

**A RESOLUTION ADOPTING ALCOHOL AND DRUG TESTING POLICY
FOR COMMERCIAL DRIVER'S LICENSE POSITIONS FOR
THE CITY OF HENDERSONVILLE**

WHEREAS, City Council recognizes mandatory testing requirements for alcohol and controlled substances as outlined in The Omnibus Transportation Employee Testing Act of 1991; and

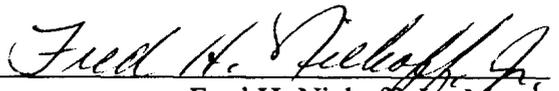
WHEREAS, City Council requires that any commercial motor vehicle operator who is subject to the commercial driver's license (CDL) requirement in the State of North Carolina be tested for alcohol and controlled substances; and

WHEREAS, the City of Hendersonville will provide a safe and productive work environment for all employees and its citizens; and

WHEREAS, City of Hendersonville employees shall report for work and remain on the job in a condition in which they can safely and efficiently perform their job duties.

NOW, THEREFORE, it is hereby RESOLVED that the Alcohol and Drug Testing Policy, which are attached hereto, are adopted as the official policy of the City of Hendersonville.

Adopted the seventh day of December, 1995 and to become effective the first day of January, 1996.


Fred H. Niehoff, Jr., Mayor

ATTEST:



Tammie K. Hill, City Clerk

CITY OF HENDERSONVILLE

ALCOHOL AND DRUG TESTING POLICY

JANUARY 1, 1996

General

The City of Hendersonville will provide a safe and productive work environment for all employees and its citizens. Employees shall report for work and remain on the job in a condition in which they can safely and efficiently perform their job duties.

The City of Hendersonville expressly prohibits the possession, sale, use, distribution, dispensation, manufacture of controlled substance or related paraphernalia by City employees while at the workplace. Such an act is grounds for immediate dismissal.

The City of Hendersonville expressly prohibits the possession, sale, use, distribution, dispensation, manufacture, purchase or storage of alcohol by City employees while at the workplace. Such an act is grounds for immediate termination.

Employees with substance abuse problems are encouraged to seek help from counselors, from other types of medical professionals, or in treatments facilities. Participation in a treatment or rehabilitation program for substance abuse will not be grounds for dismissal provided the employee voluntarily enters such a program prior to being identified as a substance abuser by means identified in this policy.

Additional Requirements

The Omnibus Transportation Employee Testing Act of 1991 (final rules implemented February 15, 1994) requires, in part, that any commercial motor vehicle operator who is subject to the commercial driver's license (CDL) requirement in the State of North Carolina be tested for alcohol and controlled substances.

Department of Health and Human Services (DHHS) mandatory guidelines for controlled substances testing and quality assurance standards shall be used. Controlled substances testing shall be conducted by a laboratory certified by the Substance Abuse and Mental Health Services Administration (SAMHSA).

Federally mandated alcohol testing must be conducted by a Breath Alcohol Technician (BAT) trained to proficiency as demonstrated by successful completion of a course of instruction. Alcohol Testing shall be conducted using an Evidential Breath Testing (EBT) device.

The employees of the City of Hendersonville shall comply with all rules and regulations set forth in the following policy.

Policy

1. Employees Who Must Be Tested for Alcohol and Drugs

- A. Drivers of commercial motor vehicles with a gross vehicle weight rating (GVWR) of 26,001 pounds or more.
- B. Drivers of commercial motor vehicles with a gross combination weigh rating of 26,001 pounds or more, including a towed vehicle with a gross vehicle weight rating of 10,000 or more.
- C. Drivers of motor vehicles designed to transport 16 or more passengers, including the driver.
- D. Drivers of motor vehicles of any size transporting hazardous materials and amounts requiring placarding.

Note: Fire Department personnel who operate emergency equipment are not covered by these rules.

2. Types of Drug and Alcohol Tests Required by the Regulations

- A. **Pre-Employment Testing** - Drug testing only must be conducted prior to the first time a driver performs safety-sensitive functions. This testing must be conducted on external applicants as well as current employees transferring into positions requiring the performance of safety-sensitive functions. The test results must indicate a verified negative drug test.
- B. **Post Accident Testing** - Must be conducted on any surviving driver who was performing safety-sensitive functions with respect to the vehicle if:
 - a. the accident involved a fatality; or,
 - b. the driver receives a citation under State or local law for a moving traffic violation arising from the accident.

