

Section 2: Employment

Policy #14: **Drug & Alcohol Free Workplace (Non-DOT)**

Effective Date: **December 1, 2010**

I. Purpose

It is the intent of the Town of Mooresville to maintain a drug and alcohol-free work force and to eliminate the safety risks, lost time and reduced productivity that results from the use of and the influence of alcohol and/or drugs in the workplace. Along with this policy, the Town will conduct screenings of job applicants and Town employees for illegal drugs, improper use of prescription drugs and alcohol.

The Town of Mooresville will ensure that testing procedures are conducted in a fair and unbiased manner and the rights of applicants' subject to testing are protected. The Town will make every effort to protect the dignity and self-esteem of those being tested by complying with the standards of confidentiality set forth in this policy. The implementation of this program is intended to deter the use of drugs and alcohol in the workplace in accordance with the United States Department of Transportation (USDOT) Federal Highway Administration (FHWA) regulations 49 Code of Federal Regulations (CFR) Part 40 entitled, "Procedures for Transportation Workplace Drug Testing Programs", part 382, entitled "Controlled Substances and Alcohol Use and Testing."

II. Scope

This policy shall apply to all final candidates for full time and part time positions and jobs at the Town, all full-time and part-time employees and all full-time and part-time employees who are demoted, transferred or promoted into a new position.

III. Background

It has been estimated that American companies spend over one hundred billion dollars each year on the consequences of substance abuse in the workplace. This considerable amount of money covers the costs of absenteeism, accidents and equipment damage, as well as the increased medical costs and insurance premiums that accompany such events.

We know for example, that health insurance costs for employees with alcohol problems are about twice those of other employees. It has also been estimated that employees who abuse alcohol or drugs have two times as many accidents, three times as many vehicular accidents, and use three times as much sick time as those who do not. Each of us reacts differently to drugs and alcohol, but one thing is clear - these substances affect our judgment and our ability to perform. The danger of

abusing these substances becomes especially clear when you add a motor vehicle to this picture.

To maintain a drug-free work force and to eliminate the safety risks, lost time and reduced productivity that results from the use and the influence of alcohol and/or drugs in the workplace, the Town of Mooresville, hereafter called Town, has adopted a substance abuse policy. The intention of this policy is to make the Town a safer and better place to work.

IV. Definitions

Alcohol - the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol. It also includes any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

Controlled Substance – Means the following drug as set out in 49 C.F.R. § 40.85 (a) Marijuana metabolites; (b) Cocaine metabolites; (c) Amphetamines; (d) Opiate metabolites; and (e) Phencyclidine (PCP). It also means a drug, substance, or immediate precursor included in Schedules I through VI of Article 5 of Chapter 90 of the North Carolina General Statutes.

Prescribed Medications - All employees in safety-sensitive functions taking prescribed medications that could impair their ability to safely operate a motor vehicle or related activities associated with loading, unloading, inspection and maintenance or other activity that is classified as "on duty time" 49 CFR 395.2, must report this to their immediate supervisor or Department Director as directed by this policy. It also includes a Prescription drug as that term is defined in Article 4A of Chapter 90 of the North Carolina General Statutes meaning a drug that under federal law is required, prior to being dispensed or delivered, to be labeled with the following statement: "Caution: Federal law prohibits dispensing without prescription."

For purposes of this policy, the term "drugs" and "controlled substances" are used interchangeably.

Safety Sensitive Position – those positions identified as ones in which the duties involve such a great risk of injury to others that even a momentary lapse of attention can have disastrous consequences; such as armed law enforcement officers and firefighters. Covered positions are included in Attachment A.

V. Legislation

Drug Free Workplace Act of 1988

Title 49, the Code of Federal Regulations, Part 382, entitled, "Controlled Substances & Alcohol Use and Testing", and Part 40, entitled, "Procedures for Transportation Workplace Drug Testing Programs."

Article 3 of Chapter 20 of the North Carolina General Statutes.

Articles 4A and 5 of Chapter 90 of the North Carolina General Statutes.

VI. Policy

The use, possession, purchase, sale or manufacture of alcohol, illegal drugs, or non-prescribed drugs or being impaired because of the use of alcohol, illegal drugs, or non-prescribed drugs while on Town property, while operating Town vehicles, or while engaging in Town business is strictly prohibited.

