

CITY OF ASHTABULA DRUG-FREE WORKPLACE POLICY

I. STATEMENT OF POLICY

The City of Ashtabula believes that it is very important to provide a safe workplace for all of its employees. Behaviors related to substance use can endanger all employees and the citizens whom we serve, not just substance users. We can't condone and won't tolerate behaviors on the part of employees that relate to substance use, such as:

- a. Use of illegal drugs;
- b. Misuse of alcohol;
- c. Sale, purchase, transfer, trafficking, use or possession of any illegal drugs;
- d. Arrival or return to work under the influence of any drug (legal or illegal) or alcohol to the extent that job performance is affected.

Management is fully committed to our Drug-Free Workplace Policy (DFWP), which establishes clear guidelines for acceptable and unacceptable employee behavior for everyone in the workplace. We will not tolerate substance use in violation of this Policy and intend to hold everyone reasonably responsible for supporting the Policy.

If any Ashtabula City employee suspects that any legally prescribed medication that they are presently taking, or one that has been recently prescribed for them, may compromise safety or their job performance, they are required to notify their immediate supervisor of that suspicion and desist working. It is not necessary to name the medication, or the reason for which it is being taken. Prior to the employee being relieved from duty, the employer shall make every reasonable effort to find an alternative, non-safety sensitive function for the employee to perform. Such alternative work status shall not exceed five consecutive working days; and the number of employees in alternative work status at any one time shall be based on the needs of the employer. If no alternative work is available, the employee will be placed in a paid leave status (i.e. own personal, sick, vacation, or comp-time), or alternatively unpaid status, until such time as the employee is capable of performing their normal duties. Unpaid status will comply with the F.M.L.A (Family Medical Leave Act).

It is the intention of this Policy to prevent the use of and rehabilitate, rather than terminate the employment of, workers who abuse drugs and/or alcohol. Employees will not be discharged for substance abuse without first having been given the opportunity to participate in a rehabilitation program. Employees who do not choose the option of rehabilitation will be discharged. An employee who tests positive for an illicit drug a second time within a two-year period will be terminated. An employee who tests positive a second time within a two-year period, and the test identifies a prescription drug or alcohol as the source of either positive test, they shall be permitted to enter into a rehabilitation program a second time in lieu of discipline. Furthermore, any employee who fails to report to a designated testing site, refuses to provide a specimen at the collection site, intentionally fails to provide a sufficient quantity of urine (at least 60 milliliters), or tampers, adulterates or substitutes urine samples will be terminated. Employees whose jobs

are subject to any special law or regulation may face additional requirements in terms of substance use.

Additionally, an employee convicted of a drug abuse offense including but not limited to those offenses set forth in section 2925.01 (H) of the Ohio Revised Code; violation of an existing or former law of this or any other state or of the United States that is substantially equivalent to any section listed in 2925.01 (H) of the Ohio Revised Code; or similar municipal ordinance or regulation shall report the conviction to the City of Ashtabula in writing no later than five working days after the conviction. Failure to do so may result in disciplinary action up to and including termination of employment.

This document (Policy) describes our Municipality's Drug-Free Workplace Program, and every employee is expected to read and understand it. The Policy applies to every employee, including all bargaining unit employees, salaried management, hourly non-bargaining unit employees, part-time and full-time, elected officials, and Auxiliary Police personnel. The consequences stated in this Drug-Free Workplace Policy will apply to anyone who violates the Policy.

Nothing in this Article will be construed as abrogating any Federal regulation regarding Commercial Drivers Licensing and such regulations as set forth by the Federal Motor Carrier Safety Administration of the United States Department of Transportation in Title 49 of the Code of Federal Regulation, Part 382, which will be fully observed.

