol and drug testing. At a minimum, the City will adhere to the annual minimum drug and alcohol random testing rates established by the FMCSA Department of Transportation (DOT), or any other future named agency

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that has jurisdiction over such standards for random drug and alcohol testing. Employees/drivers will be selected on a random basis which assures that all drivers have an equal chance of being tested.

4. Reasonable Suspicion Testing

An employee/driver must be tested for alcohol and/or drugs if there is reasonable suspicion that a driver has violated the rules on the use of alcohol or drugs. Reasonable suspicion will be based on specific, current, describable observations concerning the appearance, behavior, speech or body odors of the employee made during, just preceding, or just after the period of the work day that the employee is performing a safety-sensitive function. The observation made by any employee must be reported and a determination that a reasonable suspicion exists will be made jointly by a supervisor, manager or other City official trained in detecting the possible signs or indications of alcohol and drug use and the Director of Human Resources or his/her designee. A written record shall be made of the observations leading to a reasonable suspicion test for alcohol or drugs and shall be signed by the supervisor, manager or City official who made the observations within 24 hours of the observed behavior or before the results of the alcohol and drug tests are released, whichever is earlier. The supervisor, manager or City official making the observations should consult with Human Resources as soon as practicable.

5. Return-to-Duty Testing

An employee/driver must be tested for alcohol and/or drugs before returning to any safety-sensitive duties following a violation of the FMCSA alcohol or drug rules. Return-to-duty tests must be conducted under direct observation by a medical professional.

6. Follow-up Testing

An employee/driver who has been identified by a Substance Abuse Professional as needing assistance in resolving problems with alcohol and/or drugs and who has returned to duty is subject to a minimum of six follow-up alcohol and/or drug tests over the first 12 months following the return to duty. The Substance Abuse Professional may require the employee to undergo additional alcohol and/or drug testing for up to 60 months. All follow-up tests will be observed by a medical professional. In the event the employee/driver is placed on a Last Chance Agreement (LCA), the follow-up alcohol and/or drug tests will be subject to the terms of this LCA.

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All alcohol and drug testing done under the FMCSA rules will comply with 49 Code of Federal Regulations (CFR) Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. These procedures require separate screening and confirmation tests and a number of other procedures (including but not limited to retesting of negative dilute samples after consulting with the Medical Review Officer) which are intended to protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver.

G. Refusal to Submit to Alcohol or Drug Test

1. The FMCSA rules mandate that an employee/driver submit to the alcohol and drug tests required by the FMCSA rules. A refusal to submit is itself a violation of the FMCSA rules.
2. A refusal to submit to an alcohol and/or drug test includes, but is not limited to, any of the following conduct:
 - a. Failure to provide adequate breath for alcohol testing, without a valid medical explanation, after the driver has received notice of the requirement for alcohol testing under the FMCSA rules;
 - b. Failure to provide adequate urine for drug testing, without a valid medical explanation, after the driver has received notice of the requirement for drug testing under the FMCSA rules;
 - c. Making a verbal declaration that results in the inability to conduct the test;
 - d. Engaging in conduct that clearly obstructs the testing process;
 - e. Physical absence resulting in the inability to conduct the test;
 - f. Failure to remain at the testing site until the testing process is complete; and
 - g. Failure to remain readily available for testing following an accident involving a commercial motor vehicle.
3. A refusal to take an alcohol and/or drug test required by the FMCSA rules will have the following minimum consequences:
 - a. An applicant who refuses a pre-employment/pre-duty test will not be hired;
 - b. An employee who refuses a return-to-duty test will not be returned to duty; and
 - c. An employee who refuses a post-accident, random, reasonable suspicion or follow-up test will be treated as if he/she had a positive test result, as described in Paragraph H, which follows.

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An employee who refuses to comply with a request for testing, who provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution, shall be removed from duty immediately and subject to discipline up to and including dismissal.

H. Employees/Drivers Who Violate the FMCSA Rules on Alcohol and/or Drugs will:

1. Be removed from all safety-sensitive functions and placed on an unpaid leave of absence, unless otherwise determined appropriate by the Director of Human Resources or his/her designee;
2. Be referred to and evaluated by a Substance Abuse Professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol and/or drugs;
3. Not be returned to work unless the driver passes a return-to-duty alcohol and/or drug test and has properly followed any rehabilitation program prescribed by the Substance Abuse Professional; and
4. Be subject to FMCSA-mandated unannounced follow-up alcohol and/or drug testing, including a minimum of six tests during the first 12 months following the driver's return to work.

These are the minimum consequences mandated by the FMCSA rules. The City may take additional disciplinary action, up to and including dismissal, for conduct which violates City work rules or policies.

I. Alcohol Test Result of 0.02 or Greater but Less Than 0.04

A positive alcohol test is defined by the FMCSA rules as a test finding an alcohol concentration of 0.04 or greater. However, if a driver's alcohol test is found to have an alcohol concentration of 0.02 or greater but less than 0.04, the driver must be removed from duty until the driver's next regularly scheduled duty period, but not less than 24 hours following the test. This employee may be subject to discipline.

