




CITY OF ASHEVILLE Administrative Policy

Subject: Drug- and Alcohol-Free Workplace Policy
Effective Date: January 1, 2011

Policy Number: 27
Addendum Number: 4
Filing Instructions: A copy of this policy must be maintained in Section V, Administrative Policy Letters of the City of Asheville Personnel Policy Manual, of each City Department and Division

By: Jeff Richardson, Interim Human Resources Director

City Manager Approval: 

INDEX

I. PURPOSE.....	2
II. SCOPE.....	3
III. PROHIBITED CONDUCT	3
IV. PROHIBITED SUBSTANCES	5
V. INDIVIDUALS SUBJECT TO TESTING	6
VI. DISCIPLINE.....	11
VII. CONFIDENTIALITY, RESULTS, AND RECORDKEEPING.....	15
VIII. SUPERVISORY RESPONSIBILITIES	17
IX. EMPLOYEE RESPONSIBILITIES.....	18
X. TRAVEL	19
XI. TESTING METHODOLOGY.....	20
XII. SUSPICION OF DEFRAUDING THE CITY	20
XIII. EMPLOYEE EDUCATION, TRAINING, AND ASSISTANCE.....	21
XIV. DEFINITIONS.....	21

I. PURPOSE

The purpose of this policy is to maintain a drug- and alcohol-free workplace by providing procedures for conducting screenings of job applicants and employees for the use of illegal drugs and improper use of prescription drugs and alcohol.

- a. Employees with substance abuse problems are encouraged to voluntarily seek help from the City's Employee Assistance Program (EAP). The City believes an employee who comes forward to report a substance abuse problem should be given every encouragement to participate in a counseling, treatment, or rehabilitation program for drug and/or alcohol use or abuse. However, employees who fail drug or alcohol testing will be disciplined as outlined in this policy.
- b. In order to ensure consistency with the application of this policy, the Human Resources Director and his/her designee will be consulted prior to any discipline being imposed.
- c. All testing will be conducted in a manner that will protect the rights of employees and applicants subject to testing. The City of Asheville will take all necessary steps to safeguard the dignity and self-esteem of those being tested by following procedures outlined in this policy. All testing records and results will remain confidential and only be released to those who have a need to know such information.
- d. Supervisors and/or other employees will be trained to recognize the symptoms of possible substance abuse and the appropriate actions to take to ensure the safety of employees and maintain public confidence in the City's government.

Additionally, this policy provides procedures for complying with regulations established by the Federal Motor Carrier Safety Administration (FMCSA) to help prevent accidents and injuries resulting from the misuse of alcohol or the misuse of controlled substances by drivers of commercial vehicles.

Applicants and employees of the City of Asheville who are required to have a Commercial Drivers License (CDL) are subject to the Federal Motor Carrier Safety Administration (FMCSA) regulations. In keeping with the FMCSA regulations, the City of Asheville is committed to maintaining a healthy and efficient workforce of commercial drivers. The City strives to ensure that employees who are required to have a Commercial Drivers License are free from the influence of alcohol and any controlled substance while employed by the City of Asheville.

If you have questions about the Drug- and Alcohol-Free Workplace Policy, contact the Human Resources Director at (828) 259-5690 or Health Services at (828) 259-5693.

II. SCOPE

The Drug- and Alcohol-Free Workplace Policy applies to all employees and applicants for employment with the City of Asheville. Individuals who must hold a Commercial Drivers License (CDL), and are required to operate a City of Asheville vehicle classified as a commercial motor vehicle, are also subject to this policy. This includes full-time, part-time, temporary, casual or intermittent employees and/or drivers employed by or under lease to the City of Asheville.

Requirements and regulations under this policy vary, depending on the category associated with the individual. This policy distinguishes among three position categories of employees: Commercial Drivers License (CDL) positions, Safety-Sensitive positions, and Non-Safety Sensitive positions.

A list of positions requiring a Commercial Drivers License (CDL) and a list of Safety-Sensitive positions are available in the Office of Risk Management (Ext. 5684) and in Health Services 259-5693.

Click [here](#) for list of positions requiring CDL.

Click [here](#) for list of Safety-Sensitive positions.

III. PROHIBITED CONDUCT

A. All City Employees

The following conduct is expressly prohibited and violations will result in disciplinary action up to and including termination:

1. The unauthorized use, consumption, possession, manufacturing, distribution, dispensation or sale of alcohol, controlled substances, illegal drugs or drug paraphernalia on City premises, in City-supplied vehicles or in any City work area. Law enforcement officials shall be notified, as appropriate, where criminal activity is suspected.
2. Being under the influence of an unauthorized or controlled substance, an illegal drug, or alcohol while on duty.
3. Sale or possession of illegal drugs; or possession with intent to sell illegal drugs.

B. Commercial Vehicle Operators

1. ALCOHOL

City of Asheville employees who are required to have a CDL or operate a commercial vehicle are prohibited from alcohol use during the performance of their duties. These prohibitions include, but are not limited to, the following:

- a. Use while performing Safety-Sensitive functions.

- b. Performing a Safety-Sensitive function within four (4) hours after using alcohol.
- c. Reporting for duty or remaining on duty to perform Safety-Sensitive functions with an alcohol concentration of .04 or above (GS 20-138.2A) (Operating commercial vehicles after consuming alcohol). If a City of Asheville employee is cited for this offense, he/she has an obligation to report the violation to his/her supervisor immediately. The guidelines for reporting can be found in Sections XIII and IX of this policy.
- d. A mandatory Employee Assistance Program (EAP) referral will be made for these offenses. Repeated offenses will be dealt with as is consistent with City of Asheville Policies.
- e. Possession of medicines containing alcohol (prescription or over the counter) unless the seal is unbroken.
- f. Use of alcohol during eight (8) hours following an accident, or until he/she undergoes a post-accident test.
- g. Reporting for duty or operating a commercial motor vehicle while the driver possesses alcohol.
- h. Refusal to take a required test for alcohol.

2. CONTROLLED SUBSTANCE AND PRESCRIPTION MEDICATION

No employee who is either required to have a CDL or operate a commercial vehicle shall report for duty or remain on duty when the employee has used or tests positive for any controlled substance, including but not limited to: marijuana, cocaine, opiates, amphetamines, and phencyclidine.

