

## Chapter 135

### PERSONNEL

#### ARTICLE I

#### Alcohol and Controlled Substance Testing Policy

**Section 135.010. Policy.** [Ord. No. 910 §1, 6-13-1996]

- A. It is the policy of the City of Mound City to provide safe, dependable and economical services to its citizens and to provide safe working conditions for its employees and to comply with the requirements of Federal law and regulations related to the Drug Free Work Place Act of 1988 and the Omnibus Transportation Employee Testing Act of 1991. It is also the policy of the City of Mound City to provide healthy, satisfying, working environments for its employees.
- B. To meet these goals, it is the policy of the City of Mound City to insure that its employees are not impaired in their ability to perform assigned duties in a safe, productive and healthy manner; to create a work place environment free from the adverse effects of alcohol and controlled substance abuse or misuse; to prohibit controlled substances; and to encourage employees to seek professional assistance when personal problems, including alcohol and controlled substance dependency, adversely affect their ability to perform assigned duties.

**Section 135.020. Purpose.** [Ord. No. 910 §1, 6-13-1996]

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 work place 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 also establishes standards for collection and testing of urine and breath specimens, the reporting of certain drug-related offenses, protective measures for certain employees tested, for the preservation of confidentiality and for certain reporting.

**Section 135.030. Applicability.** [Ord. No. 910 §1, 6-13-1996]

This policy applies to all safety-sensitive employees who perform safety-sensitive functions 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 personnel.

**Section 135.040. Definitions.** [Ord. No. 910 §1, 6-13-1996]

As used in this Chapter, the following terms shall have these prescribed meanings:

**COMMERCIAL VEHICLES** — As defined in the Statutes requiring commercial driver's license.

**DELAY** — Any failure to immediately report to the test site to participate in the required testing under this policy.

**Section 135.050. Policy Administrator.** [Ord. No. 910 §1, 6-13-1996]

- A. Unless otherwise designated by the Mayor of the City of Mound City in writing, the Mayor shall be designated as the Controlled Substance and Alcohol Policy Administrator for the City of Mound City. Any inquiries concerning this policy, its application, its administration or its interpretation shall be made to the Policy Administrator.
- B. The City of Mound City shall designate a position to be identified to the public and to employees whose incumbent is the primary person responsible for implementation and administration of this policy under the supervision of the Mayor, if the person is not the chief administrator of the jurisdiction.
- C. The Policy Administrator shall develop and maintain a current list of the positions that are governed by this policy. The list shall be available for inspection in the office of the City Clerk of the City of Mound City. Individuals who are applying for positions with the City of Mound City and affected employees shall be notified of the positions that are covered by this policy.
- D. 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.

**Section 135.060. Alcohol and Controlled Substances Prohibitions.** [Ord. No. 910 §1, 6-13-1996]

- A. 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 two-hundredths percent (0.02%) or greater;
  - 3. Within four (4) hours of consuming alcohol;
  - 4. After refusing to submit to an alcohol test; and
  - 5. From consuming alcohol within eight (8) hours after an accident as specified in this policy.

- B. An employee is prohibited from the unauthorized use of a controlled substance at any time, whether on or off duty.
- C. 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.
- D. 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.
- E. 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 report shall be cause for disciplinary action up to and including termination from service.
- F. 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.

**Section 135.070. Controlled Substance and Alcohol Testing Provisions.** [Ord. No. 910 §1, 6-13-1996]

- A. 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-accident testing, return to work testing and follow-up testing to rehabilitation programs.
  - 1. *Pre-employment testing.* Pre-employment urine drug testing shall be required of all applicants for positions covered by this policy as a condition of the application procedure. Future employment as defined shall be considered as if the application was for original entry into service for purposes of this policy. Receipt of satisfactory test results is required prior to commencement of employment and/or engaging in safety-sensitive function and the failure of a controlled substance or alcohol test disqualifies and applicant from appointment to employment for a period of at least one hundred twenty (120) days. Evidence of the absence of controlled substances or alcohol dependency from a substance abuse professional (SAP) and negative controlled substance and alcohol tests shall be required prior to further consideration for any employment including reports from prior employers by an employee's written authorization.
  - 2. *Reasonable suspicion testing.*