The U.S. Department of Transportation (DOT) requires testing for amphetamines, cannabinoids, acetyl morphine, ecstasy, cocaine, opiates, phencyclidine, and illegal substances or non-prescribed drugs.

VII. Provisions

A. Participation As A Requirement Of Employment

Participation in the Town of Mooresville Drug and Alcohol-Free Workplace Program is a requirement of every employee and therefore, is a condition of employment.

B. Prohibited Conduct

Any misuse of alcohol and/or any drug use that could affect performance of safety-sensitive functions is prohibited including, but not limited to the following:

i. Alcohol

- a. Use during working hours
- b. Use during 4 hours before time on the job
- c. Reporting for duty or remaining on duty with an alcohol concentration of 0.04 or greater.
- d. Possession of alcohol, unless the alcohol is manifested and transported as part of a shipment or unless such alcohol has been seized pursuant to lawful authority. This includes the possession of medicines containing alcohol

(prescription or over-the counter), unless the packaging seal is unbroken.

- e. Use during the 8 hours following an accident, or until he/she undergoes a post accident test; whichever occurs first.
- f. Refusal to take a required test.
- g. Note: An employee found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall not perform, nor be permitted to perform, safety-sensitive functions for at least 24 hours.

ii. Controlled Substance

- a. Use of any drug, except by doctor's prescription, and then only if the doctor has advised the employee that the drug will not adversely affect the employee's ability to safely perform his/her job functions
- b. Testing positive for drugs
- c. Refusing to take a required test

iii. Refusing to take a required alcohol or drug test.

C. Consequences and Disqualifications

- i. The employee shall not perform or be permitted to perform any work functions if any of the above listed prohibitions are violated.
- ii. Any employee violating these prohibitions will be referred to a Substance Abuse Professional for evaluation, regardless of employment status.

D. Testing Circumstances

i. Pre-Employment Testing

All final candidates for part-time or full-time positions and all employees being demoted, promoted or transferred to a new position with the Town will be directed to submit to a Controlled Substance test. A drug test will be conducted during the pre-employment process and an applicant can be rejected from consideration for employment if a positive drug test result occurs.

ii. Post-accident Testing

- a. If any employee, while operating a Town vehicle or equipment, or a vehicle or equipment that is contracted or leased to the Town, is involved in an accident that:
 1. Involves a fatality;
 2. Is issued a citation under state or local law for a moving traffic violation arising from the accident;
 3. An accident causing bodily injury which requires medical treatment, on or away from the scene of the accident for anyone involved;
 4. Any vehicle is towed or rendered inoperative;
 5. An accident causing total aggregated property damage of at least \$2,500;
 6. The employee operating the vehicle or equipment has had 3 accidents within a 12 month period; and/or
 7. The employee operating the vehicle or equipment has an accident with an immovable object (i.e. buildings, street lights, street signs or barriers, unattended parked vehicles, etc.)
- b. In the event that an employee is involved in an accident as set forth in this subsection, the employee will be required to submit to an Alcohol and a Controlled Substance test. Testing will be administered immediately following the accident or as soon as medically and legally possible.
- c. If medically possible, tests for the presence of alcohol or controlled substances will be administered within 2 hours following the accident and in no case shall more than 8 hours elapse before the test is administered. It is the employee's responsibility to notify the Town immediately to insure actions are taken to meet the testing requirements.
- d. The driver must refrain from using alcohol or any other impairing substance for 8 hours following the accident, or until he/she submits to an alcohol test, whichever comes

first. The drug test must be administered within 32 hours following the accident. The driver must remain available for testing, or the Town will consider the driver to have refused to submit to testing. Nothing in this requirement should be construed as to require the delay of necessary medical attention for injured people following an accident.