The physician-directed use of legally prescribed drugs and non-prescription medications is not prohibited. However, the employee must notify City Health Services before operating a commercial vehicle when taking any medications or drugs, prescription or non-prescription, which may interfere with the employee's ability to perform a Safety-Sensitive function. The City Health Services nurse will determine if the employee can perform Safety-Sensitive functions while taking this medication.

Failure to inform City Health Services of use of prescription medications that may impair job performance will be subject to disciplinary action up to and including dismissal.

IV. PROHIBITED SUBSTANCES

Prohibited substances addressed by this policy include the following:

A. Illegally-used Controlled Substances or Drugs

Any illegal drug or controlled substances identified in federal regulations is prohibited. This includes, but is not limited to, marijuana, amphetamines, opiates, phencyclidine (PCP) and cocaine, as well as any drug not approved for medical uses by the United States Drug Enforcement Agency (USDEA) or United States Federal Drug Administration (USFDA). Illegal use includes use of any illegal drug, misuse of legally prescribed drugs and use of illegally-obtained prescription drugs.

GHB and Anabolic Steroids are considered illegal controlled substances under law and are subject to this policy. Additional substances may be added to drug test panel based on Reasonable Suspicion as outlined in Section V of this Policy at the discretion of the Department Director, Human Resources Director, or Health Services Medical Review Officer (MRO).

B. Legal Drugs

The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the employee must notify Health Services before beginning work when taking any medications or drugs which may interfere with the safe operation of City equipment/vehicles or the ability to perform work duties. This requirement is essential for employees in positions designated as Safety-Sensitive (See List of Safety-Sensitive Positions within the City of Asheville). Health Services will notify the supervisor of any restrictions via the Work Ability Report.

A *legally prescribed drug* is defined as an individual possessing a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. The prescription must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization. The misuse or abuse of legal drugs while performing City business is prohibited.

C. Alcohol

The use of beverages or other substances containing alcohol is prohibited while on duty or within four (4) hours of reporting/returning to duty.

If the measured alcohol concentration is .020 -.039, the Department Director shall exercise the right to remove the employee from the Safety-Sensitive position for a minimum period of 24 hours, as well as make an appropriate Employee Assistance Program referral to determine if a substance abuse problem exists.

An alcohol concentration greater than or equal to .04 is considered positive and is prohibited and is grounds for disciplinary action up to and including termination.

If employee is under current disciplinary action for a drug/alcohol related offense, any alcohol concentration may be considered as reason for discipline up to and including termination.

The employee must have a negative drug and alcohol screen before returning to work in the Safety-Sensitive position.

V. INDIVIDUALS SUBJECT TO TESTING

A. Applicants

1. PRE-EMPLOYMENT TESTING

Provided a 24-hour notice, the final applicant selected for each full-time (02) and part-time (03) position with the City must consent to and participate in a controlled substance screen or test prior to employment. Only those applicants who are extended an offer of employment will be required to undergo and pass a controlled substance test as a condition of employment.

2. EMPLOYEES SEEKING DUAL-EMPLOYMENT

If a current City employee applies for dual-employment in a Safety-Sensitive position with the City, and is extended an offer of employment, s/he will be required to undergo and pass a controlled substance test as a condition of employment. If the employee is seeking dual-employment in a Non-Safety Sensitive position, s/he will not be subject to testing.

3. APPLICANTS FROM OUTSIDE THE BUNCOMBE COUNTY AREA

Applicants who live outside the area will be required to submit to a controlled substance test within 24 hours of accepting an offer of employment with the City of Asheville. The City of Asheville Health Services Division will choose an appropriate collection site convenient to the applicant and make all appropriate arrangements for the collection. Applicants who do not appear for the test at the established time and location will forfeit their employment with the City.

4. COMMERCIAL DRIVERS LICENSE APPLICANTS

As required by the United States Department of Transportation, the final applicant offered employment for a City position which requires a CDL, and all employees transferring or being promoted/demoted into a City position which require a CDL, must submit to a controlled substance test. The drug test will be conducted during the pre-placement process and a negative drug test result must be received before a final order of employment, demotion, transfer, or promotion is made. Pre-placement testing must be completed the same day as the applicant is notified.

B. Employees

1. REASONABLE SUSPICION TESTING

Reasonable suspicion testing should occur within the same day or work shift. If the need for testing occurs, the employee should be escorted by the supervisor/designee to Health Services or

the designated “after-hours” testing facility. Once notified, under no circumstances will any employee be allowed to complete the workday without reporting for testing.

- a. Reasonable suspicion must be based on specific, objective facts or reasonable inferences drawn from facts that would cause a reasonable person to suspect that the employee is or has been using drugs or alcohol. Facts supporting a reasonable suspicion determination include, but are not limited to, any one or more of the following:
 - Direct observation of prohibited drug or alcohol use;
 - Slurred speech;
 - Odor of marijuana or alcohol about the person;
 - Inability to walk a straight line;
 - Physical altercation;
 - Verbal altercation;
 - Behavior that is so unusual that it warrants summoning a supervisor or anyone else in authority (i.e. confusion, disorientation, lack of coordination, marked personality changes, irrational behavior);
 - Possession of drugs;
 - A report of prohibited drug or alcohol use provided by a reliable and credible source; and/or
 - Arrests, citations, and deferred prosecutions associated with drugs or alcohol
- b. The Reasonable Suspicion Testing Form should be completed prior to testing the employee, but in any event, prior to the release of the tests results. Reasonable Suspicion testing requires two (2) signatures on the Reasonable Suspicion Testing Form. One of the signatures must come from an employee in a supervisory position. The other signature should be from an employee, manager, or supervisor who has witnessed or observed the suspicious behavior. Any supervisor/employee who signs the Reasonable Suspicion Testing Form must have attended Reasonable Suspicion Training. The Department Director must be notified within 24 hours.
- c. If the need for testing occurs **when Health Services is closed**, the employee should be driven by the supervisor/designee to the designated “after-hours” testing facility. The supervisor/designee should specifically request both a breath alcohol and urine drug screen.
- d. After specimen collection is completed, the City will arrange for the employee to be transported home by family members, designated staff, or responsible friends/acquaintances of the employee.
- e. The employee will be placed on investigative suspension until the first test results are verified. (Reference City of Asheville Personnel Policy, Section 62.)

