

ORDINANCE NO. 4181

AN ORDINANCE OF THE CITY COUNCIL OF CLINTON, MISSOURI REPEALING ALL ORDINANCES PERTAINING TO ALCOHOL AND CONTROLLED SUBSTANCE USE, ABUSE AND TESTING FOR CITY OF CLINTON EMPLOYEES AND ADOPTING A REVISED ALCOHOL AND SUBSTANCE USE, ABUSE AND TESTING POLICY FOR CITY OF CLINTON EMPLOYEES.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF CLINTON, MISSOURI AS FOLLOWS:

SECTION 1. Alcohol & Controlled Substance Use, Abuse and Testing Policy

(a) Policy objectives.

It is the policy of the City to provide safe, dependable, and economical services to its citizens and to provide safe, healthy and satisfying working conditions for its employees, and to comply with the requirements of federal law, including regulations attached to grant funding, and regarding ATF safety guidelines, and regulations related to the Drug Free Work Place Act of 1988 and the Omnibus Transportation Employee Testing Act of 1991 and all regulations adopted under these provisions.

To meet these goals, it is the policy of the City to ensure that its employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner; to create a workplace environment free from the adverse effects of alcohol and controlled substance abuse or misuse; to prohibit the unlawful manufacture, distribution, dispensing, possession, or use of alcohol and controlled substances; and to encourage employees to seek professional assistance with personal problems, including alcohol and controlled substance dependency, which adversely affect their ability to perform assigned duties.

The phrase "controlled substance" as used in this policy shall include the definitions provided by Federal Law and application shall be based on such Federal categorizations and drug scheduling process of Section 201(c), [21 U.S.C. Sec. 811(C) of the Controlled Substances Act.

The purpose of this policy is to assure worker fitness for duty and to protect employees and the public from the risks posed by the use of alcohol and controlled substances. It is also the purpose of this policy to comply with all applicable federal and state regulations governing workplace alcohol and controlled substance abuse programs mandated under the above-noted acts. These acts mandate urine drug testing and breathalyzer alcohol tests for safety-sensitive positions and prevent performance of safety-sensitive functions when there is a positive test result. The federal law has also established standards for the collection and testing of urine and breath specimens, for the reporting of certain drug-related offenses, for protective measures for certain employees tested, for the preservation of confidentiality, and for certain reporting.

(b) Applicability

This policy applies to all safety-sensitive employees who perform safety-sensitive functions, or positions with a potential for injury to the employee or third parties as a result of performance of regular job duties, as these persons and activities are defined in the Omnibus Transportation Employee Testing Act and its implementing regulations, including but not limited to persons who are required to possess a CDL license for the operation of a commercial vehicle, and all law enforcement and emergency services personnel, as well as others in safety-sensitive positions for the City of Clinton.

1. Positions

All personnel shall be expected to maintain a drug free work environment at and on the grounds of any City property, at all times. The following positions shall be subject to testing during employment due to their safety-sensitive nature

- (i) All emergency services personnel including fire, ambulance and medical of any nature, police officers, any position which is tasked with operating any vehicle owned, leased, or borrowed, by the City for City business, any position which is tasked with operating any machinery owned, leased, or borrowed by the City for City business.

2. Substances Not Limited

Substances included in safety-sensitive testing are not limited by law to only illegal substances. Use of legal controlled substances is limited for safety-sensitive positions and includes any substance of impairment including those subject to Mo. Const. Art. XIV, pursuant to Section 2 (3) "limitations" due to the risk regarding safety to the general public.

The policy shall also apply to all other employees of the City except for the parts related to random testing.

(c) Definitions

1. Administrator – designated by the City Council to be the City Administrator. The Administrator may delegate tasks, as deemed appropriate by the Administrator.
2. Commercial vehicle – as defined in the Missouri statutes requiring commercial driver's licenses.
3. Delay – any failure to immediately report to the test site to participate in the required testing under this policy.

(d) Policy Administrator

Unless otherwise designated by the City Council, the designated policy administrator for the City is the City Administrator, who shall be designated as the controlled substance and alcohol policy administrator. Any inquiries concerning this policy, its application, its administration, or its interpretation shall be made to the policy administrator.

The policy administrator shall develop and maintain a current list of the personnel that are governed by this policy. The list shall be available for inspections in the office of the Personnel Clerk of the City.

