



City Council Memorandum

To: Mayor Fasbender & City Councilmembers
From: Julie Flaten, Administrative Services Director
Date: May 18, 2020
Item: Update to Personnel Policy Appendix I – Drug & Alcohol Testing

Council Action Requested:

Approve Personnel Policy Appendix I update to the City's Drug & Alcohol Testing Policy.

Background Information:

Earlier this year the Federal Motor Carrier Safety Administration created a Commercial Driver's License Drug and Alcohol Clearinghouse with the goal of improving the safety on the Nation's roadways. This clearinghouse provides employers access to information to make decisions about which employees to place in safety-sensitive functions, including operating a commercial motor vehicle.

The City will be required to annually conduct a limited query on existing employees who hold a commercial driver's license (CDL). The City will also be required to conduct a full query on applicants for positions which require a CDL. Both queries require consent. The Clearinghouse also contains several reporting requirements the City will follow.

The City's Drug & Alcohol Testing Policy needs to be updated to include the Clearinghouse requirements.

Financial Impact:

N/A

Advisory Commission Discussion:

N/A

Council Committee Discussion:

N/A

Attachments:

- Drug & Alcohol Testing Policy Updates

**City of Hastings
Employee Handbook**

**Appendix I
Drug and Alcohol Testing Policy**

1. Introduction

The City of Hastings recognizes that safety problems are created when employees use or abuse illegal drugs and/or alcohol. The City is concerned about providing a safe workplace for its employees with the goal of attaining and maintaining a drug and alcohol free workplace.

The City also recognizes the concerns of employees if they are part of drug testing in the workplace. In order to guard against inaccurate test results, the testing policies and procedures will conform to the requirements of state law as set forth in Minnesota Statutes Chapter 181 and the Federal Drug-Free Workplace Act of 1988. Employees are required to adhere to the responsibilities and requirements outlined in Section 3.70, Drug Free Workplace.

2. Definitions

- a. "Alcohol" means ethyl alcohol.
- b. "Confirmatory Test" and "Confirmatory Retest" mean a drug or alcohol test that uses a method of analysis allowed under the program listed in Minn. Stat. 181.953 Subd. 1.
- c. "Drug" means a controlled substance as defined in Minn. Stat. 152.01, Subd. 4.
- d. "Drug and Alcohol Testing" and "Drug or Alcohol Test" mean analysis of a body component sample according to the standards established under one of the program(s) listed in Minn. Stat. 181.953, Subd. 1 for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.
- e. "Drug Paraphernalia" has the meaning set forth in Minn. Stat. 152.01, Subd. 18.
- f. "Employee" means a person employed by the City. This definition includes all employees defined in the City Employee Handbook.
- g. "Employer" means the City of Hastings.
- h. "Initial Screening Test" means a drug or alcohol test which uses a method of analysis under one of the programs listed in Section 181.953, Subd. 1 or alcohol in a sample.
- i. "Job Applicant" means a person, who applies to become an employee of the City of Hastings, and includes a person who has received a job offer made contingent on the person passing drug and alcohol testing(s).
- j. "Positive Test Result" means a finding of the presence of drugs, alcohol, or their metabolites in the sample tested in the levels contained in the standards of one of the programs listed in Minnesota Statutes 181.953, Subd. 1.
- k. "Reasonable Suspicion" means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.
- l. "Safety-Sensitive Position" means a job, including any supervisory or management position, in which an impairment caused by drug or alcohol usage would threaten the health or safety of any person; all sworn and non-sworn personnel, excluding clerical employees, in the Hastings Police Department are safety-sensitive positions.
- m. "Under The Influence" means having the presence of a drug or alcohol at or above the level of a positive test result.

3. Employees subject to Drug or Alcohol Testing

No person will be tested for drugs or alcohol under this policy without the person's consent. The City will request or require an individual to undergo drug or alcohol testing only under the circumstances described in this policy.

- a. Job Applicants—job applicants may be requested or required to undergo drug and alcohol testing after a job offer has been conditionally made and before commencing employment in the position.

a. Beginning in 2020, an applicant whose job requires a Commercial Driver's License (CDL) must provide consent to the City, and successfully pass a full query of the Federal Motor Carrier Safety Administration's Clearinghouse. In addition, at least once a year, the City will conduct a limited query of the Clearinghouse for each currently employed CDL driver. If the limited query reveals that the Clearinghouse has information about resolved or unresolved drug and alcohol program violations by a candidate or current employee, he or she will be asked to provide electronic consent to a full query of the Clearinghouse (unless he or she has previously provided electronic consent). In the event a full query of the Clearinghouse reveals unresolved violation information for a candidate or current employee, the driver will not be permitted to perform safety-sensitive functions, including the operation of a Commercial Motor Vehicle and, in the case of a candidate, may have their conditional offer of employment rescinded or, in the case of a current employee, may be subject to discipline.

