

AMENDING THE CITY'S PERSONNEL CODE BY MODIFYING CERTAIN POLICIES TO ACCOMMODATE RECENT AMENDMENTS TO THE MISSOURI CONSTITUTION RELATED TO MARIJUANA AND UPDATING THE CITY'S SMOKING POLICY.

Background:

On November 8, 2022, the voters of Missouri approved Constitutional Amendment 3. The provisions of Amendment 3 modified the Missouri Constitution to authorize the adult use of marijuana in the state and to provide employment protections for those authorized to use medical marijuana.

The provisions of Amendment 3 became effective on December 8, 2022.

Analysis:

This Resolution is offered for the purpose of updating the City's applicable employment policies considering the provisions of Amendment 3.

Before providing commentary on the changes made in each section of the Resolution, the overall policy goal behind the drafting of these changes is to address three issues: (1) Modifying the City's employment policies to allow for the adult use of marijuana by employees; (2) codify the restrictions on medical marijuana use authorized by Amendment 3 where such use could jeopardize a bona fide job requirement (CDL, Safety-sensitive, federal funding, etc.); and codify the protections for medical use of marijuana.

Section 1

This section contains minor edits to the language of the existing policy. The main substantive change is the inclusion of the word marijuana. This change is suggested due to the potential argument that the phrase "illicit drugs" likely does not cover the consumption of marijuana in a post Amendment 3 world.

Section 2

The language to be added in this section is completely new. This section is being added to provide content in the City's employment policies to deal with the fact that adult use marijuana is legal in the State of Missouri and to address the employment protections for medical marijuana users adopted by Amendment 3.

Under the provisions of Amendment 3, employers may still prohibit the use of marijuana by employees, unless the employee has a medical marijuana authorization. Employers may only prohibit medical use by employees only where such use would jeopardize an employee's ability to perform job tasks or jeopardize federal licensing requirements or federal funding.

This Section of the Resolution adds language to the City's employment code to address the situations in which the City may prohibit employees from consuming medical marijuana.

It also adds provisions to the City's policies lifted directly from Amendment 3 related to prohibiting the consumption of marijuana while on duty or on City premises.

Section 3

Similar to Section 1, this Section merely updates an existing policy by placing the word "marijuana" into the policy as phrases like "illegal drugs" likely do not cover marijuana post Amendment 3.

Additionally, this Section excludes marijuana as a disqualifier if it is found in a pre-employment drug test.

Section 4

This is a housekeeping Section of the Resolution. This Section merely adopts the City's current testing policy for employees with "Commercial Driver's Licenses" ("CDL") into the City's employment code. Previously this policy was adopted as a separate document. It is recommended that this policy be placed in the City's employment code.

Section 5

Section 5 is another housekeeping item though there are substantive changes in this Section of the Resolution. While staff was reviewing and discussing amendments to these policies, it was felt that the City should also update its smoking policy. The changes recommended in this Section expand the smoking ban to electronic smoking devices and also more clearly authorizes the City Administrator to determine the location of designated smoking areas.

In short, the changes contained within the proposed Resolution merely codify what Amendment 3 already says while also clarifying the City's stance, as an employer, on marijuana consumption by adults.

Recommendation:

Staff's proposed amendments are intended to add language to the City's personnel code to address the State's authorization of marijuana consumption by adults. Additionally, the proposed amendments place certain conditions on this consumption which mirrors those restrictions within the text of Amendment 3 itself.

Based on the foregoing, Staff recommends approval of the proposed Amendments.

MEMO SUBMITTED BY:

Nick Woodman | City Attorney

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1 **A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AMENDING THE CITY'S**
2 **PERSONNEL CODE BY MODIFYING CERTAIN POLICIES TO ACCOMMODATE**
3 **RECENT AMENDMENTS TO THE MISSOURI CONSTITUTION RELATED TO**
4 **MARIJUANA AND UPDATING THE CITY'S SMOKING POLICY.**

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6
7 **WHEREAS** City Charter Section 7.2 requires the Council to adopt a Personnel
8 Code; and

9
10 **WHEREAS** the City maintains its Personnel Code in the Personnel Handbook,
11 which is modified by Resolution from time to time; and

12
13 **WHEREAS** on November 8, 2022, the voters of Missouri approved Constitutional
14 Amendment 3; and

15
16 **WHEREAS** said Amendment modified the Missouri Constitution to authorize the
17 use of marijuana by those 21 years or older; and

18
19 **WHEREAS** said Amendment also modified the Missouri Constitution to provide
20 employment protections for those authorized to use medical marijuana products; and

21
22 **WHEREAS** the City Council desires to modify the Personnel Code to
23 accommodate the changes made by Constitutional Amendment 3.