This Policy will go into effect within sixty (60) days of the announcement of our Drug-Free Workplace Program. Our Policy covers three key parts to the City's program. The three parts are:

- A written policy that clearly spells out the program rules and how everyone benefits
- Drug and alcohol testing, the most effective way to change harmful behaviors related to substance use
- Employee assistance

Protection for Employees

- Collection of urine specimens and breath testing will be done at University Hospitals Corporate Health. A laboratory certified by the U.S. DHHS will analyze urine and drug test specimens. These labs use the highest level of care in ensuring that results are accurate, and the process that's used is 100% accurate in detecting that the substances that the City is concerned about are present in the employee in sufficient quantity to lead to behaviors that may hurt the person or other employees. The lab will work closely with University Hospitals Corporate Health to ensure fairness and accuracy of every test. We also have a Medical Review Officer (called an MRO), who is a trained physician responsible for checking whether there is a valid reason for the presence of the substance in the employee's system. The MRO is an expert in drugs and alcohol. When the MRO receives positive test results, the MRO will contact the employee and any appropriate health care provider to determine whether there is a valid reason for the presence of the drug in the person's system.

- The testing program consists of an initial screening test used to verify the presence of the drug in the individual's system. A cut-off level, which is defined as the pre-determined level of drug/metabolite that constitutes whether a tested urine specimen is negative or positive, is used to safeguard against a false positive test. Cut-off levels are measured in nanograms (one billionth of a gram) per milliliter of urine. If the initial results are positive, then a second Gas Chromatography/Mass Spectrometry confirmatory test is used which is 100,000 times more powerful, measuring the genetic "fingerprint" of the specific drug, and is considered 100% accurate. These cut-off levels come from Federal guidelines and offer protection to both employees and the employer alike as well as are defensible in court.

Employee Awareness Education

Every employee will receive a copy of this written policy and everyone will be expected to sign an acknowledgement of receipt form that they received it. New employees will receive a copy of the policy upon hire. Questions regarding this policy may be directed to the City Manager or his designee.

Drug and Alcohol Testing

DRUG TESTING THRESHOLDS

<u>DRUG</u>	<u>EMIT SCREENING TEST</u> (ng/ml)	<u>GC/MS CONFIRMATION</u> (ng/ml)
Amphetamines	500	250
Cannabinoids	50	15
Cocaine Metabolite	150	100
Opiates	2000	2000
Phencyclidine (PCP)	25	25
Barbiturates	300	300
Benzodiazepines	300	300
Methadone	300	300
Propoxyphene	300	300

Adhering to Part 40 as amended per the Federal Motor Carrier Safety Administration (FMCSA) regulations, the first five substances listed, amphetamines, cannabinoids, cocaine metabolite, opiates and phencyclidine will be tested for in the Commercial Drivers License (CDL) drug testing pool. All nine substances listed, amphetamines, cannabinoids, cocaine metabolite, opiates, phencyclidine, barbiturates, benzodiazepines, methadone, propoxyphene, will be tested for in the DFWP drug testing pool.

The City of Ashtabula reserves the right to add or delete substances on the list above, especially if mandated by changes in existing Federal, State or local regulations or laws.

Under the City of Ashtabula Drug-Free Workplace Policy, in the event that the MRO reports a specimen to be dilute negative or dilute positive, an immediate recollection under direct observation shall take place. If the second collection is reported to be dilute negative or dilute positive, a blood test shall be administered for the nine-panel test.

Alcohol testing practices will include:

- Breath or saliva initial screen using:
 - NHTSA-approved resources and technical machinery.
 - At .02 percent blood alcohol content (BAC) on the initial screen, it is required that a confirmatory test be done.

- Confirmatory test shall be conducted under the following conditions:
 - Using a federally approved and qualifying evidentiary breath test (EBT).
 - Administered by a qualifying breath alcohol technician (BAT).
 - If the confirmatory EBT testing machine is not available or reasonably accessible, a blood text should be an option made available to the employee to determine the presence of alcohol.
 - The employer is required to document and maintain on file the reason the EBT was not administered.

An alcohol test confirming at .04 percent BAC will be considered a verified positive result under the employer's DFWP. An alcohol test confirming at .02 percent BAC is considered a positive result under the DOT/FMCSA. This policy acknowledges the F.O.P., Lodge 26, bargaining unit contractual language pertaining to a positive alcohol test as follows: "A blood-alcohol test shall be considered positive if the blood-alcohol level equals to exceeds .05 percent".