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- b. Reasonable Suspicion Testing—The City may request or require an employee to undergo drug and alcohol testing if there is a reasonable suspicion that the employee:
- i. Is under the influence of drugs or alcohol while the employee is working; while the employee is on the City's premises; or operating City vehicles, machinery, or equipment; or
 - ii. Used, possessed, sold or transferred drugs, alcohol, or drug paraphernalia while the employee is working; while the employee is on City premises; operating City vehicles, machinery, or equipment; (This is also a violation of the City's Drug Free Workplace Policy adopted on 11-18-96. See Section 3.70, on the City's Drug Free Workplace Policy); or
 - iii. Has sustained a work related personal injury as that term is defined in Minnesota Statutes 176.011, Subd. 16, or has caused another person to die or sustain personal injury; or
 - iv. Has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident ~~resulting in total property damage exceeding \$1,000;~~ or
 - v. Has discharged a firearm other than
 1. on a target range, or
 2. while conducting authorized ballistic tests, or
 3. as authorized by City of Hastings Police Department General Order concerning dangerous or suffering animals; or
 - vi. Has, as determined only by employee's Department Head, or the City Administrator, engaged in an act or omission related to the performance of the job, whether committed on or off duty, that logically requires or justifies testing, revealed clear and compelling necessity by the nature of the incident.
- c. Required Random Drug and Alcohol Testing for City Employees with Commercial Drivers Licenses—City of Hastings employees who are required to possess a valid commercial drivers license as a condition of their employment position are subject to applicable State or Federal random drug testing requirements as established and adopted by the City of Hastings.
- d. Other Testing—The City may permit an employee who has requested a drug and alcohol test to undergo testing in accordance with the procedures established by the policy or by State or Federal Law.

- e. Treatment Program Testing—The City may request or require an employee to undergo drug and alcohol testing if the employee has been referred by the City for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program, in which case the employee may be requested or required to undergo drug or alcohol testing without prior notice during the evaluation or treatment period of up to two (2) years following completion of any prescribed chemical dependency treatment program.

4. Refusal to Undergo Testing

- a. **Job Applicants**—If a job applicant refuses to undergo drug or alcohol testing requested or required by the City, no such test shall be given, and the job applicant shall be deemed to have withdrawn the application for employment.
- b. **Employees**—If any employee refuses to undergo drug or alcohol testing requested or required by the City, no such test shall be given, and the appointing authority shall recommend that the employee be discharged from employment on grounds of insubordination. In accordance with the Federal Motor Carrier Safety Administration's (FMCSA) Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse reporting requirements, beginning January 6, 2020, the City will report a driver's refusal to submit to a DOT test for drug or alcohol use to the Clearinghouse within three business days.
- c. **Refusal on Religious Grounds**—No employee or job applicant who refuses to undergo drug or alcohol testing of a blood sample upon religious grounds shall be deemed to have refused unless the employee or job applicant also refuses to undergo drug or alcohol testing of a urine sample.

Formatted: Font: Bold, No underline**Formatted:** Font: 11 pt, Not Highlight**Formatted:** Font: 11 pt**Formatted:** Font: Not Bold, No underline**5. Procedure for Testing**

- a. **Notification Form**—Before requesting an employee or job applicant to undergo drug or alcohol testing, the City shall provide the individual with a form on which to:
 - i. Acknowledge that the individual has seen a copy of the City of Hastings drug and alcohol testing policy, and
 - ii. Indicate consent to undergo the drug and alcohol testing.
- b. **Test Sample**—the test sample shall be obtained in a private setting, and the procedures for taking the sample shall ensure privacy to employees and with job applicant to the extent practicable, consistent with preventing tampering with the sample, and may include a witness. No test sample shall be taken on the City's premises, except when deemed necessary, i.e. after-hours, and done by a City authorized provider, and the test sample shall not be handled by City of Hastings employees.
- c. **Identification of Samples**—Each sample shall be sealed into a suitable container free of any contamination that could affect test results. The sample shall be identified for processing by the licensed testing laboratory.
- d. **Chain of Custody**—the City shall use a testing laboratory that has established reliable chain-of-custody procedures to ensure proper recordkeeping, handling, labeling, and identification of the samples to be tested. The procedures must require the following:
 - i. Possession of a sample must be traceable to the employee from whom the sample is collected through the time the sample is delivered to the laboratory;
 - ii. The sample must always be in the possession of, must always be in view of, or must be placed in a secure area by a person authorized to handle the sample;
 - iii. A sample must be accompanied by a written chain-of-custody record; and
 - iv. Individuals relinquishing or accepting possession of the sample must record the time the possession of the sample was transferred and must sign and date the chain of custody record at the time of transfer.