24
25 **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF**
26 **NIXA, AS FOLLOWS, THAT:**

27
28 **SECTION 1:** The City's Personnel Code is hereby amended by repealing the
29 current Policy referenced within the Personnel Code as "6.5 Drug-Free Workplace" and
30 adopting in lieu thereof a new policy which shall read as follows:

31
32 (Note: Language to be added is indicated by being underlined. Language to be removed
33 is indicated by being ~~stricken~~.)

34
35 6.5 Drug-Free Workplace Policy

36
37 Employees ~~are expected and required to~~ shall report to work on time and in appropriate
38 mental and physical condition.

39
40 The City of Nixa prohibits substance abuse on its premises or by its employees while on
41 duty. Employees unlawfully manufacturing, distributing, dispensing, in the possession of,
42 ~~or~~ use of, sale of, or working under the influence of alcohol, marijuana, or illicit drugs while
43 on City premises, on duty, or while operating City vehicles will be subject to discipline, up
44 to and including termination ~~terminated~~.

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46 Assistance ~~Under these circumstances,~~ will be provided to ensure that the employee
47 arrives home safely.

48
49 Employees are prohibited from possessing or consuming alcohol on the job. Employees
50 who have consumed any alcohol or taken any medication, or combination thereof, that
51 would tend to adversely affect their mental or physical abilities shall not report for work.
52 An employee is prohibited from the operation of a commercial motor vehicle and/or from
53 engaging in any ~~work-related~~ work-related functions:

- 54
- 55 • while consuming alcohol
- 56 • while having a blood alcohol concentration of .02 or greater
- 57 • within four (4) hours of consuming alcohol. Employees are also prohibited from
- 58 consuming alcohol within eight (8) hours of an accident occurring on the job
- 59

60 Violations of this provision may result in disciplinary action up to and including termination.

61
62 Any employee convicted of, or pleading guilty to, illegal conduct related to alcohol or any
63 controlled substance or who fails to report such a conviction or plea to Human Resources
64 may be subject to disciplinary action up to and including termination.

65
66 **SECTION 2:** The City’s Personnel Code is hereby amended by adding thereto a
67 new Policy referenced within the Personnel Code as “6.5.1 Marijuana Use Policy” which
68 shall read as follows:

69
70 (Note: Language to be added is indicated by being underlined. Language to be removed
71 is indicated by being ~~stricken~~.)

72
73 6.5.1 Marijuana Use Policy

74
75 Article XIV of the Missouri Constitution has authorized the consumption of marijuana in
76 Missouri. Marijuana is still illegal under federal law. The consumption of marijuana or
77 marijuana infused products by employees could jeopardize the City’s ability to secure
78 grant funding from the federal government, could jeopardize certain licensing related
79 benefits to the City under federal law, could interfere with an employee’s ability to perform
80 job related responsibilities, could negatively impact the safety of others, or conflict with a
81 bona fide occupational qualification of the employee.

82
83 Therefore, to comply with the requirements of Article XIV of the Missouri Constitution, the
84 City adopts the following employment policies related to marijuana use:

85
86 (1) The City will not discriminate against a person in hiring, termination or otherwise
87 penalize a person based upon:

- 88
- 89 a. The person’s status as a qualifying patient or primary caregiver when they have
- 90 a valid identification card, which shall be provided to the Human Resources
- 91 Department, including the person’s legal use of a lawful medical marijuana

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92 product off City premises and during non-working hours, unless the employee
93 was under the influence of medical marijuana on City premises during their
94 hours of employment; or

- 95
96 b. A positive drug test for marijuana components or metabolites of a person who
97 has a valid qualifying patient identification card, unless the person used,
98 possessed, or was under the influence of marijuana while on duty.

99
100 (2) Notwithstanding the provision in paragraph (1) above, the use of medical
101 marijuana or non-medical marijuana products while an employee is on duty shall
102 be subject to disciplinary action up to and including termination.

103
104 (3) The provisions in paragraph (1) shall not apply to employees designated as being
105 in a safety-sensitive position, employees in a position in which the use of medical
106 marijuana products affects in any manner a person's ability to perform job-related
107 employment responsibilities, could jeopardize the City's ability to secure grant
108 funding from the federal government, could jeopardize certain licensing related
109 benefits to the City under federal law, impacts the safety of others, or conflicts with
110 a bona fide occupational qualification that is reasonably related to the employee's
111 employment. The City Administrator is authorized to designate certain positions as
112 falling within the above-mentioned categories.

113
114 (4) The City shall not permit or accommodate the consumption or possession of any
115 marijuana or marijuana products by any employee while on duty. Such actions may
116 be subject to discipline up to and including termination.

117
118 The City shall not permit or accommodate employees to be under the influence of
119 marijuana or any marijuana products while performing their job-related functions or
120 otherwise on duty. Such actions may be subject to discipline up to and including
121 termination.