Testing for drugs and alcohol should occur within two hours of the accident. If the employee is unable to be tested within two hours, reasons for the delay must be documented. If an alcohol test required by this section is not administered within eight hours of the accident, attempts to conduct the alcohol test shall cease and the reason for the inability to conduct the test shall be documented. If a drug test required by this section is not administered within thirty-two hours of the accident, attempts to conduct the drug test shall cease and the reason for the inability to conduct the test shall be documented.

- C. Random Testing - Must be conducted on a random, unannounced basis throughout the year on employees who perform safety-sensitive functions. Random testing for drugs and alcohol shall be conducted at the rate mandated by the Regulations. During the first year of the program. Regulations state that a minimum of 25 percent of the CDL holders must be tested for alcohol and 50 percent for drugs.
- D. Reasonable Suspicion Testing - Must be conducted when a trained supervisor or City official believes an employee has used a prohibited drug or has misused alcohol as defined in this Policy. The determination of reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odor of the driver.

Testing for alcohol should occur within two hours of the determination of a reasonable suspicion. If the employee is unable to be tested within two hours, reasons for the delay must be documented. If an alcohol test required by this section is not administered within eight hours, attempts to conduct the alcohol test shall cease and the reason for the inability to conduct the test shall be documented.

3. Prohibited Conduct

- A. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. A breath Alcohol Test result of 0.04 or greater is considered a positive test result.
- B. No driver shall be on duty or operate a commercial motor vehicle while the driver is in possession of alcohol.
- C. No driver shall use alcohol while performing safety-sensitive functions.
- D. No driver shall perform safety-sensitive functions within four hours after using alcohol.
- E. No driver required to take a post-accident alcohol test as defined in this policy shall use alcohol for eight hours following the accident, or until he undergoes a post-accident alcohol test, whichever comes first.
- F. No driver shall refuse to submit to an alcohol or drug test required by pre-employment, post-accident, random, reasonable suspicion, or return-to-duty testing requirements.
- G. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the driver

that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle.

- H. No driver shall report to duty, remain on duty or perform a safety-sensitive function, if the driver tests positive for drugs.

4. Consequences of Engaging in Prohibited Conduct

- A. A driver who does not pass the drug test will be terminated.
- B. A driver who does not pass the Breath Alcohol Test will be terminated.
- C. A driver who refuses to submit to a drug or alcohol test as required by this policy will be terminated.
- D. A driver who has a confirmed Breath Alcohol Test result of 0.02 - 0.039 shall not be allowed to continue to perform safety-sensitive functions. The employee will be removed from duty without pay for this 24-hour period and will receive a notation in their personnel file about the importance of reporting to work without the presence of alcohol in their system. The driver can be subject to a return-to-duty test.
- E. A driver who tests positive for a controlled substance and/or alcohol shall be referred by the Personnel Director to a Substance Abuse Professional (SAP) for evaluation, counseling, and further treatment at no cost to the City of Hendersonville.

5. Additional Requirements

- A. As required by the Federal Drug-Free Workplace Act, if an employee is convicted of a violation of a criminal drug statute and the violation occurred while the employee was at work, the employee must notify their department head of the conviction within five (5) days after the conviction. Failure to notify the department head of the conviction will result in termination.
- B. All drug test results are reviewed and interpreted by a Medical Review Officer, or MRO. The MRO is a licensed physician with knowledge of substance abuse disorders.

If the laboratory reports a positive test result to the MRO, the MRO will contact the driver, typically by telephone, and discuss the results with them. The MRO attempts to determine if there is a legitimate medical reason for the driver to have the drug in his system. If there is none, the test result is reported as positive. If there is a legitimate medical purpose for the use of the drug, the test result is reported as negative.

- C. An employee who does not pass the drug or alcohol test and is terminated will not be considered for re-employment until he provides documentation suitable to management that they have successfully completed an alcohol and/or drug rehabilitation program and they pass a pre-employment drug test.
- D. An applicant who does not pass the pre-employment drug test will not be disqualified from the application process. They will not be eligible for hire until they are able to show that they successfully completed a drug or alcohol rehabilitation program.
- E. An employee or applicant receiving notification from the MRO of a positive result of the first test has the right within 72 hours to request a test of the "split" specimen. If the employee makes this request, the split specimen is sent to another DHHS-certified laboratory for the test. A request for such will be at no cost to the City of Hendersonville. If you do not contact the MRO within 72 hours but can prove to the MRO that you had a legitimate reason for not doing so, the MRO can order a "split" specimen test.