iii. Random Testing

All employees of the Town in safety-sensitive positions will be subject to random testing for alcohol and controlled substances. Random testing will be done on a percentage basis in a fair and equal manner. On an annual basis, 10% of safety sensitive employees are randomly testing for alcohol and 50% are randomly tested for controlled substances. For alcohol testing, an employee shall only be tested while the employee is performing safety-sensitive functions, immediately prior to performing, or immediately after performing safety-sensitive functions. For drug testing an employee may be tested at any time the employee is at work for the Town. Selection of employees for random testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Each time a random selection is made, every employee will have an equal chance of being selected. Random tests will be unannounced and spread reasonably throughout the year. Upon being notified that they have been selected for random testing an employee is required to proceed immediately to the collection site. Alcohol and controlled substance testing may be performed at any time the employee is at work for the Town.

iv. Reasonable Suspicion Testing

If any employee, while on Town property, while operating a Town vehicle, or while engaging in Town business, acts in a manner sufficient to cause reasonable suspicion that he/she has violated this policy, he/she will be required to submit to an alcohol and/or a controlled substance test upon the approval and direction of the Human Resources Director, Assistant Town Manager or Town Manager. In all cases of reasonable suspicion testing, the employee will be driven to the testing site by a supervisor or manager.

v. Return to Duty Testing

Any employee, based on Town approval, that is allowed to return to duty following a positive alcohol test will be required to submit a return to

duty alcohol test. An alcohol concentration of less than 0.02 will be required before a return to duty decision is made.

vi. Follow-up Testing

In the event an employee is allowed to return to duty following referral, evaluation and treatment, a minimum of 6 unannounced alcohol tests will be required during the next 12 months of employment. Follow-up testing may continue for up to 60 months following return to duty at the Town's discretion, based on recommendations from the Substance Abuse Counselor. Alcohol and controlled substance testing may be performed at any time the employee is at work for the Town.

E. Testing Procedures

i. Breath Alcohol Technician (BAT)

Alcohol testing will only be performed by a certified Breath Alcohol Technician (BAT) trained and certified in the principles of Evidential Breath Testing Devices (EBT) methodology, operation, and calibration checks; the fundamentals of breath analysis for alcohol content; and the procedures required for obtaining a breath sample, and interpreting and recording EBT results.

ii. Evidential Breath Testing Devices (EBT)

Alcohol testing will only be performed using evidential breath testing devices (EBT's) approved by the National Highway Traffic Safety Administration (NHTSA). Alcohol testing must be either performed by a Certified BAT employed by the Town or an outside BAT. All alcohol testing will be conducted in a location that affords visual and aural privacy to the individual being tested. Unauthorized persons will not be permitted access to the testing location when a test is in progress. Alcohol testing will be performed using only the U.S. Department of Transportation Breath Alcohol Testing Form.

iii. Alcohol Testing Procedures

- a. Using the Evidential Breath Testing Device the certified Breath Alcohol Technician will open an individually sealed mouthpiece and attach it to the EBT. The employee will be instructed to blow into the mouthpiece forcefully until an adequate amount of breath has been obtained. The EBT will record the result and display it on the device and print the result immediately. The result will be recorded on the Breath Testing Form and attached to the form with tamper proof tape.

- b. When the result is less than 0.02, no further testing is authorized and the result will be transmitted to the Town in a confidential manner and will be stored to insure confidentiality is maintained. When the result is 0.02 or greater, a confirmation test must be performed to verify the initial test. The confirmation test will be conducted no less than 15 minutes and no more than 20 minutes after the initial test. In the event the initial and confirmation test results are different, the confirmation test result is deemed to be the final result upon which any action under the terms of this policy shall be based.
- c. Following the completion of the test, the BAT will date the form and sign the certification on the form. The employee will sign the certification and fill in the date on the form. This insures that each employee is attesting to the fact that the reported result is specific to the employee.
- d. Refusal to test or failure to cooperate during the testing process will be treated the same as if the result is 0.04 or greater.
- e. The Town will maintain alcohol and drug test results in a secure and confidential manner, so that disclosure of information to unauthorized persons does not occur. Employee information shall only be released as required by law or as expressly authorized as follows:
 - 1. An employee shall have access to any of his/her alcohol and drug testing records upon written request.
 - 2. The Town must allow any DOT authorized agency access to facilities and records in connection with the Town's alcohol misuse and drug abuse prevention program.
 - 3. When requested, the Town shall disclose post-accident testing information to the National Transportation Safety Board as part of an accident investigation.