2. SAFETY-SENSITIVE TESTING

- a. Hiring, Promotion, Transfer, and Dual-Employment Testing

An employee who is being hired, promoted, or transferred into a full time or part-time position which is designated as **Safety-Sensitive** (see List of Safety-Sensitive Positions within the City of Asheville) must take a controlled substance test and have a negative result prior to placement into the position. Other examples include:

An employee who is transferring from a Non-Safety Sensitive position to a Safety-Sensitive Position will be required to submit a drug screen, if s/he has not done so in the past thirty (30) days.

An employee who has been hired for dual employment, in which both positions are Safety-Sensitive, will not be required to submit an additional drug screen.

An employee who has received a promotion as part of a competitive promotional process in a Safety Sensitive position will be required to submit a drug screen if s/he has not done so in the past thirty (30) days.

If the employee has a negative drug test on file that was completed within thirty (30) calendar days prior to promotion/transfer/dual employment, a drug test will not be required.

b. Safety-Sensitive – Random Testing

All full-time and part-time employees assigned to positions that are determined to be Safety-Sensitive will be randomly tested for alcohol and controlled substances.

c. Safety-Sensitive – Post Accident Testing

(including, but not limited to, vehicular accidents and work-related injuries)

All full-time and part-time employees assigned to **Safety-Sensitive Positions** (See List of Safety-Sensitive Positions within the City of Asheville) will be tested for the presence of *controlled substances and alcohol* following an on-the-job accident that involves:

- a) A human fatality;
- b) Bodily injury to a person who, as a result of the injury, receives medical treatment other than at the City Health Services, away from the scene of the accident. The City Employee is tested, whether such bodily injury occurs to a City employee or to a citizen;
- c) 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;
- d) The City employee is issued a citation.

Post-accident drug and alcohol tests will be administered as soon as possible. In the case of damage to a vehicle/equipment/or personal property, an employee subject to testing must remain available for testing or it may be considered a refusal unless the employee is seriously injured. The employee must refrain from consuming alcohol for eight (8) hours following an accident or until the alcohol test is conducted, whichever comes first.

If the accident occurs while Health Services is closed, the employee should be driven by the supervisor/designee to the designated "after-hours" testing facility. A breath alcohol and urine drug screen should be requested.

PLEASE NOTE: If testing is not completed timely due to the employee failing to promptly report the incident, testing will be conducted as soon as the supervisor or Health Services can make arrangements to test.

3. NON-SAFETY SENSITIVE TESTING

A non-safety sensitive employee, who is being hired, promoted, or transferred into a full-time or part-time Safety-Sensitive position, and the employee has no previous drug test on file in the past thirty (30) days will be required to take a controlled substance test.

All non-safety sensitive employees involved in an accident while operating a City vehicle or equipment that causes bodily injury requiring care in a hospital emergency room will be alcohol- and drug-tested.

4. COMMERCIAL DRIVERS LICENSE TESTING

a. CDL – Post Accident Testing

If an employee, employed in a position requiring a CDL, while operating a City of Asheville DOT vehicle or equipment, is involved in an accident where one or more of the following occurs, post accident controlled substance abuse and alcohol testing must take place.

- a) A human fatality;
- b) Bodily injury to a person who, as a result of the injury, receives medical treatment other than at the City Health Services, away from the scene of the accident. The City Employee is tested, whether such bodily injury occurs to a City employee or to a citizen;
- c) 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;
- d) The City employee is issued a citation.

The alcohol test must be administered within two (2) hours following the accident and in no case shall more than eight (8) hours lapse before the test is administered. It is the employee's responsibility to notify his/her Department Director or Division Manager or their designee immediately of any such accident to ensure action is taken to meet testing requirements. **Reporting requirements can be found in section IX of this policy.**

An employee involved in an accident as described above, must refrain from using alcohol for eight (8) hours following the accident, or until he/she submits to an alcohol and or controlled substance test, whichever comes first. This requirement; however, shall in no way be construed as to require the delay of necessary medical attention for injured employees following an accident.

If the accident occurs while Health Services is closed, the employee shall be driven by the supervisor designee to the designated testing facility. The supervisor/designee should specifically request a breath alcohol and urine drug screen.

Supervisors/designees who are aware of employee accidents, but fail to follow the prescribed post-accident testing requirements will be treated consistent with failing to follow the Supervisor Responsibilities as stated in Section VIII of this Policy.

An employee who is advised by Health Services to obtain immediate drug/alcohol testing at a facility outside of Health Services, is required to report within two (2) hours of this instruction. If the employee fails to follow this instruction, he or she will be treated as an employee refusing to submit to a post accident controlled substance alcohol test. An employee refusing to submit to a post-accident test will be dismissed as outlined in Section VI of this policy.

b. CDL – Random Testing

All employees of the City of Asheville employed in a position requiring a CDL are subject to random testing for alcohol and/or controlled substances.

Employees will be randomly tested for alcohol and/or controlled substance at any time the employee is at work for the City of Asheville. This includes overtime, call-back and stand-by hours.

Random testing will be done on a percentage basis in a fair and equal manner. Each time a selection is made, every employee will have an equal chance of being selected. Selection can occur even if the employee has been previously selected for random testing. The random testing will be unannounced and spread throughout the year. An employee notified that he/she has been selected for random testing must proceed immediately to the designated collection site. Once notified, under no circumstances, will an employee be allowed to complete the workday without reporting for random testing. Failure to report as directed will be treated as refusal to test and result in immediate termination from employment as outlined in Section VI of this policy.

5. RETURN TO DUTY TESTING

Any City employee that is allowed to return to duty following referral, evaluation, and treatment as a result of a positive *alcohol or controlled substance test* will be required to submit to a return to duty *alcohol and/or controlled substance test*. An alcohol concentration of .00 and a negative controlled substance test will be required before a return to duty decision can be made.