- e. Laboratory—the City shall use the services of a testing laboratory that meets one of the following criteria:
- i. Drug Testing
 1. Is certified by the National Institute on Drug Abuse as meeting the mandatory guidelines published at 54 Federal Register 11970 to 11989, April 11, 1988;
 2. Is accredited by the College of American Pathologists, 325 Waukegan Road, Northfield, Illinois, 60093-2750, under the forensic urine drug testing laboratory program; or
 3. Is licensed to test for drugs by the State of New York, Department of Health, under Public Health Law, article 5, title V, and rules adopted under that law.
 - ii. Alcohol Testing
 1. Licensed to test for drugs and alcohol by the state of New York, Department of Health, under Public Health Law, article 5, title V, and the rules adopted under that law; or
 2. Accredited by the College of American Pathologists, 325 Waukegan Road, Northfield, Illinois, 60093-2750, in the laboratory accreditation program.
- f. Retention and Storage—All samples that produced a positive test result shall be retained and properly stored for at least six (6) months.
- g. Test Report—The testing laboratory shall prepare a written report indicating the drugs, alcohol, or their metabolites tested for and whether the test produced negative or positive test results. The testing laboratory shall disclose that report to the City within three (3) working days after obtaining the final test results.
- i. Notice of Test Results—Within three (3) working days after receipt of the test result from the testing laboratory, the City shall inform an employee or job applicant who has undergone drug or alcohol testing in writing of a negative test result on an initial screening test of a negative test result or of a positive test result on a confirmatory test. The City shall also inform an employee or job applicant to the following rights pursuant to Minn. Stat. 181.953:
 1. The right to request and receive from the City a copy of the test result report.
 2. The right to request within five (5) working days after notice of a positive test result a confirmatory test retest of the original sample at the employee's or applicant's own expense. If a confirmatory retest is conducted in accordance with Minn. Stat. 181.953, Subd. 1 by a licensed laboratory at the same threshold detection levels as used in the confirmatory test, and the confirmatory retest does not result in a positive test result, the City shall reimburse the actual cost of the confirmatory retest in an amount not to exceed \$100.00.
 3. The right to submit information to the City within three (3) working days after a notice of a positive test result to explain that result.
 4. The right of an employee, for whom a positive test result on a confirmatory test was the first such result on a drug or alcohol test requested by the City, not to be discharged unless the City has first given the employee an opportunity to participate in either a drug or alcohol counseling or rehabilitation program. Participation in a counseling or rehabilitation

program will be at the employee's own expense or pursuant to coverage under an employee's benefit plan. The City may determine which type of program is more appropriate for the employee after consultation with a certified chemical use counselor or physician trained in the diagnosis of chemical dependency. The employee may be discharged if they have either refused to participate in the counseling or rehabilitation or has failed to successfully complete the program. Withdrawal from the program before its completion or a positive test result on a confirmatory test after completion of the program will be considered evidence that the employee failed to successfully complete the program.

5. The right to be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative. Employees may be temporarily suspended pending the results of a confirmatory test.
6. The right not to be discharged, disciplined, discriminated against, or required to be rehabilitated on the basis of medical history information revealed to the City concerning the reliability of, or explanation of, a positive test result unless the employee or job applicant was under an affirmative duty to provide the information before, upon, or after hire.
7. The right to access the information on the employee's personnel file relating to positive test result reports and other information acquired in the drug and alcohol testing process including conclusions drawn from and actions taken based on the reports or other acquitted information.
- ~~8.~~ The right of an employee or a job applicant, who has received a job offer made contingent on the applicant passing drug and alcohol testing, to not have the offer withdrawn based on a positive test result from an initial screening test that has not been verified by a confirmatory test.

6. Action After Test

- a. Job Applicants—The appointing authority will not withdraw an offer of employment made contingent on the job applicant passing drug and alcohol testing based on a positive test result from an initial screening test that has not been verified by a confirmatory test. When there has been a positive test result in a confirmatory test and in any confirmatory retest, the appointing authority will withdraw the contingent offer of employment if the City determined in accordance with the Minnesota Human Rights Act that alcohol or drug usage or abuse:
 - i. Prevents the job applicant from performing the essential functions of the job in question; or
 - ii. Constitutes a direct threat to property or the safety of others; or
 - iii. Otherwise constitutes a bona fide occupational qualification.
- b. Employees—The City will not discharge, discipline, discriminate against, or request or require rehabilitation of an employee solely on the basis of a positive test result from an initial screening test. Where there has been a positive test result in a confirmatory test and in any confirmatory retest, the City may do the following:
 - i. First Positive Test Result—Give the employee an opportunity to participate in either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate. The City may determine which program is more appropriate after consultation with a certified chemical use counselor or physician trained in the diagnosis and treatment of chemical dependency. Participation in a counseling or rehabilitation program will be at the employee's own expense or pursuant to coverage