122
123 **SECTION 3:** The City's Personnel Code is hereby amended by repealing the
124 current Policy referenced within the Personnel Code as "6.5.1 Drug Testing" and adopting
125 in lieu thereof a new policy which shall read as follows:

126
127 (Note: Language to be added is indicated by being underlined. Language to be removed
128 is indicated by being ~~stricken~~.)

129
130 ~~6.5.4~~ 6.5.2 Drug Testing

131
132 The City of Nixa reserves the right to request employees to submit to substance abuse
133 tests, including but not limited to urine tests, blood tests, breath tests, or other
134 examinations to determine the use of any illegal drugs, alcohol, marijuana, or the abuse
135 or misuse of any legal drugs prohibited in this policy or to determine the employee's'
136 fitness for duty. These tests may be utilized under the following circumstances:

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- 138 • On-The-Job Accident: If an employee suffers an occupational on-the-job injury that
139 requires a doctor's care or if a serious or potentially serious accident or incident
140 occurs in which safety rules and procedures were violated, equipment or property
141 damaged, unusually careless acts were performed, or where the cause was due
142 to an employee or other person's failure to use prescribed personal protective
143 equipment while working on the City's premises. The City requires the submission
144 of a drug-test for an employee who incurs a work-related injury or illness, or "on-
145 the-job accident" should there be a reasonable basis for such testing. Refer to the
146 Workers' Compensation Policy and Procedures for further details.
147
- 148 • Pre-Employment: Job applicants will submit to a drug test after a conditional offer
149 of employment; the conditional job offer will be withdrawn if the job applicant
150 refuses to submit to a drug test or a positive confirmed drug test results, other than
151 marijuana.
152
- 153 • Reasonable Suspicion: the City has the right to ask the employee to submit to a
154 reasonable-suspicion drug and/or alcohol testing, if there is enough evidence or
155 reasonable suspicion that he/she is working under the influence. A written record
156 shall be made of the observations leading to a controlled-substances reasonable
157 suspicion test within twenty-four (24) hours of the observed behavior or before the
158 results of the test ~~are~~ is released, whichever is earlier. A copy of this documentation
159 shall be given to the employee upon request, and the original documentation shall
160 be kept confidential by the covered employer. This policy shall not be construed
161 as to imply suspicion of the use of drugs or alcohol as reason to conduct testing,
162 but as a standard procedure.
163
- 164 • Random Testing: the City of Nixa conducts quarterly random testing, for safety-
165 sensitive ~~jobs~~ positions, through a 3rd party vendor. All ~~full-time~~ full-time
166 employees, with safety-sensitive ~~jobs~~ positions, are subject to this random
167 selection.
168

169 Employees must, as a condition of employment, abide by the terms of this policy and
170 report to the City any charge under a criminal drug or alcohol violation occurring on or off
171 City premises while conducting City business. A report of charge must be made to the
172 Human Resources department within 5 days after the said charge. Failure to adhere to
173 these policies may result in immediate termination.
174

175 Prescriptions are to be carried and used only by the individual for whom they are
176 prescribed. Such drugs must be used only in the manner, combination, and quantity
177 prescribed. In the event an employee is taking a prescribed medication that will impair the
178 employee's ability to perform his or her duties safely, the employee is required to notify
179 his or her supervisor immediately.
180

181 Employees who are in positions in which the consumption of marijuana or marijuana
182 infused products by said employees could jeopardize the City's ability to secure grant
183 funding from the federal government, could jeopardize certain licensing related benefits

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184 to the City under federal law, could interfere with an employee’s ability to perform job
185 related responsibilities, could negatively impact the safety of others, or conflict with a bona
186 fide occupational qualification of the employee and who have a positive test result may
187 be subject to discipline, up to and including termination.

188
189 **SECTION 4:** The City’s Personnel Code is hereby amended by repealing the
190 current Policy referenced within the Personnel Code as “6.5.2 CDL Operators” and
191 adopting in lieu thereof a new policy which shall read as follows:

192
193 (Note: Language to be added is indicated by being underlined. Language to be removed
194 is indicated by being ~~stricken~~.)

195
196 6.5.3 Controlled Substances and Alcohol Use and Testing Policy for CDL Operators

197
198 I. Policy Statement.

199
200 The purpose of this policy is to establish procedures to comply with the Federal
201 Highway Administration’s Controlled Substances and Alcohol use and Testing
202 Rule, Code of Federal Regulations, Title 49 (49 CFR), Part 382.

203
204 II. Applicability.

205
206 This policy and the regulations that require it, apply to all applicants and employees
207 whose job classification required them to hold a commercial driver’s license (CDL).

208
209 III. Definitions.

210
211 A. “Alcohol” – Refers to the intoxicating agent in beverage alcohol, ethyl alcohol, or other
212 alcohol including methyl and isopropyl alcohol.