6. UNANNOUNCED FOLLOW-UP TESTING

In the event any employee is allowed to return to duty in any City position following referral, evaluation and treatment, a minimum of six (6) unannounced *alcohol and/or controlled substance tests* will be required during the next twelve (12) months of employment. Follow-up testing may continue for up to sixty (60) months following return to duty. This testing will be at the

discretion of the City, based upon written recommendations from the Substance Abuse Professional (SAP).

All alcohol testing will be done immediately before, during, or immediately after the employee performs a Safety-Sensitive function.

Controlled substance testing may be performed at any time the employee is at work for the City of Asheville. This includes overtime, paid stand by, and call back hours.

VI. DISCIPLINE

The City believes an employee who comes forward to report a substance abuse problem should be given every encouragement to participate in a counseling, treatment or rehabilitation program for drug and/or alcohol use or abuse. Employees who admit to a substance abuse problem must do so prior to selection or detection for testing under this policy. However, any employee who fails to comply with this policy is subject to the following discipline:

A. Refusal to Test

If an employee refuses to submit to, or fails to follow through with, a drug or alcohol test when testing is required by this policy, the Department Director, HR Director or his/her designee will inform the employee that refusal to test will be handled the same as a positive test and will be grounds for dismissal. If the employee still refuses to cooperate, the employee will be dismissed consistent with the process as outlined in Article 6 of the City of Asheville Personnel Policy. In such cases, the Department Director or his/her designee will document the refusal or failure to cooperate.

Employees who are operating a City vehicle or operating a personal vehicle on City business and are stopped by law enforcement and refuse to submit to a law enforcement directed breath alcohol test will be dismissed consistent with the process as outlined in Article 6 of the City of Asheville Personnel Policy.

B. Positive Test Results

Upon notification of a positive test result, the applicant/employee has 72 hours to request a retest on the retained portion of the original specimen at an approved laboratory at the applicant/employee's expense. A new specimen cannot be collected. The applicant/employee must make the request in writing and may contact the Medical Review Officer or designated MRO Assistant in Health Services at 259-5693 to coordinate the re-test.

If the second confirmatory test is negative, the City will reimburse the applicant the amount charged for the test.

1. APPLICANTS

Any final applicant extended an offer of employment for a City position with a verified positive controlled substance test result will be denied employment. Should the applicant reapply for a position with the City, all of the following items must be met for future consideration, but are not a guarantee of employment:

- a. A period of one year has passed since the positive drug screen;
- b. Documentation is provided for successful completion of a substance abuse evaluation and successful completion of a drug rehabilitation program;
- c. The above mentioned drug rehabilitation program is approved by the City's Medical Review Officer; and
- d. A new hire drug screen is negative.

Note: Final applicants who are notified of a time to complete the pre-employment controlled substance test and fail to follow through the process as required, are automatically disqualified from employment for a period of one year.

2. PROMOTIONS, TRANSFERS, AND DUAL EMPLOYMENT

Any employee being considered for a promotion or transfer who has a verified positive controlled substance test will not be promoted or transferred. The employee will also be subject to other disciplinary action pursuant to this policy.

Any employee, who has a negative drug and/or alcohol test on file that was completed within thirty (30) days prior to promotion/transfer/secondary employment, will not be required to undergo a drug test.

Any employee moving into a benefited position for the first time who does not have a drug test on file must be drug tested and have a negative result before moving into the position.

3. DUAL-EMPLOYMENT

In the case of an employee who is occupying or applying for dual-employment with the City and tests positive while occupying that position, the employee shall be held accountable as a City employee for all positions held with the City. The information shall be shared with relevant departmental management from all affected departments with the assistance of the Human Resources Department.

4. REASONABLE SUSPICION, POST-ACCIDENT, and RANDOM

- a. Any employee in a **Safety-Sensitive or CDL** position (See List of Safety-Sensitive Positions within the City of Asheville) with a verified positive controlled substance and/or alcohol test greater than or equal to 0.04 will be dismissed.

The employee shall be given a referral to a substance abuse professional.

- b. The Department Director exercises the right, as is consistent with Article 6 Section 61 (Inappropriate Personnel Conduct) of the City of Asheville Personnel Policy and as outlined in the City of Asheville Ethics Policy (Reporting Unethical Behavior and/or Illegal Acts) to carry out disciplinary action, up to and including dismissal, against any **Non-Safety Sensitive** employee found to be positive for use of controlled substances and/or alcohol level of greater than or equal to .04 while at work. In cases whereby the department director determines dismissal not to be warranted, the employee will be suspended without pay for thirty (30) consecutive calendar days and be given a mandatory EAP referral.

- c. All non-safety sensitive employees involved in an accident while operating a City vehicle or equipment that causes bodily injury requiring care in a hospital emergency room will be alcohol- and drug-tested.

5. CDL POSITIVE TEST REPORTING

- a. Under Federal Motor Carrier Safety regulations, the City of Asheville is required to report any CDL driver who tests positive on a drug or alcohol test to the North Carolina Department of Motor Vehicles within 5 (five) business days. This record will be held by the NC DMV for a period of two years.

Upon receipt of notice of a positive drug or alcohol test, pursuant to G.S. 20-37.19(c), the Division shall disqualify a driver from operating a commercial motor vehicle until receipt of proof of successful completion of assessment and treatment by a substance abuse professional in accordance with 49 C.F.R. § 382.503. Safety-sensitive employees who test positive in a drug or alcohol test will be dismissed from employment with the City of Asheville as outlined in Section IV.

The City of Asheville's Health Services MRO or Health Services designee shall report this information to the employee's Department Director, and then provide the notification of the positive drug screen in writing to the NC DMV with the employee's name, address, drivers' license number, social security number, and the result of the drug or alcohol test.

