



CITY OF KINSTON

Personnel Policy

Subject: Alcohol and Substance Abuse/Drug Free Workplace	Section: Employee Health Services		Review Responsibility: Director of Human Resources		
	Policy #:: 1	Effective Date: 2/17/2017	Rev. #: 6	Revision Date: 2/15/2017	Page: 1 of 10
	Supersedes: 5/1/2004	Prepared By: Gloria Blake <i>Gloria Blake</i>	Approved By: Tony Sears <i>Tony Sears</i>		

1.0 Purpose

The purpose is to advise current and prospective employees of a Drug Free Workplace with the City of Kinston and to establish a policy on the guidelines for handling job performance issues related to alcohol and drug use in the workplace and to provide procedures for assistance programs and processes for positive testing of tentative job offers.

2.0 Departments Affected

2.1 All City employees and individuals seeking employment with City Departments

3.0 Policy

3.1 The City of Kinston Policy Includes:

3.1.1 Drug and alcohol testing on City employees when there is reasonable cause to believe an employee is using drugs or alcohol or is impaired on the job or after an employee returns to duty following an Employee Assistance Program referral for substance abuse.

3.1.2 A pre-employment drug testing program for all applicants for initial hire, transfer or promotion to positions within the City.

3.1.3 A pre-employment, random, reasonable cause, post-accident, and return-to-duty drug testing program for all selected applicants and employees who are required to possess a commercial drivers' license (CDL) in the performance of their job.

4.0 Definitions

4.1 Applicant: A person, other than a lateral transfer, who applies for employment.

4.2 Certified Laboratory: A lab certified under the U.S. Department of Health and Human Services that has mandatory guidelines for federal workplace drug testing

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programs and that operates in compliance with the North Carolina Controlled Substances Examination Regulation, as set forth in Article 20 of Chapter 95 of the North Carolina General Statutes.

- 4.3 Collection Site: A designated place where employees present themselves to provide, under controlled conditions, a urine or breath specimen which will be analyzed for the presence of drugs or alcohol.
- 4.4 Collection Site Personnel: A person who instructs and assists individuals in the collection of the requested specimen for drug and/or alcohol testing under specific protocol.
- 4.5 Confirmed Positive Results: The presence of an illicit substance in the pure form or its metabolites at or above the specified cutoff level identified on two (2) consecutive tests which employ different testing methods.
- 4.6 Confirmation Test: A second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. The confirmation test must be different in scientific principle from that of the initial test procedure. At this time gas/chromatography/mass spectrometry (GC/MS) shall be used.
- 4.7 Consent and Acknowledgment Form: The Candidate/Employee Consent and Acknowledgment Form establishes consent for testing and informs the applicant/employee of the substance(s) being tested.
- 4.8 Controlled Substance: A controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation at 21 CFR 1300.11 through 1300.15, and any substance as defined by G.S. 90-87(5). Major substances for review by this policy shall include: marijuana/cannabinoids (THC); cocaine metabolites; opiates; phencyclidine (PCP); amphetamines/methamphetamines; methadone; barbiturates, and benzodiazepines.
- 4.9 Conviction: A finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.
- 4.10 Criminal Drug Statute: A federal or non-federal criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance.
- 4.11 Drug Test: A chemical, biological or physical analysis or test administered for the purpose of determining the presence or absence of a drug or its metabolites and/or alcohol.

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4.12 Impaired: Shall mean such performance and/or behavior which would indicate to the observer that the employee's ability to handle job assignments safely and efficiently may be compromised.

4.13 Initial Drug Test: A sensitive, rapid, and reliable immunoassay procedure to identify negative and presumptive positive specimens.

4.14 Medical Review Officer: A licensed physician whose duties include the review and interpretation of positive results from confirmatory testing and who evaluates those results together with medical history or any relevant biomedical information to verify positive results. This person has knowledge of substance abuse disorders and appropriate medical or forensic training.

4.15 Negative results: The absence of an illicit substance in the pure form or its metabolites in sufficient quantities to be identified by either an initial screen or confirmatory test or as determined by a Medical Review Officer.

4.16 Post Accident Test: A test conducted following all accidents involving motor vehicles requiring the operation by personnel having a CDL and for which the driver receives a moving citation as a result of the accident.

4.17 Random Drug Test: A test performed according to rates established annually by the federal government on personnel needing CDL licensing to perform driving duties. Employees' selection is randomly generated from a list of eligible employees. In addition, a drug test performed according to rates established by the department on positions identified by the Director of Human Resources.