The policy administrator shall develop all forms necessary to carry out the provisions of this policy, unless the forms are provided under the federal regulations. The forms shall be provided to appropriate persons who are responsible for the implementation and management of this policy.

The policy administrator shall ensure that every applicant considered for hire is provided a copy of this policy and upon hire that any new employee shall sign a written verification of receipt and review of this policy and understanding of the contents within as it relates to their job or position.

(e) Alcohol & Controlled Substances Prohibitions

An employee is prohibited from the operation of a commercial motor vehicle and/or from engaging in any work-related functions for alcohol-related conduct: (1) while consuming alcohol; (2) while having a blood alcohol concentration of 0.02 or greater; (3) within four (4) hours of consuming alcohol; or (4) after refusing to submit to an alcohol test.

An employee is prohibited from the use of a controlled substance at any time, whether on or off duty excepting those prescribed by medical professional for which notice shall be provided to City of any expected impacts or side effects which could impair employee's ability to safely perform job functions; any mind-altering substance that may impact safety-sensitive employee job functions may require reassignment or inability to qualify for safety-sensitive positions.

An employee is prohibited from the unauthorized possession of alcohol while on duty and of controlled substances at any time, whether on or off duty.

Any employee convicted of illegal conduct related to controlled substances or alcohol or who fails to report such a conviction to the policy administrator shall be subject to immediate termination from service.

Any employee whose job performance requires the possession of a valid CDL and who loses the CDL for a violation of, or as a consequence of the law shall be subject to disciplinary action up to and including termination from service. The employee shall notify the policy administrator and the employee's immediate supervisor of the loss of the CDL. Failure to notify the policy administrator of the loss of the CDL shall result in immediate termination from service.

Any employee who is consuming a prescribed or authorized controlled substance or other substance of any kind whose side effects may inhibit or impair the employee's performance shall provide written notice to the policy administrator of such consumption upon reporting to work and prior to engaging in any work-related activity, or earlier if possible. Failure to report shall be cause for disciplinary action up to and including termination from service. This includes all substances which may be considered mind altering or which may cause impairment.

(f) **Controlled Substance & Alcohol Testing Provisions**

Employees subject to this policy shall be subject to controlled substances and alcohol testing including the following types of tests: pre-employment testing; random testing (except as provided herein); reasonable suspicion testing; post-incident testing; return-to-work testing; and follow-up testing for rehabilitation programs.

Pre-Employment Testing

ALL POSITIONS: Pre-employment urine drug and alcohol testing shall be required of all applicants to whom a job offer is extended. Receipt of satisfactory test results is required prior to commencement of employment. Failure of a controlled substance or alcohol test voids the job offer.

SAFETY-SENSITIVE POSITIONS REGULATED BY DOT 49 CFR PART 40: Upon receipt of satisfactory test results, the City shall inquire of the prospective employee's prior drug and alcohol testing history for a period of two (2) years prior to hire, with the applicant's written consent, in compliance with 49 CFR 40.25. In the event that a prior positive drug or alcohol test is reported, evidence of the absence of controlled substance or alcohol dependency from a Substance Abuse Professional (SAP) shall be required. Failure to provide said evidence voids the job offer.

Reasonable Suspicion Testing

Reasonable suspicion testing shall be used to determine fitness for duty evaluations, including appropriate urine and/or breath testing when there are objective observable reasons to believe that a controlled substance or alcohol use is adversely affecting an employee's job performance or that the employee has violated this policy. Reasonable suspicion referral for testing shall be made on the basis of documented objective facts and circumstances which are consistent with the effects of substance use. Reasonable suspicion observations should be made by supervisory or management personnel who are trained to detect the signs and symptoms of controlled substance and alcohol use and who may reasonably conclude that an employee may be adversely affected or impaired in the employee's work performance due to the use of the controlled substance or alcohol; however, any employee may make such a report to the administrator if they feel a safety issue may be impacted by non-reporting. The observing supervisor is required to complete the appropriate required documentation concurrently with the observation and consideration to impose reasonable suspicion testing.

Reasonable suspicion testing shall be required and completed whenever possible within two (2) hours of the observation, but in any case, no later than eight (8) hours after the observation for breath alcohol testing and thirty-two (32) hours for controlled substance testing.

Post-Incident Testing

Post-incident testing shall be required to test employees after a vehicular crash has occurred in which a fatality has occurred, or when a traffic citation is issued to a City employee after a crash, or where injury to a person requires transport to a medical treatment facility, or disabling damage to one or more vehicles requires towing from the crash site to occur. Testing shall include both breath alcohol and urine drug testing of the employee(s).

Post-incident testing shall be required to test employees who are involved in any workplace incident that results in a fatality. Post-incident testing may be required where injury to a person requires transport to a medical treatment facility or where property damage occurs.

Post-incident testing shall be required and completed whenever possible within two (2) hours of the incident occurrence, but in any case, no later than eight (8) hours after the incident for breath alcohol testing and thirty-two (32) hours for controlled substance testing. If controlled substance testing is not conducted within thirty-two (32) hours, the incident report shall state the reason. An employee involved in an incident shall refrain from alcohol consumption for eight (8) hours following the incident.

Random Testing

Random testing shall be conducted on all persons in safety sensitive positions covered by this policy. Random testing shall be unannounced and conducted with unpredicted frequency throughout the year using an established scientifically based selection method. Testing shall be conducted whenever it is ordered by appropriate supervisory personnel, but no less frequently than required by federal law and regulations, and in such numbers as is minimally determined under the regulations.

Return-to-Work Testing

Return-to-work urine drug and alcohol testing for all employees covered by this policy shall be required for all employees who previously tested positive on a controlled substance or alcohol test. The employee must test negative before being permitted to return to work. Any repeat offense shall require a negative test and be evaluated and released to return to work by an SAP.

Follow-up Testing

Follow-up testing of employees returning to work shall be required. Employees shall submit to frequent, unannounced random urine drug and breath alcohol testing at least six (6) times in the following twelve (12) months after returning to work. Random testing may be continued for a period of up to sixty (60) months from the employee's return to work date.

Any employee who questions the results of a required urine drug test under this policy may require that an additional test be conducted. The test must be conducted on a split sample that was provided at the same time as the original sample and the test analysis shall be conducted at a different qualified laboratory than where the original test was conducted. All costs for employee-requested testing shall be paid by the employee unless the second test invalidates the original test. An employee's request for a re-test must be made to the Medical Review Officer (MRO) within seventy-two (72) hours of the notice to the employee of the initial test result. Requests made after the seventy-two (72) hour limit will only be accepted if the delay was due to documentable facts that were beyond the control of the employee.

The method of collecting, storing, and testing the split sample required under this policy shall be consistent with the procedures established in 49 CFR Part 40. The Policy Administrator shall provide information to sample collectors as set forth in 49 CFR 40.14.

Failure to test

Any employee who fails to submit to the required testing under the policy is considered to have tested positive and shall be subject to all of the consequences that flow related to positive testing, including termination.

Any employee ordered to test shall report immediately to the test site upon being ordered to submit to testing. No delay of any type may be granted or taken. Delay in reporting by the employee shall be treated as a refusal to test and shall subject the employee to all of the consequences that flow related to positive testing. Failure to provide a sufficient sample or for providing an adulterated sample shall be considered as a refusal to test and shall subject the employee to all of the consequences that flow.

Refusal to submit to a City ordered test shall not equate to a refusal to submit to a DOT required test.

(g) Testing Controls

ALCOHOL: Federal regulations require breath testing to be done on Evidential Breath Testing devices approved by the National Highway Safety Administration for employees holding CDLs or that are otherwise covered by Department of Transportation regulations. All non-covered employees may be tested by methods determined to be reliable by the City. An initial screening test is conducted first. Any result that is less than 0.02 blood alcohol concentration is considered negative. If the blood alcohol concentration is 0.02 or greater, a second confirmatory test must be conducted. Any employee who tests with a blood alcohol concentration of 0.02 or greater shall be removed from service for at least twenty-four (24) hours.

Any employee who is found to have engaged in prohibited alcohol conduct under this policy shall be immediately removed from work-related activity; and the employee shall not be permitted to resume work until the employee is (1) evaluated by an SAP, (2) complies with the rehabilitation contract if such is required, and (3) has tested negative in a follow-up test.

CONTROLLED SUBSTANCES: Controlled substance testing of employees holding CDLs or that are otherwise covered by Department of Transportation regulations is conducted by analyzing an employee's urine specimen performed at a laboratory certified and monitored by the U.S. Department of Health & Human Services for all substances designated in federal regulatory guidelines, including but not limited to:

1. Marijuana (THC metabolite)
2. Cocaine
3. Amphetamines
4. Opiates (including heroin)
5. Phencyclidine (PCP)

The testing for controlled substances is a two-stage process. First a screening test is conducted. If the test is positive for one or more of the controlled substances, a confirmatory test is conducted for each identified controlled substance. The confirmatory test is a gas chromatography/mass spectrometry (GC/MS) analysis.

Testing of all non-covered employees may be by any method determined to be reliable by the City.

Any employee who tests positive on the confirmatory test shall be interviewed by the Medical Review Officer (MRO). The employee shall be immediately removed from work-related activity; and the employee shall not be permitted to resume work until the employee is (1) evaluated by an SAP, (2) complies with the rehabilitation contract if such is required, and (3) has tested negative in a follow-up test.

(h) Employment Assessment

An employee who tests positive for the presence of controlled substances or alcohol above the minimum thresholds set forth in the federal regulations shall be evaluated by an SAP. The SAP shall evaluate each employee who tests positive to determine what assistance, if any, the employee needs in resolving problems associated with the controlled substance or alcohol.

Assessment by an SAP does not protect an employee from disciplinary action or guarantee continued employment or reinstatement by the City. The City's disciplinary policy provides guidance to the discipline that may be imposed, unless otherwise stated in this policy.

(i) Rehabilitation Effort, Limited.

Should the SAP determine any employee to be in need of assistance for a controlled substance or alcohol-related problem under this policy, the employee may be permitted to enter into a rehabilitation plan approved by the City, provided the employee agrees to adhere to the terms of the rehabilitation contract with the City.

Rehabilitation assistance may only be granted to an employee once while employed by the City. Failure to complete the rehabilitation assistance plan or to adhere to the rehabilitation contract shall be considered a resignation by the employee from employment with the City.

Rehabilitation shall not be available for safety-sensitive positions for use of any controlled substance, as defined by federal law, or for use of any altering substance during performance of job duties.

The rehabilitation contract shall include the following terms and conditions to be adhered to by the employee who is granted rehabilitation assistance:

1. The employee shall agree to undertake and successfully complete the rehabilitation assistance plan established for the employee by the SAP or by a rehabilitation professional accepted by the City; and
2. The employee agrees to refrain from any violation of this policy and the use of controlled substances and alcohol consistent with the plan of rehabilitation and this policy; and
3. The employee provides a release of all medical records for use and review by the City relating to the rehabilitation assistance plan for the assistance undertaken and compliance; and
4. The employee agrees to unannounced random testing for City-determined periods of time subsequent to the employee's return to work consistent with this policy; and
5. The employee agrees to submit to return-to-work testing demonstrating that the employee is negative under controlled substance and/or alcohol test standards; and
6. The employee agrees that any future controlled substance or alcohol violations shall be considered as a resignation of the employee from City service without recourse.

(j) Contractual Support Professionals

The City shall secure a contract with an appropriately certified testing laboratory to conduct the controlled substance testing analysis and reporting required under this policy and under the federal regulations in conformity with the standards established under the federal regulations. The City may contract for the required alcohol testing or may perform the testing using qualified City personnel who utilize appropriate testing equipment.

The City shall engage the services of an independent contractor to serve the City as the MRO properly credentialed and trained in compliance with the federal regulations, who shall not be an employee of the City. The MRO shall, as a part of the engagement contract, maintain all relevant records and provide the required reports that the City needs to comply with the federal reporting requirements.

The City shall appoint an SAP for the providing of services under this policy and in compliance with the federal regulations

(k) Education & Training

The City shall provide all employees with a copy of this policy and materials related to the effects of the use and/or abuse of alcohol and controlled substances. The City shall also provide information to employees regarding treatment and rehabilitation available. Employees shall be required to confirm receipt of this policy and any revisions and of the educational materials in writing, noting the date of receipt and acknowledgement by signature witnessed by the supervisor providing the materials.

The City shall develop and provide training for all supervisors and managers who are responsible for the administration and enforcement of this policy. The training, at a minimum, shall include at least sixty (60) minutes of a program on the physical and behavioral effects on personal health, safety, the work environment, and on performance indicators of the effects of alcohol and controlled substance use and abuse, the side effects of abuse, and the consequences of prohibited work-related activity involving alcohol consumption. The training shall include an overview of this policy and its implementation and application to employees. Training shall also include a component related to objective observation for reasonable suspicion testing, documentation and record keeping. The training may include other components that the policy administrator, the MRO, and/or the SAP believe can enhance the program administration and awareness of problems and treatment related to alcohol and controlled substance use. The training may also provide components related to City sponsored or supported referral programs and employee assistance efforts that are sanctioned to deal with alcohol and controlled substance use and abuse problems.

Such training shall be conducted upon initial hiring or promotion for any supervisory position and renewed, annual, with written confirmation of such training to be tracked and filed by the administrator.

(l) Confidentiality

All records developed and/or acquired pursuant to this policy shall be maintained under strict confidentiality by the City, the testing laboratory, the MRO, and the SAP, when and as applicable. The records shall be maintained separately from other personnel records kept by the City and shall be kept in a secured location with other medical records. Materials shall not be released to others without the written consent of the affected employee, except under provisions provided in the federal regulations at 49 CFR 40.323, as needed with regard to the rehabilitation contract, in litigation or quasi-judicial and administrative proceedings related to positive test results, and/or to matters initiated by an employee.

Any person who breaches the confidentiality provisions of this policy shall be subject to disciplinary action, including possible immediate termination from employment and/or from any contractual relationship with the City without recourse.

(m) Disciplinary Issues

Unless otherwise specified in this policy, the City's policies related to disciplinary action shall be followed when imposing discipline for violation of this policy excepting for verified use of any controlled substance during job duties by safety-sensitive positions which may be terminated upon discovery of such use. Use of or testing positive for mind altering or substances which may cause impairment for extended periods for which the exact time frame of impairment is uncertain shall be grounds for immediate termination of employees in safety-sensitive positions.

The acceptance by an employee of the rehabilitation assistance plan and contract does not serve as a bar to imposing disciplinary action related to violations of this policy.

Any supervisor or manager who knowingly permits an employee to violate this policy or engage in work activity while consuming alcohol or a controlled substance or fails to enforce this policy shall be subject to penalty which may include immediate termination.

This policy does not displace any other penalties that may be imposed or be incurred as a result of violation of City policy or state and federal laws, or as provided in the workers' compensation laws.

(n) Coordination with Other Laws and Policies

This policy shall be administered in compliance with other federal, state and local laws related to employee health and welfare policies, leave policies, benefit programs and other related policies of the City. In the case of apparent conflicts between this policy, other policies, and applicable laws, the policy administrator shall make the appropriate rulings to resolve the potential conflicts whenever possible.

In the event that any part of this policy is judicially determined to be in conflict with any law or to be in violation of any law or is rendered ineffective because of some state or federal legislative enactment, that part(s) shall be void, but the remainder of the policy shall remain in effect. Parts that are void or voided shall be replaced as soon as possible so as to maintain the full effect of this policy and/or to bring it into compliance with relevant laws.

(o) Amendments

This policy is subject to amendment by the City from time to time. Amendments that are made shall be provided to employees upon adoption and shall become effective as provided by the policy administrator.

(p) Drug Awareness Program.

Employees are made aware of the drug-free workplace policy and the dangers of drugs in the workplace through the display and distribution of informational material. For employees performing safety-sensitive functions, which include any duties related to the safe operation of City vehicles or equipment, the information includes the effects and consequences of drug use on personal health, safety, and the work environment, and the manifestations and behavioral cues that indicate drug use and abuse. Supervisors shall receive training on the physical, behavioral, and performance indicators of probable drug use.

The program also includes information about the availability of drug counseling and rehabilitation as provided by the Employee Assistance Program.

Section 2. This ordinance shall be effective immediately upon its passage and approval as provided by law.

Section 3. Any ordinance or parts of ordinances in conflict herewith are hereby repealed in their entirety.

Read the first time this 1st day of July, 2025.

Read a second time and passed this 15th day of July, 2025.




Carla Moberly, Presiding Officer

ATTEST:

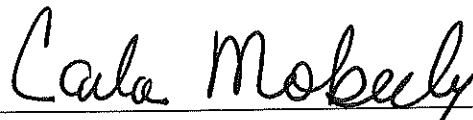
Ayes 7: Brenda Elliott, Gene Henry, Rob Hills, Roger House, Austin Jones, Gary Mount and Greg Shannon

Nays 0

Absent 1: Cameron Jackson


Wendee Seaton, City Clerk




Carla Moberly, Mayor