C. Eligibility for Rehire

Any former employee of the City who was dismissed because of a verified positive alcohol and/or controlled substance test result will not be considered for re-employment with the City until:

- a. A period of one year has passed since the positive drug screen;
- b. Documentation is provided for (a) successful completion of a substance abuse evaluation and (b) successful completion of a drug rehabilitation program;
- c. Approval of the above mentioned drug rehabilitation program is given by the City's Medical Review Officer (MRO);
- d. A new hire drug screen is negative;
- e. The Human Resources Director must approve the rehire with the City Manager's concurrence; and
- f. The employee must submit to follow-up drug/alcohol testing as prescribed by the City MRO or Employee Assistance Network (EAN) for a period of 60 months (5 years).

If a former employee is rehired with the City and they test positive during any drug or alcohol testing listed in the above (sections a – f) process, they will be terminated and ineligible for rehire **permanently**.

Any positive drug or alcohol test which occurs after the employee has completed the process outlined above (sections a – f), the employee will be subject to discipline as outlined in this Policy.

D. Off-duty DWI

The City of Asheville is concerned with off-duty behavior that is inappropriate for a government employee; reflects negatively on the reputation of the City; and/or has an impact on the employee's job function. Operating a vehicle at any time while impaired is inappropriate regardless of whether the employee is on or off duty.

Employees charged with impaired driving (also known as driving while impaired or "DWI") while off-duty shall be subject to disciplinary action up to and including dismissal. In accordance with the City of Asheville's Ethics Policy, every city employee is required to report DWI charges or arrest immediately, which means as soon as practical and no longer than 24 hours. Employees should follow their departmental procedures regarding how to contact a supervisor outside of regular business hours.

The City encourages employees to follow a certain chain of command when reporting these charges. However, due to the possibility that one's supervisor may be unavailable, that employee may notify anyone listed below, orally, or in writing:

1. The employee's immediate supervisor
2. Any supervisor employed by the City of Asheville
3. Any employee in the Human Resources Department
4. The City Manager
5. The Assistant City Manager
6. The City Attorney

The supervisors are not permitted to receive or have knowledge of such report without taking prompt and immediate action. In an instance where a supervisor receives or has knowledge of such report, he/she is required to contact either their Department Director or the Human Resources Director immediately. Failure to report this matter will be grounds disciplinary action, up to and including immediate dismissal.

The City will impose discipline, based on its own internal investigation and regardless of the criminal disposition of the matter, on a case by case basis based on the circumstances of the event, the level of impairment, the employee's conduct during the traffic stop, the employee's job function, which includes the employee's Safety-Sensitive designation, driving requirements, supervisory authority, prior alcohol or drug related offenses, and any other relevant factors.

In addition, all managers and supervisors of the City of Asheville are expected to conduct themselves off-duty in an appropriate manner (see: Ethics Policy City Supervisors' Responsibilities). These employees are considered leaders in our organization and community and are held to a higher standard regarding being charged with off-duty impaired driving.

VII. CONFIDENTIALITY, RESULTS, AND RECORDKEEPING

A. All City Employees

1. DISCLOSURE OF INFORMATION

a. Positive Applicants

Before reporting a positive result to the Department, the Medical Review Officer (MRO) or designee will discuss test results with the applicant either in person or on the telephone.

Health Services will make up five (5) documented attempts to contact the applicant. If the applicant fails to contact Health Services after these five attempts, the MRO will confirm the test result as positive. A positive test result will be reported to the hiring department.

B. Positive Employees

Health Services will make up to five (5) documented attempts to contact the employee. If the employee fails to contact Health Services after these five attempts, the MRO will confirm the test result as positive. A positive test result will then be reported to Human Resources and the Department.

Employees will be scheduled to meet with the Medical Review Officer to discuss test results. If the employee fails to keep the appointment, the MRO will confirm the test results as positive. A positive test result will be reported to Human Resources and the employee's Department.

For the name of the current MRO, contact Health Services at (828)259-5693.

2. PROTECTION OF EMPLOYEE RECORDS

The City of Asheville requires the credentialed testing laboratory to maintain and transmit employee test records in confidence and shall provide that disclosure of information related to a positive drug test and/or alcohol test be made only to the appropriate designated official(s) and/or to the City of Asheville designated personnel.

Health Services will maintain alcohol and controlled substance testing results in a secure and confidential manner.

Random test lists shall be on file for a period of 5 years.

3. ACCESS TO RECORDS

An employee or applicant shall have access to his/her alcohol and controlled substance testing records upon written authorization from the employee or applicant.

Alcohol and/or drug test results may be disclosed to the City's Attorney/designee in a lawsuit, grievance, or other proceeding initiated by or on behalf of the applicant/employee, and arising from the results of the alcohol and/or drug tests. This

includes, but is not limited to, worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the applicant/employee.

B. CDL Employees

1. DISCLOSURE OF INFORMATION

Except as provided in the Federal Motor Carrier Safety Administration (FMCSA) regulations, the Medical Review Officer (MRO) shall not disclose to any third-party medical information provided by the individual to the MRO as part of the testing verification process.

2. PROTECTION OF EMPLOYEE RECORDS

The City of Asheville contract with the laboratory shall require that the laboratory maintain employee test records in confidence and in accordance with the DOT regulations. The contract shall provide that the laboratory shall disclose information related to a positive drug test and/or alcohol test to the appropriate designated official(s) and/or to the City of Asheville designate personnel.

The City will maintain alcohol and drug testing results in a secure and confidential manner so that disclosure of information to unauthorized persons does no occur. Employee information shall only be released as required by law or as expressly authorized.

3. ACCESS TO RECORDS

- a. An employee shall have access to his/her alcohol and controlled substance testing records upon written request from the employee.
- b. The City will comply with any properly promulgated DOT regulation regarding access to the City records in connection with DOT's alcohol misuse and controlled substance abuse program.
- c. When requested, the City shall disclose post accident testing information to the National Transportation Safety Board as part of an accident investigation.

4. TEST RESULTS

The laboratory is required to report the test results directly to the National Transportation Association (NTA) Medical Review Officer (MRO) within five (5) business days. The report shall state the controlled substance/metabolites tested for, whether the results are positive or negative, the specimen number assigned by the City of Asheville and testing laboratory identification number.

The Medical Review Officer shall be a licensed physician and possess knowledge of drug abuse and disorders. The City of Asheville may contract the services of the MRO. Prior to making a final decision to verify a positive test result for an employee, the MRO shall give the employee an opportunity to discuss the test results with the MRO. 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 shall report that information to the City of Asheville. After the MRO has made a final decision as to the test results, the City of Asheville will be notified in the manner prescribed below.