It should be noted that for both drug and alcohol testing, the selection pool for the DFWP program is separate from the DOT/FMCSA pool; however those employees with a CDL will be in both pools.

Employee Assistance

The City of Ashtabula is supportive to employees with a substance problem who are taking action on their own behalf to address the problem. An employee will be permitted to use personal leave time to attend rehabilitation for substance abuse. We don't have a rehabilitation program and can't afford to pay for someone to attend a program. However, an employee who needs help with a drug and/or alcohol problem can seek assistance by phoning 998-2607 (CONTACT) and identifying themselves as a City of Ashtabula employee. Local agencies within the community are also available to assist in seeking a solution to a substance abuse problem:

- ✓ Lake Area Recovery Center (440) 998-0722
- ✓ Glenbeigh Hospital (440) 563-3400
- ✓ Community Counseling Center of Ashtabula County (440) 998-4210

II. WHEN WILL A TEST OCCUR?

Employees will be tested for the presence of drugs in the urine and/or alcohol on the breath under any and/or all the conditions outlined below:

A. Post-Offer, Pre-Employment Drug Testing

All applicants who have been extended a formal offer of employment will be required to undergo a pre-employment drug test conducted by University Hospitals Corporate Health. Employment depends upon satisfactory completion of this screening.

Newly hired or transferred CDL employees must be questioned about their ever having refused to take, or tested positive on, any pre-employment drug or alcohol test used to qualify the employee for a safety-sensitive transportation work during the past two years. If the employee admits that he/she had a positive test or a refusal to test, the employee must complete the return-to-duty process including evaluation, treatment and follow-up testing by a Substance Abuse Professional (SAP) before performing safety-sensitive functions. An employee may not drive unless a negative drug test has been verified. Also, newly hired or transferred CDL employees will sign a written consent form to have DOT-regulated previous employers who have employed the employee during any period during the two years before the date of the employee's application or transfer release the following information:

- 1) Alcohol tests with a result of .04 or higher alcohol concentration;
- 2) Verified positive drug tests;
- 3) Refusals to be tested (including verified adulterated or substituted drug test results);
- 4) Other violations of DOT agency drug and alcohol testing regulations; and
- 5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests).

B. Reasonable Suspicion Testing

Reasonable suspicion testing will occur when management has reason to suspect that an employee may be in violation of this Policy. The suspicion will be documented in writing prior to the release of test findings. A reasonable suspicion text may occur based on:

1. Observed behavior, such as direct observation of drug/alcohol use or possession and/or physical symptoms of drug and/or alcohol use;
2. A pattern of abnormal conduct or erratic behavior;

3. Arrest or conviction for a drug-related offense, or identification of an employee as the focus of a criminal investigation into illegal drug possession, use or trafficking.
4. Information provided either by reliable and credible sources or independently corroborated regarding an employee's substance use; or
5. Newly discovered evidence that the employee has tampered with a previous drug or alcohol test.

Reasonable suspicion testing does not require certainty, but mere "hunches" are not sufficient to justify testing. To prevent this, employer forms will be provided to managers/supervisors detailing behavioral, job performance and reasonable suspicion issues associated with drug and alcohol use. Testing may be for drugs or alcohol or both. A supervisor or other member of management must accompany the individual to the testing facility. The supervisor is to arrange for the employee's safe transport to the testing facility and then home. The employee will be taken out of service until the employer receives the test results. He or she will be paid any available sick time for the time off from work while "fitness for duty" is being determined. If the employee's test is negative, he/she will be credited back the sick hours that he/she was charged while test results were pending. If the employee's test is negative, and has no sick time available, he/she will then be paid at his/her normal hourly rate for all hours lost.

