

## ADMINISTRATIVE PERSONNEL POLICIES & PROCEDURES Policy No. 402: ALCOHOL and DRUG USE

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### **A. General Provisions**

1. This Policy applies to all City employees and applicants for City employment.
2. The purpose of this Policy is to promote productivity and the safety of employees and the public by prohibiting employees from working while under the influence of alcohol and/or drugs. 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. This is especially important for police, fire and other employees who use weapons, operate equipment, drive vehicles, work in hazardous situations or make critical judgments. In addition, patrol officers are sworn to enforce the law, including important laws relating to alcohol and/or drugs. All employees must seek at all times to maintain the public's confidence and respect for themselves as employees, and for the City of Kettering as an organization.
3. For purposes of this Policy, drugs or illegal drugs include marijuana and cannabis, whether prescribed or not.
4. Employees shall be held accountable for any violations of this Policy, to the extent that disciplinary action may be taken against the employee, up to and including dismissal. Ultimately the responsibility for complying with the provisions of this Policy, fitness for duty, and where applicable, seeking out and participating in rehabilitation programs, rests with the employee.

### **B. Applicants for Employment – Alcohol and/or Drug Testing**

1. After an applicant is selected as one of the potential employees for a position, the City may require the applicant to submit to a drug test. The City will routinely test all applicants in top-standing or prospective employees for all regular full-time positions and other positions where appropriate. If the pre-employment drug test is positive, the City may refuse to hire the applicant. The City will treat the applicant as required by law.
2. An applicant subject to Federal Motor Carrier Safety Administration (FMCSA) mandatory testing must be tested for alcohol as well as drugs (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions). For additional details, please see Policy No. 408: Alcohol and Drug Policy for Employees Who Operate Commercial Motor Vehicles.

### **C. City Employees - Use of Alcohol and Drugs**

1. The use or possession of illegal drugs or other controlled substances, except medication prescribed for the employee by a licensed medical practitioner, and the unlawful manufacture, distribution and dispensing of such controlled substances by any employee is unacceptable behavior. Such behavior is cause for disciplinary action, up to and including dismissal. Discipline shall be on a case-by-case basis and consistent with applicable laws. Among those factors to be evaluated in determining discipline are: if the employee either used or was under the influence of the drug or substance while on duty; if the employee's performance or attendance has reflected such use; the nature of employee's job; the level of public trust and/or responsibility for public safety held by the employee; and the employee's past record of performance and behavior.

2. Marijuana cannabis, including a mixture or preparation containing marijuana cannabis, continues to be classified as a Schedule I Controlled Substance and has no accepted medical use in the United States. Legalization of marijuana cannabis use by States or other jurisdictions, or use that is recommended or prescribed by a licensed medical practitioner does not modify Schedule I Controlled Substances. Use of any form of marijuana cannabis is cause for disciplinary action up to and including dismissal.

Employees are advised that Tetrahydrocannabinol (THC) is the active chemical ingredient in marijuana cannabis. 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.

3. When an employee is taking prescribed medication, on or off the job, which has the potential to impair their ability to perform the essential functions of their job safely, the employee shall notify the City as provided for in Policy No. 401: Safety.
4. At work, employees shall not have in their possession nor consume alcoholic beverages, illegal drugs, and/or controlled substances other than medication prescribed for the employee by a licensed medical practitioner.
5. An employee shall not report to work, nor continue to work, under the influence of alcohol or any illegal drug and/or controlled substance other than medication prescribed by a licensed medical practitioner.
6. All employees of the City of Kettering are responsible for ensuring that this policy is followed. Any employee who suspects or observes any violation of this policy is required to report the violation immediately to a supervisor, Department Director, Human Resource Director or Human Resource Manager.
7. Supervisors who have evidence of violations of this Policy shall contact Human Resources immediately to determine the appropriate action to be taken in accordance with this policy.
8. Department Directors may establish policies, not inconsistent with this Policy, in the areas of alcohol usage, possession and/or distribution, and/or controlled substance possession that address the unique circumstances of their Department, in a manner that is consistent with Policy No. 1001: Policy Modifications. Any policies must be submitted to the Human Resource Department and the City Manager for prior approval.