The MRO will notify each employee who has a confirmed positive test. The employee may request, in writing, within 72 hours that the retained portion of the sample be tested at an approved laboratory. The MRO will direct, in writing, the laboratory to provide the split specimen to another certified laboratory for analysis if the split specimen fails to reconfirm the presence of drugs or drug metabolite found in the primary specimen, or if the split specimen is unavailable, the MRO will cancel the test and report cancellation and the reason for it to the DOT, the City of Asheville, and the employee. This test is at the employee's expense. If the re-confirmatory test is negative, the City will reimburse the employee the amount charged for the test.

If the MRO, after making and documenting all reasonable efforts, is unable to contact the tested employee, the MRO will contact the Health Services nurse of the City of Asheville. The Health Services Nurse will attempt to contact the employee and inform him/her to contact the MRO within 24 hours. If within five (5) days after documented contact by the Health Services Nurse, the employee's Department Director or designee instructing the employee to contact the MRO, the employee fails to contact the MRO, the MRO will verify the test positive and report it to the City of Asheville.

For the name of the current MRO, contact Health Services at (828)259-5693.

VIII. SUPERVISORY RESPONSIBILITIES

Every City of Asheville supervisor shall:

- A. Ensure that a negative drug test result has been received prior to placing an applicant in a position or an employee in a position which requires testing under this policy.
- B. Consistently apply this policy to all employees under his or her supervision. A supervisor who fails to apply this policy when he or she believes, or reasonably should believe, that an employee under his or her supervision has committed a violation will be disciplined up to and including termination.
- C. Initiate the process for having an employee drug and alcohol tested if there is reasonable suspicion that an employee under his or her supervision, when such employee is on duty, has an illegal drug or alcohol in his or her system or is using any legal drug in a manner other than it was intended.
- D. Report instances of off-duty DWI arrests and/or drug and alcohol related inappropriate conduct immediately, which means as soon as practical and no longer than 24 hours. Examples include, but are not limited to, smelling alcohol on employees' breath in the parking lot before clocking in, observing impaired behavior on the job-site, and/or observing drug or alcohol impaired employees returning to City property while off duty. Employees and supervisors should follow their departmental procedures regarding how to contact a supervisor outside of regular business hours along the appropriate reporting lines as outlined here and in the City of Asheville Ethics Policy:

1. The employee's immediate supervisor
 2. Any supervisor employed by the City of Asheville
 3. Any employee in the Human Resources Department
 4. The City Manager
 5. The Assistant City Manager
 6. The City Attorney
- E. Ensure that each new employee he or she supervises is provided a copy of this policy on or before his/her first day of employment.
- F. Attend and support all required scheduled trainings.
- G. Ensure that an employee believed to be under the influence of drugs or alcohol is transported home either by personal family, friends, or by arranged transportation.
- H. Inform the Asheville Police Department if they have reasonable suspicion that an employee is in possession of illegal drugs.
- I. Inform any employee experiencing unexplained changes in work performance or behavior of the availability of assistance through the Employee Assistance Program (EAP).
- J. If the need for testing occurs **while Health Services is closed**, the employee should be driven by the supervisor/designee to the designated "after-hours" testing facility. Supervisors should use sound judgment in deciding if a third party should accompany them. The supervisor/designee should specifically request a breath alcohol and urine drug screen.

Failure to comply with these responsibilities may result in disciplinary action up to and including termination.

IX. EMPLOYEE RESPONSIBILITIES

Every employee shall:

- A. Abide by this policy as a condition of employment.
- B. Comply with all applicable laws regulating the manufacture, distribution, dispensation, use or possession of illegal drugs, alcohol, or prescription drugs.
- C. Assure that his or her ability to perform his or her job duties is not negatively affected due to use of a drug or alcohol when (1) scheduled to report to work; (2) at work; (3) "on call"; or (4) on "stand-by" status.
- D. Submit immediately to a drug and/or alcohol test when requested by his or her supervisor or Health Services.
- E. Cooperate with the recommendations of the Employee Assistance Program following a mandatory referral.
- F. Report instances of off-duty DWI arrests and/or drug and alcohol related inappropriate conduct immediately, which means as soon as practical and no longer than 24 hours. Employees should follow their departmental procedures regarding how to contact a supervisor outside of regular business hours along the appropriate reporting lines as outlined here and in the City of Asheville Ethics Policy:
 1. The employee's immediate supervisor
 2. Any supervisor employed by the City of Asheville
 3. Any employee in the Human Resources Department
 4. The City Manager
 5. The Assistant City Manager
 6. The City Attorney

- G. Follow the proper chain of command as outline above in 'F' if arrested, indicted, or convicted of a state, local, or federal drug/alcohol related law within the above reporting guidelines and no later than 24 hours. (see: Ethics Policy Unethical Behavior/Illegal Acts)
- H. Notify a Health Services nurse before beginning work when taking any medications or drugs which may interfere with the safe operation of City equipment/vehicles or the ability to perform work duties.
- I. Cooperate with requests from the City's Medical Review Officer. Provide whatever requested documentation, including a current, valid prescription for any drug or medication within twenty-four (24) hours unless an extension of time is granted by the person making the request. The prescription must be in the employee's name.
- J. Notify his or her supervisor if he/she reasonably believes that another employee is under the influence of drugs or alcohol.
- K. At the time of a work-related vehicular accident, notify the Asheville Police Department or the law enforcement agency in the city/county where the accident took place that an accident has occurred immediately. This includes accidents occurring while traveling on City business, whether in a City, personal, or rental vehicle. Also notify his/her supervisor of any type of accident within 24 hours as outlined in 'F'.

Failure to comply with these responsibilities may result in immediate disciplinary action up to and including termination.

X. TRAVEL

City employees who receive a DWI while traveling on City business shall notify their supervisor within twenty-four (24) hours from issue of citation.

Employees charged with impaired driving (also known as driving while impaired or "DWI") shall be subject to disciplinary action up to and including dismissal. In accordance with the City of Asheville's Ethics Policy, every City employee is required to report DWI charges or arrest immediately, which means as soon as practical and no longer than 24 hours. Employees should follow their departmental procedures regarding how to contact a supervisor outside of regular business hours. The City encourages employees to follow a certain chain of command when reporting these charges. However, due to the possibility that one's supervisor may be unavailable, that employee may notify anyone listed below, orally or in writing:

1. The employee's immediate supervisor
2. Any supervisor employed by the City of Asheville
3. Any employee in the Human Resources Department
4. The City Manager
5. The Assistant City Manager
6. The City Attorney

The supervisors are not permitted to receive or have knowledge of such report without taking prompt and immediate action. In an instance where a supervisor receives or has knowledge of such report, he/she is required to contact either his/her Department Director or the Human Resources Director immediately. Failure to report this matter will be grounds for disciplinary action up to and including immediate dismissal.

Employees traveling on City business are serving as representatives of the City and should conduct themselves accordingly. Employees arrested on alcohol or drug related offenses while traveling on City business, whether on-duty or off-duty, shall be subject to disciplinary action up to and including termination.

XI. TESTING METHODOLOGY

The City of Asheville commits to follow medically accepted and forensically approved drug and alcohol testing methodology. The City's Medical Review Officer is responsible for ensuring such steps are consistently adhered to for the purposes of properly administering this policy. The specific procedures may be obtained through the City of Asheville Health Services Division.

Additionally, the City commits to follow the FHWA alcohol and controlled substances testing program methodology requirements as provided by law. The specific procedures may be obtained through the City of Asheville Health Services Division.

XII. SUSPICION OF DEFRAUDING THE CITY

Effective December 1, 2002, the North Carolina General Assembly passed a law making it a criminal offense to defraud drug or alcohol screening tests. Under this law, it is unlawful for person to:

- A. Sell, give away, distribute or market urine in NC or transport urine into the state with the intent that it be used to defraud a drug or alcohol screening test;
- B. Attempt to foil or defeat a drug or alcohol screening test by the substitution or spiking of a sample;
- C. Advertisement of a sample substitution or other spiking device or measure,
- D. Adulterate a urine or other bodily fluid sample with the intent to defraud a drug or alcohol screening test;
- E. Possess adulterants that are intended to be used to adulterate urine or other bodily fluid samples for the purpose of defrauding a drug or alcohol screening test;
- F. Sell adulterant with the intent that they may be used to adulterate urine or other bodily fluid sample for the purpose of defrauding a drug or alcohol screening test.

First violation results in a Class 1 Misdemeanor; second offense is a Class 1 Felony.

Applicants found to be in violation of this law will be reported to local law enforcement and denied employment with the City.

Employees found to be in violation of this law will be subject to disciplinary action and will be reported to local law enforcement.

XIII. EMPLOYEE EDUCATION, TRAINING, AND ASSISTANCE

A. Education and Training

The City of Asheville will provide an overview of the requirements of this policy. Each employee shall also receive a copy of this policy during Employee Orientation.

B. Receipt of Policy

Each employee shall sign a certificate of receipt for said policy during Employee Orientation.

Employees who must hold a Commercial Drivers License (CDL) as part of their employment duties with the City are required to sign a statement certifying that he/she received a copy of this policy. The original signed statement shall be maintained in the employee's DOT file in the City of Asheville Health Services Division. The Risk Management Division and the employee's Department/Division may obtain a copy of the signed receipt.

C. Reasonable Suspicion Training

The City of Asheville requires persons who are allowed to determine whether reasonable suspicion exists to attend reasonable suspicion training. Department Directors or their Designee shall arrange reasonable suspicion training through the Human Resources Department.

Reasonable suspicion training shall cover the physical, behavioral, speech and performance indicators of probable alcohol use and/or misuse and the use of controlled or illegal substances. Training will also include proper use and enforcement of this policy.

D. Referral Evaluation and Treatment

Each employee who is engaged in conduct prohibited by this policy shall be advised by the Medical Review Officer (MRO) or a City representative of the assessment/treatment resources available through the City's Employee Assistance Program (EAP).

XIV. DEFINITIONS

- **Accident (related to ALL Employees, including CDL employees and Safety-Sensitive Employees)** involves employees working in the capacity of a CDL driver, and occurs while that employee is operating a City of Asheville vehicle or equipment or other commercial vehicle on City business, as well as those employees operating a City vehicle and working in a Safety-Sensitive capacity. The definition of accident is satisfied if any one or more of the following situations occur:
 - A human fatality;
 - Bodily injury to a person who, as a result of the injury, receives medical treatment other than at the City Health Services, away from the scene of the accident. The City Employee is tested, whether such bodily injury occurs to a City employee or to a citizen;
 - 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;

- The City employee is issued a citation.
- **Alcohol** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol.
- **Alcohol Screen** means the test for the presence of alcohol in the body as determined through the use of an approved evidential test such as breathalyzer test, saliva test, or blood screen.
- **Alcohol Test** means the test for the presence of alcohol in the body. The alcohol level is determined through the use of a breath alcohol test, evidential breathalyzer test, or saliva test. Blood screening can also be done, but requires employee consent.
- **Alcohol Use** means the consumption of any beverage, mixture, or preparation, including any medication containing alcohol.
- **Applicant Testing** - See Post-offer Testing.
- **Appropriate Designated Official** means the individual in charge of the City of Asheville Health Services or their designee, or other persons designated by the City Manager or a Department Director.
- **Breath Alcohol Technician (BAT)** means a certified individual who instructs and assists individual in the alcohol screening process and operates an evidential breath testing device (EBT).
- **Chain of Custody** is the process of ensuring and providing documentation of proper specimen identification and handling from the time of collection to the receipt of laboratory results. If the results come under legal challenge, the specimen must have been handled according to chain-of-custody procedures exactly and accurately. The chain-of-custody protocol assures the specimen belongs to the individual whose information is printed on the specimen bottle label, no adulteration or tampering has taken place, exactly who had possession of the specimen and when, how the specimen was transported and stored before it was analyzed, no unauthorized access to the specimen was possible, and the specimen was handled in a secure manner.
- **Commercial Drivers License** is abbreviated as CDL. It is a special driver's license issued by the Department of Motor Vehicles and is required to drive or operate any commercial motor vehicle which weighs 26,001 or more pounds, transports hazardous materials, or transports sixteen (16) or more passengers. Reference definition for commercial motor vehicle.
- **Commercial Motor Vehicle** means a self-propelled or towed vehicle used on public highways and commerce to transport passengers or property when the vehicle:
 - a) has a gross vehicle rating or gross combined rating of 26,001 or more pounds
 - b) is used in the transportation of hazardous materials and quantities requiring placarding; or
 - c) is designed to transport sixteen (16) or more passengers, including the driver; or
 - d) 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.

- **Controlled substance** means those psychoactive drugs (including narcotics) which are prescribed and dispensed according to state or federal law because of their abuse potential, medical acceptance, and ability to produce dependence. Thus defined, the language “controlled substance testing” and “drug testing” are interchangeable.
- **Department Director** means the Director of a Department of the City of Asheville.
- **DHHS** means the Secretary of the Department of Health and Human Services.
- **DOT Agency** means an agency of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing.
- **Driver** means any person who operates a motor vehicle or equipment.
- **Drug** means a controlled substance as listed in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C 812) or Chapter 90 Section 87(5) of the North Carolina General Statutes or a metabolite thereof.
- **Drug Test and Drug Screening** means a test, including providing the necessary sample of body fluid by the employee to be tested, for the presence of any of the following drugs or drug metabolites in the urine or blood of an employee, which list includes but is not limited to the following:
 - amphetamines;
 - anabolic steroids;
 - barbiturates;
 - benzodiazepines;
 - cannabinoids;
 - cocaine;
 - methaqualone;
 - opiates;
 - phencyclidine; and
 - propoxyphene
- **Dual-employment** means when a City employee has one position with the City, and also has a secondary part-time or temporary job within a different City department.
- **Employee Assistance Program (EAP)** means counseling services available to City of Asheville employees to help them deal with personal problems, including substance abuse issues. All employees with substance abuse problems are encouraged to seek assistance through the EAP.
- **Evidential Breath Testing Device (EBT)** is an alcohol testing method approved by DOT.
- **Medical Review Officer (MRO)** means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer’s drug and alcohol testing program. The Medical Review Officer has knowledge of substance abuse

disorders and has appropriate medical training to interpret and evaluate laboratory test results in conjunction with an employee's medical history. The Medical Review Officer verifies the positive drug test result by reviewing the laboratory report and employee's personal medical history to determine whether the result was caused by the use of prohibited drugs or by an employee's medical condition.

- **On-duty** means when an employee is at the workplace, performing job duties, or on call or stand-by, or during any other period of time to which he or she is entitled to receive pay from the City of Asheville. This includes working out-of-class.
- **Post-offer Testing** means testing that is conducted on the final applicant prior to his/her being hired by the City of Asheville.
- **Promotion Testing** means testing that is conducted on a current City employee after a competitive hiring process and **prior** to his/her being promoted into a Safety-Sensitive position. This does not include career ladder advancements or a non-competitive process.
- **Random Testing** means testing that is conducted for employees holding Safety-Sensitive positions with the City of Asheville. Name selections are computer-generated by a scientifically valid method, such as a random number table or random number generator by an outside source. Under this selection process, each Safety-Sensitive employee shall have an equal chance of being tested each time selections are made.
- **Reasonable Suspicion** exists when an employee exhibits specific indicators such as unkempt appearance, behavior, speech, body odor or other physical indications of probable drug or alcohol use.
- **Safety-Sensitive Position** means
 - A position where the City of Asheville has a compelling need, on the basis of safety concerns, to ascertain on-the-job impairment on the part of employees who hold the position. Such a compelling need may arise where the duties of a position create, or are accompanied by, such a great risk of injury to other persons or to property of such magnitude that even a momentary lapse of attention, judgment or dexterity could have disastrous consequences. Examples of these positions include:
 - positions (full- or part-time) requiring the use of weapons (or potential use of weapons) or the operation of vehicles, machinery, or equipment as a primary task (does not include routine office equipment);
 - positions requiring the handling of hazardous materials, the mishandling of which may place the employee, fellow employees, or the general public at risk of serious injury, or the nature of which would create a security risk in the workplace;
 - positions having direct responsibility for the safety and welfare of children as a primary responsibility.
 - The following includes activities defined as Safety-Sensitive by the Federal Motor Carrier Safety Administration or Federal Transit Administration portions of the Department of Transportation guidelines:
 - driving;
 - inspecting, servicing, or conditioning any commercial motor vehicle;

- waiting to be dispatched at a carrier or shipper plant, terminal, facility, or other public property;
 - performing all other functions in or upon any commercial vehicle except resting in a sleeper berth;
 - loading or unloading a vehicle, supervising or assisting in the loading or unloading of a vehicle, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or giving or receiving receipts for shipments being loaded or unloaded;
 - performing driver requirements relating to accidents;
 - repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle;
 - operating a revenue service vehicle, including when not in revenue service;
 - operating a nonrevenue service vehicle when required to be operated by a holder of a Commercial Drivers License;
 - controlling dispatch or movement of a revenue service vehicle;
 - maintaining a revenue service vehicle or equipment used in revenue service; and/or
 - carrying a firearm for security reasons.
 - Determination as to which positions are Safety-Sensitive can be based on Department of Transportation guidelines and/or the recommendation of the Department Director and approval by the Human Resources Director.
- **Secondary employment** is defined as an employee having a second job with someone other than the City of Asheville including, but not limited to, self-employment.
 - **Screening** means an analytical procedure to eliminate “negative” urine or alcohol specimens from further consideration.
 - **Substance Abuse Professional** means a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of both drug- and alcohol-related disorders.
 - **Unannounced Follow-Up Testing** means testing that is conducted on a periodic, unannounced basis, following an employee’s return to work from a positive drug or alcohol test.
 - **Under the Influence** means (1) an alcohol concentration of .04 or greater; or (2) the presence of any detectable controlled substance in the urine.