213
214 B. “Alcohol concentration” – Is the alcohol in a volume of breath in terms of grams of
215 alcohol is 210 liters of breath as indicated by an evidential breath test as described in
216 this policy.

217
218 C. “Alcohol use” – Refers to the consumption of any beverage, mixture or preparation,
219 including medication which contains alcohol.

220
221 D. “Breath Alcohol Technician or BAT” – An individual who instructs and assists persons
222 in the alcohol testing process and operates an EBT (Evidential Breath Testing device).

223
224 E. “Confirmation Test”:

225
226 1. For Alcohol – means a second test, following a screening test with a result of
227 0.02 or greater that provides quantitative results of alcohol concentration.

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229 2. For controlled substances – means a second analytical procedure to verify the
230 presence of a specific drug. NOTE: the GC/MS (Gas Chromatography/Mass
231 Spectrometry) is the only authorized method for the drugs covered in this policy
232 and defined under the heading, “controlled substance” below.
233

234 F. “Collection Site Person” – A person who instructs and assists individuals at a collection
235 site and who receives and renders an initial examination of urine specimens.
236

237 G. “Company” – See Employer.
238

239 H. “Controlled Substances” – Marijuana, cocaine, opiates, amphetamines, and
240 phencyclidine (PCP).
241

242 I. “Driver” – Any employee who operates a commercial motor vehicle.
243

244 J. “Drug” – Includes controlled substances as defined above.
245

246 K. “Employer” – Refers to any person (Including the United States, a state, the District of
247 Columbia, or a political subdivision of a state) who owns or leases a commercial motor
248 vehicle or assigns persons to operate such a vehicle.
249

250 L. “Medical Review Officer (MRO)” – a licensed doctor of medicine or osteopathy with
251 knowledge of drug abuse disorders who is employed or used by the City of Nixa to
252 conduct drug testing in accordance with Federal Law; responsible for receiving
253 laboratory results generated by the City of Nixa drug testing program who has been
254 medically trained to interpret and evaluate any individual’s positive test result, together
255 with his or her medical history and any other relevant biomedical information.
256

257 M. “Performing a Safety-Sensitive function” – Means a driver is considered to be
258 performing a safety-sensitive function during any period in which he or she is actually
259 performing, ready to perform, or immediately available to perform any safety sensitive
260 function as listed below in the definition “Safety Sensitive Function.”
261

262 N. “Reasonable Suspicion” – Is the belief that the driver has violated the alcohol of
263 controlled substances prohibitions, based on specific, contemporaneous, articulation
264 observations concerning the appearance, behavior, speech, or body odors of the
265 driver.
266

267 O. “Refusal to Submit” – (to an alcohol or controlled substances test) means that a driver:
268

269 1. Fails to provide adequate breath for testing without a valid medical explanation
270 after he or she received notice of the requirement for breath testing.
271

272 2. Fails to provide adequate urine for controlled substances testing without a valid
273 medical explanation after he or she has received notice of the requirement for urine
274 testing.

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3. Engages in conduct that clearly obstructs the testing process.

P. “Safety-Sensitive Functions” – Means any of the “on-duty” functions described below:

1. All time at any facility owned, or otherwise waiting to be dispatched, unless the driver has been relieved from duty by the employer.

2. All time inspecting equipment as required by the regulations or otherwise inspecting.

3. All time spent at the driving control of a commercial motor vehicle.

4. All time, other than driving, spent on or in a commercial motor vehicle except time spent resting in a sleeper berth.

5. All time loading or unloading a commercial motor vehicle, supervising, or assisting in this process, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle.

6. All time repairing, obtaining assistance or remaining in attendance of a disabled vehicle.

Q. “Substance Abuse Professional or SAP” – is a licensed physician (Medical Doctor or Doctor Osteopathy), or 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 a clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

IV. Alcohol and Controlled Substance Prohibitions.

A. No employee shall report for duty or remain on duty for the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater.

B. No employee shall possess any quantity of alcohol while on duty unless the alcohol is manifested and transported as part of the freight. This includes any medicines, both prescription and over the counter, food, or any other alcohol-containing products.