4. The Town will make records available to a subsequent employer upon receipt of a written request from the employee.
 5. The Town may disclose information to the employee or to the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual. This may include worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee.
- f. If an employee attempts but fails to provide an adequate amount of breath the Town will be immediately notified and will direct the employee to obtain, as soon as practical, an evaluation from a licensed physician who is acceptable to the Town concerning the employee's medical ability to provide an adequate amount of breath. If the physician determines that there is a medical reason that prevents the employee from providing an adequate amount of breath, he/she will provide the Town with a written statement of the basis for his or her conclusion. If the physician determines there is no medical reason to prevent the employee from providing an adequate amount of breath, he/she will provide the Town with a written statement of the basis for his or her conclusion and it will be regarded as a refusal to take the test. The terms of this policy will then be administered.

iv. Drug Testing Procedures

- a. Specific guidelines will be followed in urine specimen collections for the purpose of drug testing. Drug tests will be conducted at Lake Norman Urgent Care Center in Mooresville, NC. This facility meets security requirements as specified by the Department of Health and Human Services (DHHS) guidelines. The collection site will be a secure location to allow for maximum privacy, which includes a toilet for completion of urination, a source of water for washing hands and, where practicable, excluded from the area provided for urination.
- b. No other person will be present or gain access to the collection area during the collection process. All specimens must remain in the direct control of the collection site

person. No one other than the collection site person may handle specimens prior to their being placed securely in the mailing container.

- c. When reporting to a collection site for specimen collection each employee will be required to provide a photo I.D. Employees will be asked to remove all unnecessary outer garments (i.e., coat or jacket), and secure all personal belongings (individual may retain his/her wallet). Employees will be allowed to provide his/her specimen in the privacy of a stall. A split sample method of collection will be used. At least 45 ml of urine must be collected, 30 ml to be used as the primary specimen and 15 ml to be used as the split specimen. Both bottles will be shipped in a single container.
- d. If the collection site person believes tampering or adulteration has occurred, a second specimen shall be collected immediately under the direct observation of a same gender collection site person. Both samples will be sent to the lab. Refusal to test will be handled the same as a verified positive result.
- e. Pursuant to standards established by the U.S. Department of Transportation, in all cases the employee and the collection site person shall keep the specimen in view at all times prior to being sealed and labeled. The specimen will be labeled with tamperproof seals and the employee will sign appropriate places on the Chain of Custody and initial the seal on the bottle attesting to the fact that the specimen is specific to the individual providing the sample.
 1. Testing Methodology
Only laboratories certified by the Department of Health and Human Services (DHHS) will be used for drug urinalysis. Every specimen is required to undergo an initial screen followed by confirmation of all positive screen results. This screen-confirmation process utilizes highly sophisticated techniques to detect minute levels of prohibited substances in urine.
 2. Reporting of Results

The laboratory is required to report the test results directly to the Town's Medical Review Officer (MRO) within 5 working days. The report shall indicate the drug/metabolites tested for, whether the results are positive or negative, the specimen number assigned by the Town and the drug testing laboratory identification number.

3. Review of Results/MRO:

The medical review officer (MRO) is a licensed physician and possesses knowledge of drug abuse disorders. The MRO may be an employee of the Town or one contracted to provide the services required. The MRO will review and interpret positive results obtained from the laboratory. The MRO through a verification process will assess and determine whether alternate medical explanations could account for the positive test results. The MRO may conduct medical interviews of the employee, review the employee's medical history and review any other relevant bio-medical factors. Additionally, the MRO will examine all medical records and data made available by the tested individual, such as evidence of prescribed medications.

The MRO will give the individual testing positive an opportunity to discuss the test results prior to making a final decision. After the final decision is made, the MRO will notify the Town as prescribed below. If during the course of an interview with an employee who has tested positive, the MRO learns of a medical condition, which could, in the MRO's reasonable medical judgment, pose a risk to safety, the MRO may report that information to the Department of Transportation (DOT) or to the Town.

The MRO will notify each employee who has a confirmed positive test that the employee has 72 hours in which to request a test of the split specimen. If the employee makes such a request, the MRO will direct, in writing, the laboratory to provide the split specimen to another certified

laboratory for analysis. If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO will cancel the test and report cancellation and the reasons for it to the DOT, the Town, and the employee. A request for testing of the split sample and associated costs are the responsibility of the employee.