- a. 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 and reports can only 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. The observing supervisor or manager, whether or not the person is the employee's immediate supervisor, is required to complete the appropriate required documentation concurrently with the observation and consideration to impose reasonable suspicion testing.
  - b. Reasonable suspicion testing shall be required and completed whenever possible within two (2) hours of the observation, but in any case no later than before eight (8) hours after the observation for breath alcohol testing and thirty-two (32) hours for controlled substance testing.
3. *Post-accident testing.*
  - a. Post-accident testing shall be required to test employees after a vehicular accident has occurred in which a fatality has occurred or when a traffic citation is issued after an accident or testing may be required where injury to a person requires transport to a medical treatment facility or disabling damage to one (1) or more vehicles requires towing from the accident site to occur. Testing shall include both breath alcohol and urine drug testing of the employee(s).
  - b. Post-accident testing shall be required and completed whenever possible within two (2) hours of the accident occurrence but in any case no later than before eight (8) hours after the accident for breath alcohol testing and thirty-two (32) hours for controlled substance testing. An employee involved in an accident shall refrain from alcohol consumption for eight (8) hours following the accident.
4. *Random testing.* Random testing shall be conducted on all persons covered by this policy. Random testing shall be unannounced and conducted with unpredictable frequency throughout the year using an established scientifically-based selection method. Testing shall be conducted whenever and as 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.

5. *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. To return to work, the employee must test negative and be evaluated and released to return to work by a SAP before being permitted to return to work.
6. *Follow-up testing.*
  - a. Follow-up testing shall be required for employees returning to work. Employees returning to work shall be required for employees to submit to frequent unannounced random urine drug and breath alcohol testing no less than six (6) times in the following twelve (12) months after returning to work, which random testing may be continued for a period of up to sixty (60) months from the employee's return to work date.
  - b. Any employee who questions the results of a required urine drug test under this policy may request 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 (2nd) test invalidates the original test. An employee's request for a retest 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.
  - c. The method of collecting, storing and testing the split sample required under this policy shall be consistent with the procedures established in 40 CFR Part 40.
7. *Failure to test.*
  - a. Any employee who fails to submit to the required testing under this policy is considered to have tested positive and shall be subject to all of the consequences that follow related to positive testing.
  - b. 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 follow 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 follow.

**Section 135.080. Testing Controls.** [Ord. No. 910 §1, 6-13-1996]

A. *Alcohol.*

1. Federal regulations require breath testing to be done on evidential breath testing devices approved by the National Highway Safety Administration. An initial screening test is conducted first (1st). Any result that is less than two-hundredths (0.02) blood alcohol concentration is considered negative. If the blood alcohol concentration is two-hundredths (0.02) or greater, a second (2nd) confirmatory test must be conducted. Any employee who tests with a blood alcohol concentration of two-hundredths (0.02) or greater shall be removed from service for at least twenty-four (24) hours.
2. 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:
  - a. Evaluated by a SAP;
  - b. Complies with the rehabilitation contract if such is required; and
  - c. Has tested negative in a follow-up test.

B. *Controlled Substances.*

1. Controlled substance testing is conducted by analyzing an employee's urine specimen performed at a laboratory certified and monitored by the U.S. Department of Health and Human Services for the following controlled substances:
  - a. Marijuana
  - b. Cocaine
  - c. Amphetamines
  - d. Opiates (including heroin)
  - e. Phencyclidine (PCP)
2. The testing for controlled substances is a two (2) stage process. First (1st) a screening test is conducted. If the test is positive for one (1) 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.
3. Any employee who tests positive on the confirmatory test shall be interviewed by the City of Mound City 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:
  - a. Evaluated by a SAP;
  - b. Complies with the rehabilitation contract if such is required;
  - c. Has tested negative in a follow-up test.