4.18 Reasonable Cause Drug Testing: Testing based on a belief that an employee is using or has used alcohol or drugs in violation of the department's policy based on specific objective and articulable facts and reasonable inferences. Such facts and inferences may be based on, but not limited to, any of the following:

- a. Direct observations of abnormal conduct or erratic behavior by the employee, including conduct which may render the employee unable to perform assigned duties or which may pose a threat to safety or health.
- b. A report of observed alcohol or drug use provided by a reliable and credible source.
- c. An on the job accident or occurrence where there is evidence to indicate the accident or occurrence, in whole or in part, may have been the result of the employee's use of a controlled substance or alcohol.
- d. Evidence that an employee is involved in the use, possession, sale, solicitation, or transfer of drugs or alcohol while working or while on the

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employer's premises/workplace or operating the employer's vehicle, machinery, or equipment.

- 14.19 Refusal To Submit to an Alcohol or Drug test: The failure of an employee to provide an adequate breath or urine specimen upon request for testing without a valid medical explanation or unreasonable conduct which interferes with the testing process.
- 14.20 Release of Information Form: Outlines the information that will be released to management from an Employee Assistance Program referral.
- 14.21 Substance Abuse Professional: Licensed physicians, as well as licensed or certified psychologists, social workers, employee assistance professionals, and alcohol and drug counselors certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) to assess or evaluate an employee who has engaged in prohibited alcohol or drug conduct.
- 14.22 Verified Positive Result: The positive result reported by a Medical Review Officer after the assessment of collection and testing protocols and a determination of no alternate medical explanation for the presence of the controlled substance.

5.0 Implementation

- 5.1 Management is committed to providing an alcohol and drug free workplace for all employees of the City of Kinston.
- 5.2 The unlawful manufacture, distribution, dispensation, sale possession or use of controlled substances; the unlawful use of prescription drugs; the possession or use of alcoholic beverages; and the possession of and the manufacture or delivery of drug paraphernalia is prohibited on city premises and workplaces. The city maintains a zero tolerance position on the above issues.
- 5.3 Violation of the policy set out in item 5.2 above and/or alcohol or controlled substance impaired behavior on the job shall be viewed as unacceptable personal conduct and shall be cause for disciplinary action up to and including dismissal.
- 5.4 An employee determined, by administrative or other investigation, to be involved in the manufacture, distribution, dispensation, or sale of a controlled substance or alcohol on city premises or workplaces shall be dismissed.
- 5.5 An employee determined to be in possession of alcohol or an illegal possession of a controlled substance, or involved in the manufacture or delivery of drug paraphernalia on city premises or workplaces shall receive at least a written

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warning and may be required to participate in the department's Employee Assistance Program.

- 5.6 An employee determined to be using or under the influence and/or functioning below acceptable work standards due to alcohol or a controlled substance or unlawful use of prescription drugs on city premises or workplaces shall receive at least a written warning and if not released shall be referred to the department's Employee Assistance Program.
- 5.7 The city will report violations of criminal drug statutes occurring in the workplace to the appropriate law enforcement authority.
- 5.8 An employee charged with driving while impaired or charged with a drug or alcohol related offense will notify their department head no later than three (3) days after such a charge. An employee convicted of any criminal drug or alcohol statute violation for conduct occurring in the workplace must notify the supervisor no later than (5) five calendar days after such conviction. Failure to provide notification of such a conviction will result in dismissal. When required by the Federal Drug-Free Workplace Act of 1988, city management shall notify the appropriate federal contracting agency of such a conviction.
- 5.9 Management, in accordance with Employee Assistance Program principles will support the responsible action of any employee seeking help for an alcohol or controlled substance program. An employee's efforts to obtain help through the city will be handled in confidence.
- 5.10 The city shall develop an awareness program to inform employees about the dangers of alcohol and drug abuse in the workplace. Every employee shall receive orientation on this policy and documentation shall be maintained by the city to support that this occurred.
- 5.11 All employees have a responsibility to report observed and suspected violations of this policy to their supervisor or department management.
- 5.12 The Director of Human Resources is assigned responsibility and authority to establish supplemental policies and procedures necessary for the implementation and administration of this policy with the City Manager's approval.
- 5.13 The Director of Human Resources shall coordinate the departments' alcohol and drug abuse awareness training programs.
- 5.14 Disciplinary action, in the form of a written warning, disciplinary suspension without pay, demotion or dismissal, shall be taken when an employee:

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- a. Refuses to submit to a required drug or alcohol test.
- b. Fails to show for a scheduled drug or alcohol test.
- c. Intentionally tampers, or attempts to tamper, with a drug or alcohol sample,
- d. Produces a confirmed positive alcohol test at 0.02 or above or a verified positive drug test.