If the MRO, after making and documenting all reasonable efforts is unable to contact the tested person, the MRO will contact a designated management official of the Town to arrange for the employee to contact the MRO prior to going on duty. Within 5 days after a documented contact by designated management official of the Town instructing the employee to contact the MRO, the employee has not done so, the MRO will verify the test positive and report it to the Town.

F. Discipline and Consequences

i. Pre-Employment/Pre-duty

A final candidate for part-time or full-time employment or transfer from a non safety-sensitive position to a safety-sensitive position with a verified positive controlled substance test result or a confirmed breath test result of 0.04 or greater will be denied employment. If the alcohol breath test result is 0.02 or greater but less than 0.04, the applicant will:

- a. Be denied employment for at least 24 hours; and
- b. Be subject to a follow-up test after 24 hours and prior to performing a safety sensitive function to verify test result is below 0.02.

If an applicant is not hired because of a positive controlled substance or breath test, he/she will not be hired, and will not be considered for employment for a two-year period following the date of the test.

The applicant will only again be considered for employment when:

- a. A two-year period has passed from the positive test as indicated above; and
 - b. He/She provides proof of successfully completing a drug and/or alcohol rehabilitation program; and
 - c. He/She passes a pre-placement drug and/or alcohol test
- ii. Employed Employees (Reasonable Cause/Random/Post-Accident)
An employee with a verified positive controlled substance test result or a confirmed breath test is subject to the following disciplinary actions:
- a. Alcohol (First confirmed test result of .02 - .039)
 - (1) Referred to a Substance Abuse Counselor
 - (2) One (1) day suspension without pay
 - (3) A Return to Duty test
 - b. Alcohol (First Confirmed test result of .04 or greater)
 - (1) Referred to a Substance Abuse Counselor
 - (2) Five (5) day suspension without pay
 - (3) A Return to Duty test
 - c. Alcohol (Second confirmed test result within a 60 month period of .02 or greater)
 - (1) Referred to a Substance Abuse Counselor
 - (2) Immediate termination
 - d. Controlled Substance (Any confirmed test result)
 - (1) Referred to a Substance Abuse Counselor
 - (2) Immediate termination
 - e. Any refusal to submit to a test for alcohol or controlled substances, or failure to provide an adequate sample for testing unless a verifiable medical condition exists, will result in immediate termination.
 - f. In a post-accident situation, if an employee uses a controlled substance, or a prescribed medication unless under the direction of a physician, within eight hours following the accident, or prior to submitting to an alcohol or controlled substance test, whichever comes first, the employee will be immediately terminated.

g. In a post-accident situation, if an employee does not remain available for alcohol or drug testing following the accident (within 32hours), the employee will be immediately terminated.

iii. Substance Abuse Professional (SAP) Services

In all cases where there is a verified positive controlled substance test result and/or a confirmed alcohol breath test result the employee will be referred to a Substance Abuse Professional (SAP) for evaluation, referral and treatment. The referral to the SAP applies even if the employee is terminated.

If an employee approaches the Town for rehabilitation assistance prior to a testing request by the Town, all possible and positive consideration for a medical leave of absence for treatment and/or counseling will be pursued. If an employee is terminated, the Town will not be obligated to provide assistance beyond the last day of employment.

G. Supervisory Training

Supervisory training is required for reasonable suspicion training and will be provided.

H. Contact Person

Any questions regarding this policy should be directed to:
Director of Human Resources
704-662-8724

VIII. Authorization

Approved by:

Steve Husemann
Town Manager

11/9/10
Date

I, the undersigned, have read, understood, and agree to abide by the rules and regulations set forth by this Drug & Alcohol Free Workplace policy.

Name

Date

Attachment A

Safety Sensitive Positions

| Classification |
|-----------------------------------|
| Assistant Fire Chief – Operations |
| Assistant Fire Chief – Safety |
| Fire Battalion Chief |
| Fire Captain |
| Fire Chief |
| Fire Engineer |
| Firefighter |
| Police Captain |
| Police Chief |
| Police Lieutenant |
| Police Major |
| Police Officer I |
| Police Officer II |
| Police Officer III |
| Senior Firefighter |