

ORDINANCE 2020-01

AN ORDINANCE OF THE NORTH OGDEN CITY COUNCIL TO ADOPT PERSONNEL POLICY AMENDMENTS

WHEREAS; North Ogden City has maintained a personnel policy for several years and routinely updates the policy; and

WHEREAS; the City Council believes it is necessary to review and revise the entire policy to ensure compliance with any recent changes in state and federal laws as well as to accommodate best practices to provide a quality working environment for the city employees; and

WHEREAS; the City Council has reviewed the proposed changes to the personnel policy; and

WHEREAS; the City Council wishes to stay maintain a positive work environment and to continue to attract quality employees for vacant positions with the City; and

WHEREAS; the City Council has determined that the changes suggested by the personnel policy committee are in the best interest of the City, though they may be revised from time to time in the future as seen fit by the City.

NOW THEREFORE BE IT ORDAINED by the Council of North Ogden City, Utah that PERSONNEL POLICY 2.3 SUBSTANCE ABUSE AND DRUG FREE WORKPLACE be amended to read, and the Personnel Policy be updated accordingly.

Policy 2.3 SUBSTANCE ABUSE AND DRUG FREE WORKPLACE

The City believes in the importance of a healthy and productive work force, safe-working conditions free from the effects of drugs and alcohol, and maintenance of the quality of services rendered. The abuse of drugs and alcohol creates a variety of workplace problems, including increased injuries on the job, increased absenteeism, increased workplace theft, decreased employee morale, decreased productivity, and a decline in the quality of products and services.

Therefore, the City hereby adopts this Policy for testing employees and prospective employees as related to drugs and alcohol in the workplace. All employees are to sign that they acknowledge, understand, and agree to abide by the "Drug and Alcohol Testing Policy" attached as "Exhibit M".

A. DRUG AND ALCOHOL TESTING POLICY DEFINITIONS

For the purposes of this policy, the following definitions shall apply:

1. **Accident** - an incident involving physical injury in which any person involved is required to obtain medical care, or an incident involving a city vehicle in which property damage occurs whether on a city vehicle or other personal property.
2. **Alcohol** - alcoholic beverages and any other intoxicating substance.
3. **Drug(s)** - refers to and includes all drugs, paraphernalia, controlled substances, and mood or mind altering inhalants, any of which were not prescribed by a licensed physician/dentist in the United States for the person taking or in possession of the drug or substance, or which have not been used as prescribed or directed.
4. **Over-the-Counter Drug** – includes only medications, drugs, controlled substances or other Drugs, as defined above, which are legally available for purchase without a prescription in Utah. Any substance which requires a prescription under Utah Law does not qualify as an Over-the-Counter Drug regardless of where purchased or used.
5. **Drug paraphernalia** - objects used to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, store, contain, and/or inject, ingest, inhale, or otherwise introduce a drug into the human body.
6. **Employee** - any person, excluding elected officials, in the service of the City whether for compensation or as a volunteer.
7. **Prospective employee** - any person who has made application for employment with the City and to whom the City has offered employment, conditional upon the results of a drug and alcohol test.
8. **Conviction** - a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal statutes.
9. **Criminal Drug Statute** - a federal or state criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.
10. **MRO (Medical Review Office)** - charged with reviewing and interpreting test results and determining any alternate medical explanation.
11. **Drug Policy Coordinator** - The Human Resource Director, who will administer the Drug and Alcohol Testing Policy and through whom any

procedures or disciplinary or rehabilitative action regarding this policy must be reviewed and approved. The Drug Policy Coordinator is the Human Resource Director or other person designated by the City Administrator/Manager.

12. **CDL (Commercial Driver's License)** - the license required to operate a commercial vehicle.
13. **Positive Drug Test** – The presence of controlled substances, metabolites, or other indicators which are scientifically accepted across the industry as markers of drug use, including any levels which may satisfy the level of criminal statutes.

B. TESTING POLICY

1. It is the policy of the City to test employees and prospective employees for the presence of drugs or alcohol, according to the provisions set forth below, as a condition of hire or continued employment. Any employee or prospective employee failing or refusing to take the test will not be eligible for employment, or if employed, shall be subject to termination. The City shall consider as negative all confirmed positive drug and alcohol test results with a medically sufficient explanation.
2. The City shall require the testing of employees and prospective employees, including management, on a periodic basis under the following circumstances and purposes:
 - a. **Pre-employment testing** - offers of employment shall be made conditional upon submission to a drug and alcohol test. All prospective employees shall be tested for drug and alcohol usage prior to employment. All job applicants shall be informed of this policy at the pre-employment interviews. A copy of this policy shall be available for review by all job applicants. All prospective employees shall be required, prior to being hired by the City, to sign the acknowledgement form, agreeing to abide by the terms of this policy. The City will exclude from employment any job applicant or prospective employee who refuses to abide by the terms of this policy. Any prospective employee whose pre-employment drug and alcohol test results in a confirmed positive and who does not have a medically sufficient explanation (as determined in the sole, but reasonable, discretion of the MRO,) may reapply for employment with the City after six months from the date of such test. If the City hires a prospective employee, the person must have first successfully passed the above-referenced pre-employment drug and alcohol test, and thereafter the person will be subject to all the procedures and requirements for the drug and alcohol testing as set forth in this policy.