C. No employee shall use alcohol on the job.

D. No employee shall perform safety-sensitive functions within four hours after using alcohol.

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319 E. When involved in an accident that requires a post-accident alcohol test, the employee
320 shall not use alcohol within eight (8) hours of the accident or prior to submitting for the
321 post-accident test, whichever comes first.
322

323 F. No employee shall refuse to submit to a drug or alcohol test as required by this policy.
324 Any refusal will be treated in the same manner as a positive test.
325

326 G. No employee shall report for duty or remain on duty when the employee uses any
327 controlled substance, except when the use is pursuant to the instructions of a
328 physician who has advised the driver that the substance does not adversely affect the
329 employee's ability to safely operate a commercial motor vehicle.
330

331 H. No employee shall report for duty or remain on duty if the employee tests positive for
332 controlled substances.
333

334 *V. Alcohol and Controlled Substance Testing.*
335

336 Employees subject to this policy will be required to submit to controlled substance
337 testing under the following six types of tests and alcohol testing under all except pre-
338 employment testing.
339

340 A. Pre-Employment Testing:
341

342 1. All individuals the company intends to hire for a position covered by this policy will
343 be subject to a pre-employment drug test prior to the first time the driver performs
344 a safety-sensitive function.
345

346 2. The covered applicants/employee will be notified that a urine sample will be tested
347 for the presence of controlled substances.
348

349 3. A pre-employment drug test will be conducted when a current employee transfers
350 from a position not covered by this policy into a covered position. An employee
351 who previously is separated from a Part 283 alcohol and controlled substance
352 testing program will be pre-employment tested for controlled substances prior to
353 performing a function covered by this policy.
354

355 4. Applicants who are offered a position covered by this policy will be tested before
356 being employed. Pre-employment job applicants who test positive for drugs will not
357 be hired and do have the right to have their samples retested under the conditions
358 set forth in Section VII of this policy. Employees transferring into a position requiring
359 drug testing who test positive for do have the right to have their sample retested.
360 Employees who fail a drug test will not be hired for the position requiring testing.
361

362 5. An employee who transfers from one position covered by this policy to another
363 covered by this policy does not require pre-employment testing.
364

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365 B. Random Testing:

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367 1. All employees working in a position covered by this policy are subject to
368 unannounced testing based on random selection. This includes temporary
369 employees performing work in a covered position.

370

371 2. The testing rate will be a 50 percent annualized rate for controlled substances and
372 10 percent annualized rate for alcohol (or the current DOT level). These testes will
373 be spread reasonable throughout the year.

374

375 3. To assure that the selection process is random; all employees covered by this
376 policy will be placed in a common pool. All full time and temporary employees will
377 be in this pool

378

379 4. The random selection procedure will be a drawing which is executed for as many
380 times as it takes to select the number of employees that have been requested.

381

382 5. An employee will only be tested randomly for alcohol when the employee is
383 performing safety-sensitive functions, immediately prior to or after performing a
384 safety-sensitive function.

385

386 6. Once an employee is notified of the requirement to take a random alcohol and/or
387 controlled substance test, the employee must proceed to the test site immediately.

388

389 C. Reasonable Cause Testing:

390

391 1. Employees will be tested when there is a reasonable cause to believe that an
392 employee covered by this policy is using a controlled substance prohibited by this
393 policy.

394

395 2. Conduct by employees constituting reasonable suspicion must be based on the
396 specific, contemporaneous, articulation observations concerning the appearance,
397 behavior, and speech or body odors of the employee. For controlled substances
398 the observation includes the indications of the chronic and withdrawal effects of
399 controlled substances. This conduct must be witnessed by, and the decision to
400 administer a reasonable cause test made by, a supervisor or company official who
401 has had a minimum of 60 minutes of training on alcohol and 60 minutes of training
402 on controlled substance use.

403

404 3. Reasonable suspicion testing for alcohol is authorized only if the observation, as
405 described above, is made during, just before, or just after the employee has been,
406 will be, or was performing a safety-sensitive function.

407

408 4. A reasonable suspicion test for alcohol must be conducted within two hours after
409 the employee was notified. If the test is not conducted within two hours, a written
410 record stating the reasons the alcohol test was not promptly administer must be

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411 completed. If the test is not administered within eight hours following the
412 notification, attempts to administer an alcohol test will be ceased and reasons
413 documented for not administering the test.

414
415 5. A written record shall be made of the observations leading to a controlled
416 substance or alcohol reasonable suspicion test, and signed by the person who
417 made the observation, within 24 hours of the observation.

418 D. Post Accident Testing:

419
420
421 NOTE: Nothing in this policy shall be construed as to require the delay of necessary
422 medical attention for injured persons following an accident, or to prohibit an employee
423 from obtaining necessary emergency medical care.

424
425 1. As soon as practicable following an accident involving a commercial motor vehicle,
426 tests for alcohol and controlled substances shall be administered for each surviving
427 driver.

428
429 a. Who was performing safety-sensitive functions with respect to the vehicle, if
430 the accident involved the loss of human life; or

431
432 b. Who received a citation under state or local law for a moving traffic violation
433 arising from the accident.

434
435 2. An alcohol test must take place within two (2) hours following the accident. If the
436 test is not conducted within two hours, a written record stating the reasons the
437 alcohol test was not promptly administered must be completed. If the test is not
438 administered within eight hours following the accident, attempts to administer an
439 alcohol test will be ceased and reasons documented for not administering the test.

440
441 3. An employee subject to alcohol testing shall not use alcohol for eight (8) hours
442 following an accident or until he/she undergoes a post-accident alcohol test. The
443 employee must remain readily available for testing during the eight (8) hours
444 following an accident, or he/she will be considered as refusing to submit to testing.

445
446 4. If a required controlled substance test is not administered within 32 hours after,
447 attempts to administer the test will be ceased and reasons documented for not
448 administering the test.

449
450 5. The results of a breath or blood test for the use of alcohol, or a urine test for the
451 use of controlled substances, conducted by Federal, state or local officials having
452 independent authority for the test, will be considered to meet the requirements of
453 this section.

454 E. Return To Duty Testing:

455
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457 Before an employee returns to duty requiring the performance of a safety-sensitive
458 function, after engaging in prohibited conduct regarding alcohol misuse and/or controlled
459 substance use, the employee will be tested for alcohol and/or controlled substances. In
460 order to return to duty an employee must test negative for controlled substances and have
461 a breath alcohol concentration of less than 0.02.

462 463 F. Follow-Up Testing:

464
465 Any employee who has violated the alcohol and/or controlled substance
466 prohibitions in the policy shall, after returning to duty, are subject to unannounced follow-
467 up testing. The number and frequency of the tests will be determined by the substance
468 abuse professional (SAP) and must consist of at least six tests in the first 12 months
469 following the employee's return to duty for up to a period of 60 months, dependent upon
470 SAP's recommendation. Continuation of employment remains at the discretion of the
471 employer.

472 473 VI. Consequences of Alcohol Misuse and Drug Use

474
475 A. Any employee who has engaged in conduct prohibited by this policy shall not perform
476 or continue to perform a safety-sensitive function, unless the employee has:

- 477
478 1. Been advised of the resources available for evaluating and treating alcohol and
479 controlled substance abuse;
480
481 2. Been evaluated by a substance abuse professional to determine what assistance,
482 if any, is required by the employee;
483
484 3. Follow and rehabilitation program prescribed; and
485
486 4. Been subjected to return-to-duty and follow-up testing.

487
488 B. Any employee who is found to have engaged in conduct prohibited by this policy shall:

- 489
490 1. Be immediately removed from duty;
491
492 2. Be evaluated by a substance abuse professional (SAP) provided by the City to
493 determine what assistance, if any, the employee needs in resolving problems of
494 alcohol and/or drug misuse and complete any rehabilitation prescribed;
495
496 3. Be subject to return-to-duty testing and follow-up testing in accordance with
497 sections V-E and V-F of this policy;
498
499 4. Be evaluated by the SAP to determine that the employee has followed the
500 rehabilitation program, and
501
502 5. Be subject to discipline.

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503
504 C. Any employee subjected to an alcohol test as required by this policy who is found to
505 have an alcohol concentration of 0.02 or greater, but less than 0.04, shall not be
506 allowed to perform or continue to perform safety-sensitive functions until the start of
507 the employee's next regularly scheduled duty period. In no case would this be less
508 than 24 hours following the administration of the test.

509
510 VII. Testing Procedures

511
512 The collection agency and the testing laboratory shall adhere to all requirements outlined
513 in 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing
514 Programs.

515
516 A. The collection agent for this policy would be the City's current contracted screening
517 provider.

518
519 B. The testing laboratory for this policy would be coordinated through the screening
520 provider currently being used by the City.

521
522 C. Controlled substance sample collection and testing.

523
524 1. Drug testing will be performed utilizing urine samples.

525
526 2. Tests for marijuana, cocaine opiates, amphetamines, and phencyclidine will be
527 performed.

528
529 3. Upon notification that a drug test is required, an employee will report as soon as
530 possible after notification to the drug collection site and provide a specimen of
531 his/her urine.

532
533 4. The "split sample" procedures will be used as outlined in Part 40 of the Department
534 of Transportation (DOT) regulations.

535
536 D. Alcohol Sample Collection and Testing.

537
538 1. Alcohol testing will be performed utilizing breath samples.

539
540 2. All samples will be collected by a "Breath Alcohol Technician (BAT)" who has been
541 trained in proficient operation of the evidential breath testing device (EBT) and in
542 the alcohol testing procedures contained in 49 CFR Part 40.

543
544 3. Testing will be conducted in a location that affords visual and aural privacy to the
545 individual being tested, sufficient to prevent unauthorized persons from seeing or
546 hearing test results.

547
548 VIII. Reporting and Review of Results

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A. Controlled Substances

1. The Medical Review Officer (MRO) for this policy would be the screening officer currently providing screening services for the City.