J. Employee Requested Confirmation Testing

An employee who questions the results of a required drug test may request that an additional test be conducted at a different Department of Health and Human Services (DHHS)-certified laboratory. The test will be

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conducted on the split sample that was provided at the same time as the original sample. The cost of the second test will be borne by the employee, unless the second test invalidates the first.

The method of collecting, storing and testing the split sample is as prescribed by the procedures in 49 CFR Part 40. The employee's request for a split sample test must be made to the City's designated Medical Review Officer (MRO) within 72 hours of notice of the initial test result. Requests after 72 hours will be accepted only if the delay was due to documentable facts that were beyond the control of the employee.

K. Confidentiality

Laboratory reports or test results shall not appear in an employee's general personnel folder. Information of this nature will be secured in a separate confidential folder in the Human Resource Department. The reports or test results may be disclosed to City management on a need-to-know basis and to the tested employee upon request. The City may also disclose confidential information required by FMCSA to be maintained pertaining to an employee to: the decision makers in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee, and arising from the results of an alcohol and/or controlled substance test administered under FMCSA rules, or from the City's determination that the employee engaged in prohibited conduct.

L. FMCSA Mandated Alcohol/Drug Evaluation/Treatment

Employees/drivers who test positive for the presence of alcohol and/or illegal drugs will be referred to, and evaluated by, a Substance Abuse Professional (SAP). A Substance Abuse Professional is a:

1. Licensed physician (Doctor of Medicine or Osteopathy)
2. Licensed or certified social worker;
3. Licensed or certified psychologist;
4. Licensed or certified employee assistance professional;
5. State-licensed or certified marriage and family therapist; or
6. Drug and alcohol counselor certified by an organization listed at <https://www.transportation.gov/odapc/sap>.

The SAP must be knowledgeable about and have clinical experience in the diagnosis and treatment of drug and alcohol-related disorders. The SAP must be knowledgeable about the SAP function as it relates to employer interests in safety-sensitive duties. The SAP will evaluate each employee to determine what

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assistance, if any, the employee needs to resolve problems associated with prohibited substance abuse or misuse of alcohol.

Under certain circumstances, including positive alcohol and/or drug tests, employees may be required to undergo treatment for substance abuse. If an employee is not discharged, but is allowed to return to duty after such evaluation and/or treatment, he/she must properly follow the rehabilitation program prescribed by the Substance Abuse Professional, must pass the return to duty alcohol and/or drug test(s) and be subject to unannounced follow-up tests for a period of one to five years, as determined by the Substance Abuse Professional or as required by federal law. Any employee who refuses treatment when required, or fails to comply with the Individualized Treatment Plan prescribed by the Substance Abuse Professional for treatment, aftercare, or return to duty, shall be subject to disciplinary action, up to and including discharge.

M. Additional Alcohol and Drug Information

1. The use of alcohol and/or drugs can have negative effects on an individual's health, work and personal life.
2. Copies of the FMCSA rules on alcohol and drug use and testing, 49 CFR Part 382, and the Department of Transportation rule on procedures for Transportation Workplace Drug and Alcohol Testing Programs, 49 CFR Part 40, are available for review in the Human Resource Department.
3. Employees are urged to request assistance with any alcohol and/or drug problem before disciplinary action is necessary. If an employee advises the City of an alcohol and/or drug problem, the employee will be urged to receive counseling and, if appropriate and necessary, will be permitted to take accrued paid sick leave and other accrued, paid leave to receive the recommended treatment. If an employee has exhausted all appropriate accrued paid leave, he/she may apply for an unpaid personal leave of absence for the period of time necessary to receive the recommended treatment.
4. Alcohol and drug dependencies are treatable. Employees covered by City-sponsored employee assistance program and/or health insurance plan have limited coverage for treatment of alcoholism and drug dependency. Any costs associated with treatment that are not covered by insurance will be the responsibility of the employee.

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5. Employees who suspect that another employee is in violation of the FMCSA alcohol and drug rules should immediately report their suspicion, and the basis for it, to their supervisor/manager, Department Director, or to the Director of Human Resources, or his/her designee so that appropriate action may be taken, and a potentially unsafe situation avoided.

N. Commercial Driver's License Drug and Alcohol Clearinghouse

The City will comply with the FMCSA requirements to report to the Clearinghouse information related to violations of the drug and alcohol regulations in 49 CFR Parts 40 and 382 by current and prospective employees. The City will also comply with necessary queries of current and prospective employees.

The City Manager hereby delegates the appropriate responsibility and authority to administer this Policy to the City's Assistant City Manager and Department Directors.

Approved:

2/10/2022

Date

Mark W. Schwieterman

Mark W. Schwieterman
City Manager

Issued:

2.11.2022

Date

Jenny Smith

Jenny Smith
Director of Human Resources