under an employee's own benefit plan. If the employee either refuses to participate in the counseling or rehabilitation program or fails to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a positive test result on a confirmatory test after completion of the program, and alcohol or drug abuse prevents the employee from performing the essential functions of the job in question or constitutes a direct threat to property or the safety of others or otherwise constitutes a bona fide occupational qualification, the appointing authority will recommend that the employee be disciplined; including but not limited to, discharge from employment.

- ii. **Suspensions and Transfers**—Notwithstanding any other provisions herein, the City may temporarily suspend the tested employee with pay for up to ninety (90) days or transfer that employee to another position at the same rate of pay pending the outcome of the confirmatory retest, and, if requested, the confirmatory retest, provided that the City believes that it is necessary to protect the health or safety of the employee, co-employees, or the public.
 - iii. **Other Misconduct**—Nothing in this policy limits the right of the City to discipline or discharge an employee on grounds other than a positive test result in a confirmatory test, including for a violation occurring in the workplace.
7. **Data Privacy**—The City of Hastings will not disclose the test result reports and other information acquired in the drug or alcohol testing process to another employee or to a third party individual, governmental agency, or private organization without the written consent of the employee tested, unless permitted by law or court order. Beginning in 2020, the City will be required to query and report to the agency's Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse prior to hiring new drivers, will conduct annual checks of existing CDL-drivers, and will report certain violations of the DOT drug and alcohol testing program for holders of CDL's.

In accordance with the Federal Motor Carrier Safety Administration's (FMSCA) Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse reporting requirements beginning January 6, 2020, the City will report the following information to the Clearinghouse within three business days:

- a. A DOT alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
- b. A negative DOT return-to-duty test result;
- c. The driver's refusal to submit to a DOT test for drug or alcohol use;
- d. Actual knowledge a driver has used alcohol or controlled substances, based on the employer's direct observation, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances, or an employee's admission of alcohol or controlled substance abuse except as provided in § 382.121) of:
 - i. On duty alcohol use pursuant to §382.205;
 - ii. Pre-duty alcohol use pursuant to §382.207
 - iii. Alcohol use following an accident pursuant to §382.209
 - iv. Controlled substance use pursuant to §382.213
- e. Employers will also report negative return-to-duty (RTD) test results and the successful completion of a driver's follow-up testing plan as ordered by a SAP.

8. **Rights of Employees**—An employee has the right to offer the City a written explanation of a positive test result on a confirmatory test within three (3) working days after notice of the positive test result, and has a right to request within five (5) working days after notice of a positive test result a

confirmatory retest of the original sample at another licensed testing laboratory at the employee's or job applicant's own expense.

9. **Appeals Procedure**—Concerning disciplinary actions taken pursuant to this drug and alcohol testing policy, available appeal procedures may be taken:
 - a. **Temporary Employees**—Temporary employees shall have no right of appeal.
 - b. **Non-Veterans on Probation**—An employee who has not completed the probationary period and who is not a veteran has no right of appeal.
 - c. **Non-Veterans After Probation**—A regular employee who has completed the review period and who is not a veteran has a right to appeal. Disciplinary actions taken pursuant to his drug and alcohol testing policy are appealable pursuant to the procedures established in the City's Grievance and Discipline policies.
 - d. **Veterans**—An employee who is a veteran has the right to appeal to the City Council a permanent demotion (including salary decreases), or a discharge, if the employee submits a notice of appeal within sixty (60) calendar days of the action, regardless of status with respect to the review period. An employee who is a veteran may have additional rights under the Veterans Preference Act, Minn. Stat. 197.46.
 - e. **Employees Covered under Collective Bargaining Units Contracts**—An employee who is covered by a collective bargaining agreement may elect to seek relief under the terms of that agreement by contacting the appropriate union and initiating grievance procedures in lieu of taking up the grievance procedure outlined in the City Employment Handbook.

All notice of appeal not covered under a collective bargaining agreement must be submitted in writing to the Hastings City Administrator, 101 4th Street East, Hastings, MN 55033.

10. **Good Faith Effort**—The City of Hastings will make a continuing good faith effort to maintain a drug-free workplace through the implementation of its Drug and Alcohol Testing Policy.