C. Post Accident Testing

Post accident testing will be conducted whenever an accident occurs, regardless of whether there is an injury. We consider an accident an unplanned, unexpected or unintended event that occurs on our property, during the conduct of our business, or during working hours, or which involves one of our motor vehicles or motor vehicles that are used in conducting City business, or is within the scope of employment, and which results in any of the following:

1. A fatality of anyone involved in the accident;
2. Bodily injury to the employee and/or another person that requires off-site medical attention away from the City's place of employment;
3. Vehicular damage or non-vehicular damage to property.
4. A traffic citation for driving a City vehicle, or vehicle used in conducting City business while under the influence of alcohol or controlled substances.

Any employee who may have contributed to the accident will be tested for drugs or alcohol use or both. Urine specimen collection (for drugs) or breath/saliva (for alcohol) is to occur as quickly as possible after a need to test has been determined. At no time will a urine specimen be collected after 32 hours from the time of an employment-related incident. Breath or saliva alcohol testing will be performed as quickly as possible but no later than eight hours after the incident, or it will be documented but not performed. If the employee responsible for employment-related accident is injured, it is a condition of employment that the employee grants the City of Ashtabula the right to request that attending medical personnel obtain appropriate specimens (breath, urine and/or blood) for the purpose of conducting alcohol and/or drug testing. Further, all employees grant the City of Ashtabula access to any and all other medical information that may be relevant in conducting a complete and thorough investigation of the work-related accident including a full medical report from the examining physician(s) or other

health care providers. A signed consent to testing form is considered a condition of employment. The supervisor is to arrange for the employee's safe transport to the testing facility and then the employee's home. An employee may be permitted to work pending receipt of the test results. Management reserves the right to remove the employee from all safety sensitive duties and retain the employee in the workplace for non-safety sensitive work pending results of post-accident drug and alcohol testing. The employee shall be paid their regular rate of pay for work performed during this time. If the employee is not retained in the workplace for non-safety sensitive work pending the results of post-accident drug and alcohol testing, he/she will be paid any available sick time for the time off from work while "fitness for duty" is being determined. If the employee's test result is negative, he/she will be credited back the sick hours that he/she was charged while the test results were pending. If the employee's test is negative, and has no sick time available, he/she will then be paid at his/her normal hourly rate for all hours lost. Management reserves the right to determine who may have caused or contributed to a work-related accident and may choose not to test after minor accidents if there is no violation of a safety or work rule, minor damage and/or injuries and no reasonable suspicion.

D. Follow up Testing after Return-to-Duty from Assessment or Treatment

This test occurs when an employee who has previously tested positive and the decision is made to not terminate the employee under a "last chance" agreement. A negative return-to-duty test is required before the employee is allowed to return to work. If the employee fails this test, this will lead to termination of employment. Once the employee passes the drug and/or alcohol test and returns to work, management may choose to do additional unannounced tests up to six times per year with a minimum of four tests in the first year from the date of return to duty for the DFWP. CDL employees are subject to a minimum of six tests during the first 12 months following the driver's return to duty. Follow up tests for CDL employees may be done for up to 60 months. Any employee with a second positive test within two years will be terminated.

E. Random Drug and Alcohol Testing

Random drug and alcohol testing will include all employees and is conducted on an unannounced basis. University Hospitals Corporate Health will be responsible for randomly selecting employees by the use of a computer software program, which generates a number assigned to an employee. All employees in the testing pool have an equal statistical likelihood of being selected for testing. When the next random draw is conducted, all employees are again included in the pool with an equal chance of selection, regardless of whether an employee was previously selected. Random testing is designed to deter drug and alcohol use in violation of the Policy and ensure that we maintain confidence in our employees' abilities to perform their duties. The City of Ashtabula will provide employee identification numbers to be used in the random selection drawings. University Hospitals Corporate Health will, in turn, furnish the City of Ashtabula with a list of individuals to be tested at the beginning of each selection period. It shall be the responsibility of the City of Ashtabula to notify each employee who was selected with the date, time and location that random testing will be performed. When notified, it shall be the responsibility of the individual employee to provide a urine specimen for drug testing and/or

breath for alcohol testing. Ten percent of the employer's average workforce each program year will be randomly selected for drug and/or alcohol testing under the City's DFWP. FMCSA requires fifty percent random drug testing and ten percent random alcohol testing for CDL employees. Employees will only be asked to report to a collection site while on duty.