6. Definitions

- A. Alcohol Test - A test for the presence of alcohol in the body. This presence must be determined by the use of Breath Alcohol Test or other device approved by USDOT.
- B. Drug Test - A test for the presence of the following drugs or drug metabolites in the urine or blood of the employee:
 - a. Amphetamines (including Methamphetamine)
 - b. Cannabinoids (Marijuana)
 - c. Cocaine (including Crack)
 - d. Opiates
 - e. Phencyclidine (PCP)
 - f. Other drugs may also be included as directed by Federal law or expanded City policy.
- C. Negative Drug Test - A drug test which does not show the presence of drugs at a level specified to be a positive test.
- D. Positive Drug Test - A drug test which does indicate the presence of a drug or drug metabolite in the urine or blood at the level specified to be positive by the Substance Abuse and Mental Health Services (SAMHSA). All positive results will be confirmed using a different technology than the first test, such as the Gas Chromatography Mass Spectrometry (GCMS) process.

- E. Negative Alcohol Test - An alcohol test which indicates a breath alcohol concentration of less than 0.02.
- F. Positive Alcohol Test - An alcohol test which indicates a breath alcohol concentration of 0.04 or greater.
- G. Refusal To Submit - Occurs when a driver:
 - a. fails to provide an adequate amount of urine for a drug test without a valid medical explanation after he has received notice of the test
 - b. fails to provide an adequate amount of breath for an alcohol test without a valid medical explanation after he has received notice of the test
 - c. engages in conduct that clearly indicates that he is failing to follow through with the testing process or conduct that interferes with the ability to obtain an adequate specimen.
- H. Safety Sensitive Function - The following list of activities constitutes safety-sensitive functions:
 - a. Driving a commercial motor vehicle
 - b. Inspecting, servicing, or conditioning any commercial motor vehicle
 - c. Any time at a City facility or other public property waiting to operate a commercial motor vehicle
 - d. Performing all other functions in or upon any commercial motor vehicle
 - e. Loading or unloading a vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle
 - f. All time spent performing the driver requirements associated with an accident
 - g. Repairing, obtaining assistance, or remaining in attendance of a disabled commercial vehicle.

The employees of the City of Hendersonville having questions concerning this Alcohol and Drug Testing policy should contact the Personnel Director at 697-3000.

Adopted by the City Council at a regular meeting held December 7, 1995.

Estimated cost based on 40 CDL drivers:

Annual Program Administration Fee:		\$125.00
Annual Estimate for Drug Testing	20 @ \$39.00 =	\$780.00
Annual Estimate for Alcohol Testing	10 @ \$33.00 =	\$330.00
Annual Estimated Pre-Employment	2 @ \$39.00 =	\$ 78.00
Annual Estimated post accident	1 @ \$72.00 =	\$ 72.00
Annual Estimated Reasonable Suspicion	2 @ \$72.00 =	\$144.00
Estimated Annual Drug & Alcohol		\$1,404.00
Estimated Overall Cost		\$1,529.00

November 9, 1995 talked with Mark Snyder of DOT Washington office. Was informed that if the State requires CDL for vehicle then the policy would apply to firefighters. (202)366-2982

Called the Attorney Generals office. I talked with a Sgt. in the enforcement division (919)733-4077. I was told they as long as a firefighter was operating equipment in emergency on call basis as part of their job they would not be required to hold a CDL license therefore would not have to comply with the DOT drug & alcohol policy. Fire vehicle drivers are exempt from having CDL license while operating in emergency in emergency situations. I informed them that they would not always be operating in emergency situations, but would be driving that vehicle for hydrant maintenance, etc. I was informed if this was an assigned job and they were still on call for emergency situations, they would not be required to hold CDL.

I called the state DOT on 11-09-95. I left a message for Jim Brylsky to call me concerning the regulations to get an interpretation. He returned my call on 11-13-95. I told him I felt that I had already gotten the answer to my question. he wanted to know who I had talked to. I told him that I had talked to the Washington office and to called the attorney generals office and talked with the enforcement section and that I was informed the finding stated above. He said "why did you call them". I explained to him that I was trying to get a definite answer as to our fire department having to comply with the D&A policy. He never gave me a straight answer, but asked me if I thought it would apply. I explained to him I felt that emergency services should be included, but what I thought did not really matter. I just needed a definite answer on it. He advised me to check with our City attorney regarding the City's liability and if I didn't get an answer to call him back and he would try to send me the regulation rulings to go by. (919)856-4378.