2. The following is a listing of the MRO's specific responsibilities. For additional details of responsibilities see the United States Department of Health and Human Services (DHHS) Medical Review Officer Manual.
 - a. Receive all results from laboratory.
 - b. Request, if needed, a quantitative description of test results.
 - c. Receive a certified copy of the original chain of custody.
 - d. Review and interpret positive test results.
 - e. Inform the tested individual and provide test results for the positive test.
 - f. Conduct a medical interview with the tested employee when results are positive. If, after making all reasonable efforts and documenting the efforts, the MRO is unable to reach the employee directly, the MRO shall contact the designated management official who shall direct the employee to contact the MRO as soon as possible. If it becomes necessary to reach the employee through the designated management official, the designated management official shall employ procedures that will ensure to the maximum extent practical, that the requirement that the employee's contact with MRO is held in confidence. If the designated employee representative has successfully made and document a contact with the employee and has instructed the employee to contact the MOR and more than five days have passed since the date the employee was successfully contacted by the designated employee representative, or, if after making a reasonable efforts, the designated management official is unable to contact the employee, the employer may place the employee on temporary medical unqualified status or medical leave and the MRO may verify a test is positive without having communicated directly with the employee about the test. If later the employee presents to the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented the employee from timely contacting the MRO, on the basis of such information, may reopen the verification allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes there is a legitimate explanation, the MRO declares the test to be negative. The MRO may also verify a test is positive without having communicated directly with the employee if the employee declines the opportunity to discuss the test.
 - g. Reviews the individual's medical history, or any other relevant biomedical factor to determine if a positive result is from legally prescribed medicine.
 - h. Verify the laboratory assessment is correct.
 - i. Give the individual an opportunity to discuss test results.
 - j. Report to operator that result is negative where a legitimate medical reason is found for a confirmed positive test result.

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- 595 k. Order a reanalysis if the remaining portion of the sample from a second certified
- 596 laboratory, if so requested by the tested employee, within 72 hours of the
- 597 employee being notified of a positive test.
- 598 l. Consult with others if a question of accuracy arises.
- 599 m. Consult with laboratory officials.
- 600 n. Not receive urinalysis results that do not comply with the Mandatory Guidelines.
- 601 o. Not declare positive opiate positive urine without “clinical evidence.”
- 602 p. Determine whether a result is scientifically insufficient.
- 603 q. Determine whether a result is consistent with legal drug use.
- 604 r. Forward results of verified positive tests to Manger of Employee Relations.
- 605 s. Maintain the required records to administer this program.
- 606 t. If an employee who has tested positive completes rehabilitation, the MRO can
- 607 recommend return to work and MRO will schedule return to duty testing.
- 608 Testing will be on an unannounced basis – daily, weekly, monthly, or longer –
- 609 at the discretion of the MRO.
- 610 u. The MRO shall not be disclosed to any third party medical information provided
- 611 by the employee as part of the testing verification process unless an applicable
- 612 DOT regulation permits such disclosure; if, in the MRO’s reasonable medical
- 613 judgment, the information could result in the employee being determined to be
- 614 medically unqualified under an applicable DOT agency rule; or, in the MRO’s
- 615 reasonable medical judgment, in a situation in which there is no DOT agency
- 616 rule establishing physical qualification standards applicable to the employee,
- 617 the information indicated that continued performance by the employee of
- 618 his/her safety sensitive function could pose a significant risk. Before obtaining
- 619 medical information from the employee as per of this verification process, the
- 620 MRO shall inform the employee that the information may be disclosed under
- 621 the above-mentioned circumstances.

B. Alcohol

- 623
- 624
- 625 1. The City of Nixa will designate one or more representatives for the purpose of
- 626 receiving and handling alcohol testing results in a confidential manner. The Breath
- 627 Alcohol Technician (BAT) will transmit all results only to the tested employee and
- 628 the designated representative(s).
- 629
- 630 2. The BAT will ensure immediate transmission to the City representative(s) of results
- 631 that require the employee be prevented from performing a safety-sensitive
- 632 function.
- 633
- 634 3. If the initial transmission of results was not in writing, the BAT shall provide a follow-
- 635 up copy of the results in writing.
- 636

C. Any employee who is subject to a drug and/or alcohol test will, upon written request, have access to any records relating to his or her testing result.