In addition, any employee who has taken an extended leave of absence of six months or longer must be retested under this section before returning to work.

- b. **Reasonable suspicion (for cause) testing** - certain supervisors shall be trained to look for behaviors which may indicate drug or alcohol usage. These behaviors include, but are not limited to, direct observation of drug or alcohol used; drug paraphernalia; abnormal or erratic behaviors such as accidents, stealing, or repeated errors on the job; or unsatisfactory time and attendance patterns, any of which are coupled with specific contemporaneous events that indicate probable drug or alcohol use. An employee will be required to submit to a drug screen testing, as outlined below, when such reasonable suspicion arises and at least one supervisor or manager, and the designated Drug Policy Coordinator, concur that a reasonable suspicion of drug or alcohol use exists. The decision to test for drug or alcohol use by an employee is based on specific contemporaneous, physical behavior, and/or performance indicators. Once the authorized supervisor has determined that a reasonable suspicion exists, and after consent of City Administrator/Manager, testing is to be done immediately.
 - c. **Return to duty testing** - if the City returns an employee to duty after the employee has voluntarily sought rehabilitation for drug or alcohol abuse and has successfully completed rehabilitation, such employee shall be entered into a program of unannounced drug and alcohol tests for a predetermined period of time at the sole discretion of the City.
 - d. **Post-accident testing** - Post-accident testing will be conducted on employees, officers, officials, and volunteers involved whenever a workplace injury or damage to municipal property occurs. For traffic accidents testing shall be completed even if the accident appears to be the fault of a third party. Such testing will occur as soon as possible, but not later than twelve hours after an accident has occurred.
 - e. **Random testing** - For public safety reasons all employees who routinely operate vehicles, heavy machinery, or carry firearms as part of their job description must inquire to the prescribing physician whether any work restrictions should be imposed during use of the prescribed drug. The City will make reasonable accommodations for such work restrictions. Any employee failing to inquire about work restrictions or to disclose any restrictions to the Human Resource Director may be subject to discipline.
3. Employees who are required to hold a Commercial Driver's License (CDL) and drive commercial vehicles as a condition of employment may be

tested as a condition of employment and may be tested as required by federal and/or state law.

4. Any drug or alcohol testing shall occur during or immediately after the regular work period of current employees and shall be deemed work time for the purposes of compensation and benefits for current employees.
5. Individuals will be tested on City premises or sent to an outside clinic or testing facility licensed to perform such tests. If an employee is sent to an outside clinic for a "Reasonable Suspicion" test, the employee must be driven to the facility by the supervisor or designee. The employee must then be put on administrative leave until the results of the test are available. The supervisor must make arrangements or help the employee make arrangements to get home without driving.
6. The City shall pay all costs of testing and transportation associated with a test required by the City.
7. All sample collection and testing shall be performed under the following conditions:
 - a. The collection of samples shall be performed under reasonable and sanitary conditions.
 - b. Samples shall be collected and tested with due regard to the privacy of the individual being tested, and in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples.
 - c. The collection of samples shall be documented, and the documentation procedures shall include labeling of samples, to reasonably preclude the probability of erroneous identification of test results. An opportunity shall be provided for the employee or prospective employee to provide notification of any information that the person considers to be relevant to the test, including identification of currently or recently used prescriptions or non-prescription drugs or other relevant medical information.
 - d. Sample collection, storage and transportation to the place of testing shall be performed in a manner that reasonably precludes the probability of a sample misidentification, contamination or adulteration.
 - e. Sample testing shall conform to scientifically accepted analytical methods and procedures.