5.15 Substances that may be tested for under this policy include, but are not limited to:

- a. Marijuana/cannabinoids (THC),
- b. Cocaine metabolites,
- c. Opiates,
- d. Phencyclidine (PCP),
- e. Amphetamines/methamphetamines,
- f. Alcohol,
- g. Methadone,
- h. Barbituates,
- i. Benzodiazepines, and
- j. Tricyclic antidepressants

Note: Substances to be tested for can be expanded only for cases which reasonable cause identifies a need to test for a substance. Employees must be informed of the substances of which they will be tested.

5.16 An employee who produces a confirmed positive alcohol test at 0.04 or above or a verified positive drug test if not dismissed shall receive at least a written warning and before the employee is eligible to return to duty must:

- a. Undergo an evaluation or assessment by a substance abuse professional through the Employee Assistance Program.
- b. Satisfactorily complete any rehabilitation process that is recommended through this assessment.
- c. Successfully complete any return to duty requirements which will include a return to duty drug/alcohol test, and
- d. Successfully undergo follow-up testing within the first 12 months of returning to work at the direction of management and the Employee Assistance Program.

5.17 Any employee who produces a positive alcohol test of at least 0.02 but less than, 0.04 may receive disciplinary action as determined by management. In addition, any CDL classified employee shall not perform driving duties until at least 24 hours have lapsed.

5.18 An employee/applicant who receives a positive drug test may request through the Medical Review Officer the same or split specimen be tested at another certified

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laboratory with the cost of such testing at the employee's/applicant's expense. Notification for retesting of a sample must be made within 72 hours upon the employee receiving written notice of a positive test result.

- 5.19 Applicants or employees with a confirmed positive test will be afforded the opportunity to appeal the results. This is accomplished by providing medical data/history for review and assessment by the Medical Review Officer who will make a final determination of the test result.
- 5.20 Employees who are dismissed may be referred to the Employee Assistance Program for evaluation or assessment.
- 5.21 An employee who tests positive in a second drug or alcohol test shall be dismissed.
- 5.22 Should an applicant test positive, they will not be allowed to reapply for employment/service for a period of six (6) months from the date of the test results.

In addition to the above, the following is applicable.

Mandatory drug testing shall apply to:

- a. Final applicants for employment in positions requiring certification under the criminal justice standards.
- b. Veteran law enforcement officers and local confinement personnel who apply for lateral transfer to another law enforcement agency or who apply for reinstatement.
- c. Final applicants for employment in positions requiring a commercial drivers' license (CDL) to perform the job.
- d. Unannounced random testing for employees in a CDL position based upon rates published by the federal government and spread reasonably throughout the year.
- e. CDL drivers involved in a vehicular accident involving loss of human life or where the CDL driver receives a moving citation as the result of the accident. Testing shall be conducted as soon as possible but no later than eight (8) hours following the event.
- f. Employees suspected of drug or alcohol use at work when there is reasonable cause.

Test Actions:

- 5.23 Drug Screen testing shall take place during the application process. The test conducted shall not be more than 60 days old calculated from the time when the laboratory reports the results to the date of employment/service.

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5.24 In order to maintain the effectiveness and reliability of the drug testing process, applicants/employees should not be given more than 24 hour advance notice of the testing date and time.

5.25 Employee subject to random testing shall be chosen randomly by the testing contractor. The contractor shall notify the Human Resources Director of the employees selected for testing. The Human Resources Director shall arrange for employee testing immediately following notification.

5.26 Prior to testing an applicant or lateral transfer for a criminal justice position, the human resources director shall submit a records search request form to the Criminal Justice Standards Division to determine if the applicant or lateral transfer has previously produced a positive test result or refused to submit to drug testing.

5.27 When management has reasonable cause to believe an employee is using or is under the influence of alcohol or a controlled substance in violation of this policy, the employee may be required to submit a drug and/or alcohol test.