IX. Notification of Test Results and Recordkeeping

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- 641
642 A. The City of Nixa will notify a driver of the results of a pre-employment-controlled
643 substance test, provided that the driver requests said test results within sixty (60) days
644 of being notified of the disposition of the employment application.
645
646 B. The City of Nixa will notify employees of the results of random, reasonable suspicion,
647 and post-accident alcohol and/or controlled substance test, provided that the results
648 were positive, and will also advise the driver of what controlled substance was
649 detected or the alcohol level that was discovered.
650
651 C. All records relating to the administration and results of the alcohol and drug testing
652 program will be maintained for a minimum period of five (5) years, except that
653 individual negative, cancelled or alcohol tests of less than 0.02 results need only be
654 maintained for a minimum of twelve (12) months.
655
656 D. All records related to the collection process and required training shall be retained for
657 a minimum period of two (2) years.
658
659 E. A medical review officer will serve as the sole custodian of individual test results, and
660 will retain the reports of individual test results for a minimum of five (5) years.
661
662 *X. Release of Testing Information by Previous Employers*
663
664 A. The City of Nixa may obtain from any previous employer of the driver information
665 related to the driver's participation in an alcohol and drug testing program. The City
666 will obtain written permission from the driver to acquire this information.
667
668 B. The City of Nixa will obtain and review the information listed from any previous employer
669 that the driver performed safety-sensitive function in the previous two (2) years. The
670 City must request and review this information within 14 days after the driver first
671 performs a safety-sensitive function. This information will include:
672
673 1. Driver's breath alcohol test that indicates concentrations of 0.004 or greater.
674
675 2. Positive controlled substance test.
676
677 3. Any refusal to submit to a required alcohol or controlled substance test.
678
679 C. The City of Nixa will provide the previous employers of the past two (2) years with the
680 driver's written consent to release the information. The City may obtain the information
681 via personal interview, telephone interview, letter, or other method as long as
682 measures are taken to ensure confidentiality. City will maintain a written, confidential
683 record with respect to each of the past employers contacted.
684
685 D. The City of Nixa will not use a driver to perform safety-sensitive functions if the City
686 obtains information indicating the driver tested positive for controlled substances,

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687 testes at or above 0.04 breath alcohol concentration, or refuse to test, unless the
688 employer has evidence the driver has been evaluated by a SAP, completed any
689 required counseling, passed a return-to-duty test, and been subject to follow-up
690 testing.

691
692 6.5.2 CDL Operators

693
694 ~~All City employees classified as “CDL” Operators perform safety sensitive jobs and are~~
695 ~~covered by the “City of Nixa Controlled Substances and Alcohol Use and Testing Policy~~
696 ~~for CDL Operators.”~~

697
698 ~~Post-accident alcohol and drug testing for Injury and Non-injury Accidents~~

699
700 ~~“CDL” licensed drivers will be tested at time of accident by attending law enforcement~~
701 ~~agency for initial determination. “CDL” licensed drivers will then follow post-accident~~
702 ~~testing procedure as outlined in the “Controlled Substances and Alcohol Use and Testing~~
703 ~~Policy for CDL Operators” as described under separate policy.~~

704
705 **SECTION 5:** The City’s Personnel Code is hereby amended by repealing the
706 current Policy referenced within the Personnel Code as “6.6 Smoking” and adopting in
707 lieu thereof a new policy which shall read as follows:

708
709 (Note: Language to be added is indicated by being underlined. Language to be removed
710 is indicated by being ~~stricken~~.)

711
712 6.6 Smoking-Smoke and Vape-Free Workplace Policy

713
714 ~~Smoking is not allowed in any City building or City vehicle. Smoking is allowed in~~
715 ~~designated areas only.~~

716
717 The City is committed to providing a safe and healthy workplace and to promoting the
718 health and well-being of its employees and the residents and visitors to City facilities. As
719 such, the following policy applies to all City employees.

720
721 Smoking and vaping are prohibited on all City premises by employees. Smoking is
722 defined as the act of lighting, smoking, or carrying a lighted or smoldering cigar, cigarette,
723 or pipe of any kind. Vaping is defined as the use of electronic nicotine delivery systems
724 or electronic smoking devices such as e-cigarettes, e-pipes, e-hookahs, and e-cigars.

725
726 This policy applies to:

- 727
728
 - All areas of buildings occupied by employees.
 - 729 • All City sponsored offsite conferences and meetings.
 - 730 • All vehicles owned or leased by the City.
 - 731 • All City employees.
 - 732 • All visitors to City premises.

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- 733 • All contractors and consultants and/or their employees working on City premises.
- 734 • All temporary employees.
- 735 • All interns.

736

737 Smoking and vaping may be permitted in certain designated outdoor areas which may be

738 designated at the discretion of the City Administrator.

739

740 Violations of this policy will be subject to disciplinary action.

741

742 **SECTION 6:** This Resolution shall be in full force and effect from and after its final

743 passage by the City Council and after its approval by the Mayor, subject to the provisions

744 of section 3.11(g) of the City Charter.

745

746

747 **ADOPTED BY THE COUNCIL THIS 13th DAY OF February, 2023.**

748

749 ATTEST:

750

751 _____

752 PRESIDING OFFICER CITY CLERK

753

754

755 **APPROVED BY THE MAYOR THIS _____ DAY OF _____, 2023.**

756

757 ATTEST:

758

759 _____

760 MAYOR CITY CLERK

761

762

763 APPROVED AS TO FORM:

764

765 _____

766 CITY ATTORNEY