- f. Testing shall include verification or confirmation of any positive initial screening test by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable method.
 - g. In the case of urine testing, an employee or prospective employee will submit a split urine sample. A split urine sample shall consist of at least 45 ml of urine. The urine shall be divided into two specimen bottles, with at least 30 ml of urine in one bottle and at least 15 ml of urine in the other. If the test results are positive for drugs, the donor of the test shall have 72 hours from the time the person is so notified to request, at the person's option that the 15 ml urine sample be tested for the indicated drugs, the expense of which shall be divided equally between the donor and the City. The test results of both samples may be considered at any subsequent disciplinary hearing.
8. Drug and alcohol testing will be conducted in compliance with federal, state, and local laws, including but not limited to Utah Code Ann. §34-41-104 et seq.
- a. **City action** - Upon receipt of a verified or confirmed positive drug or alcohol test result, which indicates a violation of this policy (and in the case of urine testing after providing the employee or prospective employee notice of the result of the initial test and the option to have the 15 ml urine sample tested), or upon the refusal of any employee or prospective employee to provide a sample, the City may use that test result or refusal as the basis for disciplinary or rehabilitative actions, which may include, but not be limited to, the following as determined by the Human Resource Director and the City Administrator/Manager or Mayor (See Policy 3.1):
 - 1. Termination of employment
 - 2. Refusal to hire a prospective employee.
 - 3. Any other disciplinary measures in conformance with the City's practices, policies, or procedures.
 - 4. Rehabilitation
 - b. **Confidentiality** - The information received from the drug testing results shall be the property of the City. Test results information may be released to the person who has been tested upon written request.

c. Work place rules

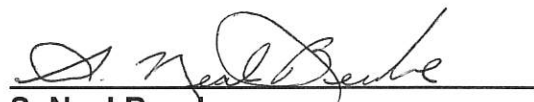
1. Employees, who possess, dispense, manufacture, or distribute alcohol, drugs, or drug paraphernalia on City premises or on City time will be subject to disciplinary action, including termination.
2. Employees undergoing prescribed medical treatment with a drug that may alter physical or mental abilities must report that to the Human Resource Director.
3. Any employee convicted of violating a criminal drug statute must notify the City Administrator/Manager within five (5) days of conviction. The City may take appropriate disciplinary or rehabilitative actions as a consequence.
4. No employee may use or be under the influence of drugs or alcohol on the City's premises, in the City's vehicles, or any time the employee is representing the City on City business, except in cases involving a current prescription prescribed in the United States, or over-the-counter drug, taken as prescribed or directed.
5. Employees may continue to work while taking prescription drugs needed for the treatment of an illness, providing the medications prescribed do not affect the employee's ability to perform work safely, as determined by the City. The employee is required to notify North Ogden City any time they are placed on prescription medications that could affect their ability to perform their job functions. A valid prescription does not mean the medication is safe to use in the workplace, and a safety sensitive evaluation may be required if the medication(s) could affect the employee's ability to safely perform their job functions. The employee is responsible for awareness of all cautions associated with the use of prescription drugs.
6. Employees may continue to work while taking non-prescription or over-the-counter drugs needed for the treatment of an illness providing the medications do not affect the employee's ability to perform work safely. Non-prescription or over-the counter drugs must be taken in accordance with the manufacturer's dosage recommendations and usage cautions. The employee is responsible for awareness of all cautions associated with the use of these types of medications.

d. **Miscellaneous.**

1. A copy of the City's Drug and Alcohol Testing Policy shall be distributed to and posted for all employees, and all employees shall be required to acknowledge receiving, reading, and acknowledging the policy. Copies shall be made available to prospective employees.
 2. This policy applies to all employees as well as management, City Council, and volunteers. Though no Elected Official may be removed from office for violating this policy, restricting access to City vehicles and equipment shall be implemented.
 3. Employees wishing assistance with overcoming drug or alcohol abuse may contact their supervisor or the Human Resource Director for information about counseling and rehabilitation programs including, but not limited to the North Ogden City Employee Assistance Program.
- e. **Acknowledgement of policy** - The City shall require each employee to read this policy and sign a form, acknowledging that they have received and read a copy of this policy and agree to abide by its terms as a condition of continued employment. The signed acknowledgment shall be kept in each employee's personnel file.
- f. **Drug and alcohol policy not a contract** - This Drug and Alcohol Testing Policy is the unilateral action of the City and does not constitute an expressed or implied contract with any person affected by or subject to the policy. Neither this policy nor any action taken pursuant to this policy assures or guarantees employment or any terms of employment to any person for any period of time. The City may alter, terminate or make exceptions to this policy at any time, at the City's sole discretion.

PASSED and ADOPTED this 28th day of January, 2020.

North Ogden City:



S. Neal Berube
North Ogden City Mayor

CITY COUNCIL VOTE AS RECORDED:

	Aye	Nay
Council Member Barker:	<u> X </u>	___
Council Member Cevering:	<u> X </u>	___
Council Member Ekstrom:	<u> X </u>	___
Council Member Stoker:	<u> X </u>	___
Council Member Swanson:	<u> X </u>	___
(In event of a tie vote of the Council):		
Mayor Berube	___	___

ATTEST:

S. Annette Spendlove
S. Annette Spendlove, MMC
City Recorder