- A. All test conducted for reasonable cause must have the City Manager or designee and Human Resources Director or designee's approval.
- B. The supervisor, with the Human Resources Director shall inform the employee that as a condition of employment, management has the right to ask him/her to submit to a drug or alcohol test.
- C. The employee should be advised of the: basis for the reasonable cause; methods of testing which may be used; substances which may be identified; importance of cooperating with the collection site personnel; confidentiality of individual test results; appeals process through a Medical Review Officer following a confirmed positive drug test; and the consequences of refusing to sign consent forms, failing to submit to testing, failing to report for a specimen collection, or receiving a verified positive test result or confirmed positive alcohol test.
- D. The Human Resources Director shall initiate a testing process as soon as possible. The employee shall be given verbal notification of the time, date and location of the test and be required to sign a consent and acknowledgment form. The employee will be given a copy of the form and a copy will be placed in the employee's personnel file.
- E. If the employee refuses to sign the consent form or to undergo testing as scheduled, the supervisor shall take disciplinary action upon consultation with the Human Resources Director in accordance with city policy.
- F. If a non-positive test result occurs, the employee shall be notified as promptly as is practical by the Human Resources Director. If the test is positive, the

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Human Resources Director, within five days of receiving positive test confirmation, shall inform the employee in writing of the results and proposed action to be taken.

- G. The employee who tests positive, if not dismissed, shall be required to participate in the city's Employee Assistance Program. The Human Resources Director shall contact the Employee Assistance Program consultant to schedule an appointment for the employee. The employee shall be given verbal notification of the date, place and time of the session.
- H. The employee shall be required to sign and date a Release of Information form prior to being seen by the Employee Assistance Program consultant. A copy of this form shall be given to the employee and a copy retained by the Human Resources Director. This form shall permit the Human Resources Director to be informed on: whether the employee reported for the initial session; whether the employee is engaged in a treatment program; and whether the employee successfully completed the recommended course of treatment.
- I. A copy of the Release of Information form shall be sent to the Employee Assistance Program consultant as notice that the employee is a mandatory referral.
- J. The employee will be granted leave as reasonable to participate in an appropriate and approved education or treatment program. The employee will be allowed to use accumulated sick and vacation leave or leave without pay.
- K. Upon successful completion of the Employee Assistance Program recommended course of action the employee may be returned to the work unit after approval by the Human Resources Manager and City Manager.
- L. The employee, upon return to the work unit, may be subject to after care testing during a twelve month period following return.
- M. Disciplinary actions resulting from a confirmed positive test result, refusal to participate in a test, altering results, or failure to complete a required referral to an education or treatment program shall be handled in accordance with the established city policy for disciplinary action.

Employment Actions:

- 5.28 All offers of positions requiring pre-employment drug testing shall be conditional offers upon satisfactory test results.
- 5.29 A refusal to submit, fail to show, or tampering with a sample or a positive test result that cannot be explained to the satisfaction of the Medical Review Officer and the City of Kinston shall result in the offer of employment or continued employment service to be withdrawn.

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5.30 Refusal to submit to a drug test or a positive test result that cannot be explained to the satisfaction of the North Carolina Criminal Justice Education and Training Standards Commission on criminal justice positions may result in suspension, revocation or denial of certification for the individual involved for a period of not less than five years. When the Commission suspends or denies the certification, the period of sanction shall not be less than five years; however, the Commission may either reduce or suspend the period of sanction or substitute a period of probation in lieu of suspension of certification.

5.31 If the drug test produces a negative result, then the employment process may proceed.

5.32 If the drug test produces a positive result, the applicant will be notified of such and that the conditional offer of employment/service is being withdrawn. Documentation of the positive laboratory result will be retained.

5.34 In cases which involve possible manufacture, distribution, dispensing, selling, or possession of controlled substances at the workplace, the Human Resources Director, City Manager or designee shall contact the local law enforcement agency for assistance.

5.34 All drug and alcohol test results will be maintained in a secure and confidential manner in the employee's personnel file and will not be released without written consent of the applicant or employee except as a result of action initiated by Human Resources on behalf of the applicant or employee or as otherwise required by law. Test results are to be maintained for the life of the employment.

6.0 Appendices

6.1 Candidate/Employee Consent and Acknowledgement Form Authorization- Appendix A

6.2 Release of Information for Employee Assistance Program Authorization- Appendix B

6.3 Notice of Positive Drug/Alcohol Examination Results- Appendix C

6.4 Drug Free Workplace Memo of Understanding- Appendix D