III. SPECIMEN COLLECTION PROCEDURE

Trained collection personnel who meet standards for urine collection and breath alcohol testing will conduct urine specimens and breath testing. Confidentiality is required from our collection sites and labs. Employees are permitted to provide urine specimens in private, but subject to strict scrutiny by collection personnel so as to avoid any alteration or substitution of the specimen. Breath alcohol testing will likewise be done in an area that affords the individual privacy. In all cases, there will only be one individual tested at a time. Failure to appear for testing when scheduled shall be considered refusal to participate in testing, and will subject an employee to the range of disciplinary actions, including dismissal, and an applicant to the cancellation of an offer of employment. An observed voiding will only occur if there is grounds for suspecting manipulation of the testing process.

IV. EMPLOYEES' RIGHTS WHEN THERE'S A POSITIVE TEST RESULT

An employee who tests positive under this Policy will be given an opportunity to explain the findings to the MRO prior to the issuance of a positive test result to the City of Ashtabula. Upon receipt of a confirmed positive finding, the MRO will attempt to contact the employee by telephone or in person. If contact is made by the MRO, the employee will be informed of the positive finding and given the opportunity to rebut or explain the findings. The MRO can request information on recent medical history and on medications taken within the last thirty days by the employee.

If the MRO finds support in the explanation offered by the employee, the employee may be asked to provide documentary evidence to support the employee's position (for example the names of treating physicians, pharmacies, where prescriptions have been filled, etc.). A failure on the part of the employee to provide such documentary evidence will result in the issuance of a positive report by the MRO with no medical explanation. A medical disqualification of the employee will result. If the employee fails to contact the MRO as instructed, the MRO will issue a positive report to the City of Ashtabula.

V. REPORTING OF RESULTS

All test results will be reported to the MRO prior to the results being issued to the City of Ashtabula. The MRO will receive a detailed report of the findings of the analysis from the testing laboratory. Each substance tested for will be listed along with the results of the testing. The City of Ashtabula will receive a summary report, and this report will indicate that the

employee passed or failed the test. All of these procedures are intended to be consistent with the most current guidelines for Medical Review Officers, published by the Federal Department of Health and Human Services.

VI. POSITIVE TEST RESULTS

Employees who are found to have a confirmed positive drug or alcohol test will be immediately taken off safety-sensitive duties and are subject to discipline up to and including termination. For the purpose of removing the employee from safety-sensitive duties, a verbal confirmation from the MRO is all that is necessary. A written confirmation of the positive test results will follow.

VII. STORAGE OF TEST RESULTS AND RIGHT TO REVIEW TEST RESULTS

All records of drug and alcohol testing will be stored within a specific folder within the employee's personnel file, separate from general personnel documents. The City's DFWP test results are considered a conditional report based on employment status and shall be subject to disclosure under the Public Records Act. CDL test results are protected under Federal Law and will not be released publicly. Any employees tested for drugs or alcohol under this Policy may have the right to review and/or receive a copy of their own test results. An employee may request from the City Manager, in writing, presenting a duly notarized Employee Request for Release of Drug Tests Results form, requesting a copy of the test results be provided. The City will use its best efforts to promptly comply with this request and will issue to the employee a copy of the results personally or by U.S. Certified Mail, Return Receipt requested.

The retention period for drug and alcohol test results will be in compliance with the City of Ashtabula's Record Retention Policy. Records of confirmed positive drug test results; alcohol test results of .02 or greater; documentation of refusals to take required alcohol and/or drug tests (including substituted or adulterated drug test results); SAP reports; and all follow-up tests and schedules for follow-up tests will be kept for five years. Records from previous employers will be kept for three years. Records of negative and cancelled drug test results and alcohol test results with a concentration of less than .02 will be kept for one year.

VIII. TERMINATION OF EMPLOYMENT

In those cases where substance testing results in termination of employment, all termination notices will list "misconduct" as the reason. Termination shall be deemed "for cause."

Signed:


Anthony Cantagallo, Ashtabula City Manager

Date:

