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HUMAN RESOURCES

To: Gregg Mandsager, City Administrator
From: Stephanie Romagnoli, Human Resources Manager
Date: April 16, 2012
Re: Updated Drug Testing Policy

Included with this memo is an updated drug and alcohol testing policy.

The changes in the policy are based mainly on updated requirements from the Department of Transportation and the Federal Transit Authority the majority of which are clarifications in language to enhance employees' understanding of the process. This policy update has been reviewed by the City Attorney.

The policy change also adds the random testing of police officers as was agreed to in the most recent union negotiations. Random tests for the police department will also be coordinated through the Bi-State Regional Commission.

At this time, I am requesting City Council adopt the updated Drug and Alcohol Policy. Please let me know if there are any questions or if additional information is needed.

DRUG AND ALCOHOL POLICY

December 1990
Revised April 2001
Revised March 2012

Policy Statement

The City of Muscatine has a strong commitment to employees and the public to provide a safe and drug free workplace. Being under the influence of a drug or alcohol poses serious safety and health risks not only to the user, but to all those who work and come in contact with the user. The purpose of this policy is to assist in providing a workplace that is safe and healthy by limiting the effects of drug and alcohol use. The City also declares the responsibility to the public to demonstrate the safe and controlled operation of City work environments by establishment of a Drug and Alcohol Testing Program.

The Medical Review Officer

The Medical Review Officer for the City will be a licensed physician, either a medical doctor (MD) or osteopath (OD), fully licensed to practice in Iowa. The Medical Officer will have the responsibility of interpreting all tests taken under the provisions of the City's drug policy. The Medical Review Officer will determine if there is a violation of the use of restricted drugs and/or alcohol under this policy and report such specific violations directly to the Human Resources office. That report will be used with other information gathered at the time to determine what, if any, action should be taken with an employee found in violation of the City's Drug and Alcohol Policy.

The MRO will ensure that the chain of custody is complete and sufficient on its face and that proper testing protocol has been followed. An employee or prospective employee shall be provided an opportunity to provide any information to the MRO, which may be considered relevant to the test including identification of prescription or nonprescription drugs currently or recently used, or other relevant medical information.

The City's current Medical Review Officer is: Rick Gerrels M.D., M.R.O.

Testing

Testing – All drug or alcohol testing will be conducted by a laboratory or testing facility that has been approved under the rules of the Department of Public Health of the State of Iowa or U.S. Department of Health and Human Services. When testing for alcohol/drugs, testing will include a urine test.

If a test result other than pre-employment indicates the presence of alcohol or an illegal drug, a second test using an alternate method of analysis shall be conducted. If this test is also positive, a portion of the original sample will be made available for the employee to have his/her own test made at his/her own expense.

An employee other than a new employee or potential new employee shall be accorded a reasonable opportunity to rebut or explain the results of a drug test.

An employee who refuses to be tested when so required will be subject to the full range of disciplinary action, including dismissal. No applicant who refuses to be tested shall be extended an offer of employment. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

Drugs for Which Individuals are Tested – Section 503 of the Drug free Workplace Act of 1988 requires the City of Muscatine to specify drugs for which individuals are tested. The City may test for the following drugs: marijuana, cocaine, amphetamines, opiates, alcohol, and phencyclidines (PCP) or any other drug as approved in advance by the Secretary of the Department of Health and Human Services, or as may be required under State and Federal regulations. For non-DOT employees, the City may test for a specific drug.

In conducting those tests designed to identify the presence of chemical substance in the body, the City shall ensure to the extent feasible that the tests only measure, and that the records of the tests only show or make use of information regarding chemical substance in the body which are likely to affect the ability of the employee to perform his/her duties safely while on the job.

Confirmatory Challenge - Collection of a urine sample for testing of current employees shall be performed so that the specimen is split into two components at the time of collection in the presence of the individual from whom the sample is collected. The second portion of the specimen shall be of sufficient quantity to permit a second, independent confirmatory test. If a confirmed positive test result for drugs or alcohol for a current employee is reported to the employer by the MRO, the City shall notify the employee in writing and inform the employee of the right to request and obtain a confirmatory test of the second sample collected. This second test shall be conducted within seventy-two hours of being notified of a positive result at an approved laboratory of the employee's choice, with the cost being the employee's responsibility. If the results of the second confirmatory test do not confirm the results of the initial confirmatory test, the City shall reimburse the employee for the fee paid by the employee for the second test. The initial confirmatory test shall not be considered a confirmed positive drug test for purposes of taking disciplinary action pursuant to this policy.

Pre-Employment Testing –

The City will require drug testing as part of a pre-employment physical for all employees. *All applicants for City employment must test drug free for employment eligibility. No applicant who refuses to be tested shall be extended an offer of employment.*

Notice of the testing will be a part of any notice or advertisement soliciting applicants for employment, and as part of the employment application. Applicants for employment shall also be personally informed of the requirement for a drug test at the first interview.

The City will check the drug and alcohol testing background of potential new employees for DOT covered positions. This check will include sending a form, with consent from the applicant, to DOT-regulated employers for whom the applicant has worked in the past two years, and asking each applicant, during the first interview, if they have ever failed or refused to take, in the last two (2) years, a DOT pre-employment drug or alcohol test. *A potential employee who has refused to take a DOT pre-employment drug or alcohol test in the past two years will not be eligible for hire.*

A potential new employee who has tested positive for drugs or alcohol in the past two years must provide certification that an evaluation was done by a SAP (Substance Abuse Professional), and that any recommended treatment was completed in order to be eligible for hire.

Random Testing –

The City is required to comply with random drug testing rules as they relate to the Department of Transportation and the Federal Transit Authority. Under these regulations, the City will conduct unannounced drug or alcohol tests of employees who are required to have a Commercial Driver's License (CDL). Tests will be randomly selected from a pool of employees through the Bi-State Regional Commission Drug Testing Consortium, which is based on a computerized randomly generated selection process in which each member of the employee pool has an equal chance of selection.

Employees will only be tested at a time they are scheduled to be at work.

Routine Physicals –

The City will require a drug test as part of any regularly scheduled physical for those who undergo such physicals. Employees shall receive notice at least 30 days prior to the date the physical is scheduled and be informed that a drug test will be part of that physical.

Specific physicals, including a drug test, may be required for those employees who have been exposed to toxic or other unhealthy substances during the course of their work. These tests shall be limited to those specific substances.

Reasonable Suspicion Drug and Alcohol Testing –

Drug or alcohol tests based upon evidence that an employee is using, or has used, alcohol or other drugs in violation of the City's written policy drawn from specific objectives and articulable facts, and reasonable inferences drawn from those facts in light of training and experience. For the purposes of this paragraph, facts and inferences may be based upon, but not limited to, any of the following:

- a. Observable phenomena while at work such as direct observation of alcohol or drug use, or abuse, or of physical symptoms or manifestations of being impaired due to alcohol or other drug use.

- b. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
- c. A report of alcohol use or the use of other drugs provided by a reliable and credible source.
- d. Evidence that an individual has tampered with any drug or alcohol test during the individual's employment with the City.
- e. Information that an employee has caused or contributed to an accident while at work (if the accident does not fall under the procedures governing Post-Accident Testing).
- f. Evidence that an employee has manufactured, sold, distributed/solicited, possessed, used or transferred drugs while on the employer's premises, or while operating the employer's vehicle, machinery, or equipment.

The above list is by no means totally inclusive.

In instances where reasonable suspicion occurs, the following procedures will be followed:

- 1) Employees suspected of being under the influence of drugs or alcohol shall be transported to a designated laboratory for the purpose of drug testing.
- 2) Probable cause incidents shall be documented by a supervisor and one other person.
- 3) The City may perform drug testing on employees involved in vehicular accidents if probable cause is established and in all serious injury accidents.
- 4) In the event an employee is relieved of duties under this section then a "return to duty test" may be required by the employer prior to the employee's return to work.

Workers Compensation/Post Accident

The City may require drug testing to determine if an employee is ineligible to receive Workers Compensation in accordance with 85.16 Subsection 2 of Iowa Workers Compensation Law. Post-accident testing may occur for employees involved in on-the-job accidents or who engage in unsafe on-duty job-related activities that pose a danger to others in the overall operation of the City and may be subject to testing in workers comp situation when circumstances involve:

- 1) a death, or personal injury requiring hospitalization or
- 2) an injury compensable under workers' compensation
- 3) damage to the City's or private property in excess of \$1,000 or,
- 4) for transit employees, when the vehicle is disabled or must be towed as a result of the accident.

Testing for alcohol and controlled substances will be conducted as soon as practicable following an accident which meets the criteria of this section. Alcohol tests must be conducted within

eight hours following the accident; controlled substances tests must be conducted within 32 hours following the accident. The employee must remain readily available for testing until the tests are administered or for these time periods, whichever comes first.

Drug Testing will occur in accidents:

involving the loss of human life; or

in which the driver receives a citation under State or local law for a moving violation arising from the accident, **and:**

an individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or

the accident results in the towing away of a vehicle, or one or more vehicles incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle, or if driving the vehicle(s) would cause more damage to the vehicle(s).¹

For employees not employed in the Transit Division, when the accident involves a commercial motor vehicle(s), tests will be conducted on each surviving driver who was performing safety-sensitive functions with respect to the vehicle.

For employees in the Transit Division, on each surviving covered employee on duty in the transit vehicle at the time of accident, and on any other covered employee whose performance could have contributed to the accident (e.g. mechanic or dispatcher), as determined by the employer using the best information available at the time of decision.

The employee will be paid for the time of the test(s), including the time in which the employee is transported between the work site and the testing site. The employee may not perform safety-sensitive work until the results of the tests are reported.

If the results of the alcohol and/or drug test(s) are negative, the employee will be returned to his/her regular duties and be paid for any scheduled hours lost between the time the tests are conducted and the time the test results are reported.

If the result of an alcohol test is “non-negative,” the employee may not perform safety-sensitive work for 24 hours.

If the results of the alcohol and/or drug test(s) are positive, the employee will be referred to the EAP and disqualified for safety-sensitive work until he/she is released to return to safety-sensitive work.

The employee may use paid vacation, compensatory and/or sick leave until such leave is expended, with the following exception. Sick leave may be used for outpatient rehabilitation only when it is not possible for the employee to undergo rehabilitation outside of work hours. If

available; or damage to the headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative. (See 49 CFR 382.107, 390.5, 653.7, and 654.7).

the employee chooses not to use paid leave, or if the paid leave has been expended, the disqualification period will be without pay.

Nothing in this section shall preclude a supervisor from requiring a reasonable suspicion test following an accident.

Use of Alcohol

The use of, or being under the influence of alcohol by any employee while performing City business, while in a City facility, vehicle, or on equipment is prohibited. Use of alcohol while on duty is prohibited. *An employee who uses alcohol while on the job is subject to disciplinary actions up to and including dismissal, for the first occurrence, when the use is discovered through means other than the administration of an alcohol test*

Employees are prohibited from having a blood alcohol concentration of .040 or greater while on duty. An alcohol test result below .020 is considered negative; a result of .020 or greater but less than .040 is considered "non-negative." *After a result of "non-negative," the employee may not perform or continue to perform safety-sensitive work for 24 hours following the test.*² The employee may be sent home for the remainder of the day or placed in non-public contact job duties. (A return to duty test is not necessary after a non-negative alcohol test result.)

When an employee tests greater than 0.04% on an alcohol test, they will be referred to EAP for evaluation, counseling and recommendations for treatment, return-to-work and follow-up testing.

Pre-duty Use of Alcohol

Regular Shifts and Scheduled Overtime – Employees are prohibited from drinking alcohol within four hours prior to the start time of a regular shift or a scheduled overtime assignment. *An employee who violates this prohibition is subject to disciplinary actions up to and including dismissal, for the first occurrence.*

Standby – Employees are prohibited from drinking alcohol while on standby. *An employee who violates this prohibition is subject to disciplinary actions up to and including dismissal, for the first occurrence.*

Unscheduled Overtime Assignments – If an employee is offered an unscheduled overtime assignment, he/she is responsible for declining the offer if he/she has used alcohol during the previous four hours. *An employee who begins work in violation of this prohibition is subject to disciplinary actions up to and including dismissal, for the first occurrence.*

Use following a Vehicular Accident – Employees who are involved in an “accident,” as it is defined in this policy, are prohibited from consuming alcohol for eight (8) hours following the accident or until tested for alcohol, whichever comes first. The employee must remain readily available for testing during this eight-hour period. *An employee who violates these prohibitions is subject to disciplinary actions up to and including dismissal, for the first occurrence.*

Refusal to Submit to a Required Test – Employees are prohibited from refusing to submit a required alcohol and/or drug test. *An employee’s refusal to submit to a required drug or alcohol test shall be treated as a positive test. The employee will be referred to the EAP and disqualified from safety-sensitive work until he/she is released to return to safety-sensitive work.*

Legal Drugs

The use of, or being under the influence of any legal drug by any employee while performing City business, while in a City facility, vehicle, or on equipment, is prohibited if the drug impairs the employer’s ability to perform his/her job or assignment.

Employees who use prescription and over-the-counter medications are required to report all usage to their department head when it has been determined by their attending physician that their use of prescription medication may impair their ability to perform their job or when use of prescription medication, following label instructions as outlined by the manufacturer, would present an impairment to the individual in providing for safe and effective operation of machinery, driving ability, or impaired motor skills. It shall be required of the employee to report such drug usage to the department head. Failure to adhere to restrictions from either an attending physician for prescription medication or from the manufacturer’s recommendation for over-the-counter medication may also result in disciplinary action.

Illegal Drugs

The use, sale, purchase, transfer, or possession of an illegal drug by any employee while in a City facility, vehicle, equipment, or while performing City business is prohibited.

Departmental Work Rules

Nothing in these rules and regulations precludes management of any particular City department from establishing work rules that apply to that department. Such work rules cannot be less stringent than this policy.

Employee Assistance and/or Discipline

Employee Assistance – The City shall provide employee assistance under the City of Muscatine Employees Assistant Program (E.A.P.) for drug and alcohol problems. The City shall retain the right to evaluate employees in “probable cause” situations and, in addition, shall take no disciplinary action against an employee due to the employee’s drug involvement the first time

the employee's drug test indicates the presence of alcohol/drugs, if the employee undergoes a substance abuse evaluation and if the employee successfully completes a substance abuse treatment as determined, if treatment is recommended by the evaluation. However, if an employee fails to undergo the substance abuse evaluation when required under the results of a positive drug test or fails to successfully complete the substance abuse treatment when recommended by an evaluation, the employee may be disciplined up to and including discharge. If subsequent violations occur, the City may take disciplinary action as it sees fit.

Nothing in this section shall prohibit an employee from seeking assistance on his/her own through the City of Muscatine Employee Assistance Program (E.A.P.) prior to any detected violation.

Discipline – Discipline under this program will be administered under the City of Muscatine Discipline Policy, which shall include reasonable notice and an opportunity for the employee to explain the results of a drug test.

Required Rehabilitation after a Positive Alcohol and/or Drug Test

During any period of disqualification from safety-sensitive work, the employer may assign the employee to work that is not safety-sensitive. The employee will receive his/her regular pay for work assigned.

An employee who tests positive for alcohol or drugs is obligated to successfully complete any inpatient or outpatient rehabilitation recommended by the EAP. *If the EAP notifies the City that the required rehabilitation program is not being satisfactorily completed, disciplinary actions up to and including dismissal may be exercised for the first occurrence.*

Consequences of a Repeat Positive Alcohol and/or Drug Test

The City is obligated to conduct its business in an environment that is safe for the workforce and the public. The disciplinary policies relating to the testing program are intended to balance this obligation with the desire to help rehabilitate employees with problems involving alcohol and/or prohibited drugs. However, the obligation to the safety of the workforce and the public must ultimately take precedence over the rehabilitation of employees. *Any employee who fails an alcohol or drug test (other than a progress test taken during the initial treatment period while the employee is disqualified from work) more than once in any ten year period will be dismissed.*

Education and Training

Policy and guidelines will be distributed by the City of Muscatine to each covered employee and provided to a representative of the employee labor organization. Employees will be provided with informative training regarding the effects of alcohol and drug use, company policy, and procedures for identifying alcohol or drug problems in others. Employees who have questions about the City's drug and alcohol testing program should contact the City's Human Resources Coordinator at City Hall. The City's Employee Assistance Program is available by contacting

Genesis at 264-2725. The Employee Assistant Counselor assigned to the city is Cassie Ridenour, RN, LMHC.

Supervisors designated to make reasonable suspicion determinations for drug or alcohol testing under this policy shall attend a minimum of two hours of initial training and to attend, on an annual basis thereafter, a minimum of one hour of subsequent training. The training shall include, but not be limited to, information concerning the recognition of evidence of employee alcohol and other drug abuse, the documentation and corroboration of employee alcohol and other drug abuse, and the referral of employees who abuse alcohol or other drugs to the EAP.

Confidentiality of Test Results

The City shall protect the confidentiality of the results of any alcohol/drug test conducted on an employee. A file separate from the employee's personnel file will be used for medical records and reports of testing.

In order to comply with Section 503(e) of the Drug Free Workplace Act of 1988, the results of a drug test of a City of Muscatine employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be—

- To the agency in which the employee is receiving counseling or treatment, or is otherwise participating;
- To the Medical Review Officer;
- To the Human Resources Manager. The Human Resources Manager may notify the department head/supervisor of the employee's absence from work or work responsibilities.
- Pursuant to the order of a court of competent jurisdiction or where required by the United States Government to defend against any challenge against any adverse personnel action.

Exclusions

This policy does not apply to police officers when such prohibited activity occurs as a required part of such officer's performance of his/her official duties.

When applicable, state and federal laws, and any applicable collective bargaining agreement take precedence over this policy.

Directives

The City of Muscatine establishes this policy in compliance and conformance with the following guidelines:

Executive Order 12564. On September 15, 1986, former President Reagan signed Executive Order 12564, mandating a drug-free federal workplace. The Executive Order calls for random drug testing in certain "sensitive" governmental positions.

Drug-Free Workplace Act of 1988. Effective March 18, 1989, recipients of federal contracts for procurement of property or services valued at \$25,000 or more and federal grants, regardless of amount, are required to take measures to combat drug use in the workplace.

Federal requirements and Final rules.

State of Iowa Regulations.

Employee Compliance

It is a condition of continued employment by the City of Muscatine that each employee complies with the laws on controlled substances. Any known violation of said laws occurring in the workplace must be reported to the employee's supervisor within five days of occurrence. Any employee convicted of violating any controlled substance law, operating while intoxicated, or public intoxication, must notify his/her supervisor of the conviction within five days of the conviction. Employees are responsible for notifying their supervisor of any use or suspected use of controlled substances or alcohol by any person or employee that may affect work performance.

Cost of Treatment

All costs for treatment will be shared by the City and the employees according to the applicable guidelines of the EAP and the health insurance program.