#### **D. City Employees - Alcohol and/or Drug Testing**

\*Note: Policy No. 408: Alcohol and Drug Policy for Employees Who Operate Commercial Motor Vehicles may also apply depending on certain facts or circumstances. Please refer to Policy No. 408 for additional information.

1. When the City has a reasonable suspicion that an employee is violating this Policy, the City may require the employee to submit promptly to an alcohol test (by breathalyzer, blood test or other method) and/or to a drug test (by urinalysis, blood test or other method).
2. The Human Resource Director or the Director's designee and the employee's Department Director or the Director's designee shall jointly determine whether there is a basis for a reasonable suspicion that would warrant testing.
3. For the purposes of this Policy reasonable suspicion may be based upon, but is not limited to: the employee's potential responsibility for an accident or other incident which results in bodily injury or damage to property; an employee's violation of traffic or other laws which has the potential for

causing bodily injury or property damage; unexplained and excessive absence; reports that the employee uses or is under the influence of alcohol and/or drugs; the odor of drug and/or alcohol on an employee; unusual behavior such as slurred speech or lack of coordination; or an employee's prior violation of this Policy.

4. The City may require an employee who has previously violated this Policy, as a condition of continued employment, to submit to testing at any time. The Human Resource Director or the Director's designee and the employee's Department Director or the Director's designee shall jointly determine when such testing for monitoring purposes is warranted, and/or whether there is a basis for a reasonable suspicion that would warrant testing.
5. When the City requests, the employee shall submit promptly to testing at a facility of the City's choice. Refusal to submit promptly to alcohol and/or drug testing shall constitute insubordination and will result in disciplinary action up to and including dismissal.
6. The collection of test samples and all testing shall be conducted by appropriate medical personnel. The test results shall be reported directly to the Human Resource Director or the Director's designee.
7. 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;
  - b. Failure to provide adequate urine or other appropriate sample for drug testing, without a valid medical explanation;
  - 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.
8. A refusal to take an alcohol and/or drug test 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 the employee had a positive test result, as described below:

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.
9. If the initial drug test is positive for any controlled substance, a confirmation test shall be run on the same sample. The employee may be suspended pending receipt of the confirmation test results. If the confirmation test is also positive, the employee shall be deemed to be in violation of this Policy. For purposes of this Policy, an employee who has an alcohol concentration of 0.04 or greater or who has a positive drug test is considered under the influence.
10. If an employee is found to be in violation of this Policy, following a positive confirmation test, the City may initiate disciplinary action, up to and including dismissal.
11. An employee who tests positive may, at the employee's own expense, have another test run on the split sample.
12. Information resulting from such tests will not be divulged except to the extent necessary to protect a legitimate interest of the City or to the extent required by law.


**E. Employee Assistance**

1. The City will give employees reasonable consideration and assistance in obtaining treatment for alcoholism and chemical dependence, where applicable. The City will assist employees who request help in obtaining a source for professional treatment. An employee may request assistance from their supervisor, Department Director or the Human Resource Department. All employees and their household members are eligible to use the City's Employee Assistance Program (see Policy No. 407: Employee Assistance Program).
2. However, if conduct for which discipline is appropriate has already occurred, alcoholism or chemical dependence will not be considered a valid explanation for the employee's performance problems/misconduct and in no way will be given any weight by the City when contemplating the appropriate disciplinary action to be taken.
3. Employees who seek voluntary treatment for alcoholism or chemical dependency, or seek such treatment after a disciplinary action has been contemplated or begun, are reminded that such treatment provides them with an opportunity to deal with their dependency problem; however, it does not provide them with immunity against contemplated or future disciplinary actions for past, present or future violations of this Policy.
4. The City will grant sick leave for treatment of alcoholism and chemical dependence on the same basis as other illnesses. The City will comply with Policy No. 310: Family and Medical Leave Act. If an employee has used all available leave, the City may consider granting an unpaid leave of absence for professional treatment in accordance with Policy No. 304: Leave Without Pay. The leave of absence may be conditioned upon the receipt of reports that the employee is cooperating and making reasonable progress in the treatment program.

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:

12/6/23  
Date

  
Matthew H. Greeson  
City Manager

Issued:

12/4/23  
Date

  
Jenny Smith  
Human Resource Director