**Section 135.090. Employment Assessment.** [Ord. No. 910 §1, 6-13-1996]

- A. 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 a 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.
- B. Assessment by a SAP does not protect any employee from disciplinary action or guarantee continued employment or reinstatement by the City of Mound City. The City of Mound City disciplinary policy provides guidance to the discipline that may be imposed unless otherwise stated in this policy.

**Section 135.100. Contractual Support Professionals.** [Ord. No. 910 §1, 6-13-1996]

- A. The City of Mound 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 of Mound City may contract for the required alcohol testing or may perform the testing using qualified personnel who utilize appropriate testing equipment.
- B. The City of Mound City shall engage the services of an independent contractor to serve the City of Mound City as the MRO, properly credentialed and trained in compliance with the Federal regulations, who shall not be an employee of the City of Mound City. The MRO shall, as a part of the engagement contract, maintain all relevant records and provide the required reports that the City of Mound City needs to comply with the Federal reporting requirements.
- C. The City of Mound City shall appoint a SAP for the providing of services under this policy and in compliance with the Federal regulations.

**Section 135.110. Education and Training.** [Ord. No. 910 §1, 6-13-1996]

- A. The City of Mound City shall provide all employees with a copy of this policy and materials related to the effects of the uses and/or abuse of alcohol and controlled substances. The City of Mound 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 acknowledgment by signature witnessed by the supervisor providing the materials.
- B. The City of Mound 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 program on the physical and behavioral effects on personal health, safety and on the work environment and performance indicators on the effects of alcohol 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. The training, at a minimum, shall include at least sixty (60) minutes of program on the physical and behavioral effects on personal health, safety and on the work environment and performance indicators of controlled substances use and abuse, the side effects of controlled substance abuse, and the consequences of prohibited activity involving controlled substances. Training shall also include a component related to objective observation for reasonable suspicion testing, documentation and recordkeeping.

**Section 135.120. Confidentiality.** [Ord. No. 910 §1, 6-13-1996]

- A. All records developed and/or acquired pursuant to this policy shall be maintained under strict confidentiality by the City of Mound City, the testing laboratory, the MRO and SAP, when and as applicable. The records shall be maintained separately from other personnel records kept by the City of Mound 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, 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.
- B. Any person who breaches the confidentiality provisions of this policy shall be subject to immediate termination from employment and/or from any contractual relationship with the City of Mound City without recourse.

**Section 135.130. Disciplinary Issues.** [Ord. No. 910 §1, 6-13-1996]

- A. Unless otherwise specified in this policy, the City of Mound City policies related to disciplinary action shall be followed when imposing discipline for violation of this policy.
- B. 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.
- C. 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 immediate termination from employment.
- D. This policy does not displace any other penalties that may be imposed or be incurred as a result of violation of the City of Mound City policy or State and Federal laws or as provided in the Workers' Compensation laws.

**Section 135.140. Coordination With Other Laws and Policies.** [Ord. No. 910 §1, 6-13-1996]

- A. 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 of Mound 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.

- B. 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.

**Section 135.150. Amendments.** [Ord. No. 910 §1, 6-13-1996]

This policy is subject to amendment by the City of Mound 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.

ARTICLE II  
**Employees' Retirement System**

**Section 135.160. Missouri Local Government Employees' Retirement System.** [Ord. No. 662 §§1 — 2, 2-3-1971; Ord. No. 952 §§1 — 5, 6-10-1999; Ord. No. 1077 §§1 — 2, 10-5-2006]

- A. The City of Mound City is a "*political subdivision*" as defined in Sections 70.600 through 70.670, RSMo., and hereby elects to have covered by the Missouri Local Government Employees' Retirement System all of its eligible present and future general employees excepting Policemen and firemen.
- B. The City of Mound City hereby elects that one hundred percent (100%) of prior employment be considered for prior service credit in computing benefits and contributions to the system.
- C. The City of Mound City hereby elects to adopt no change in the contributions from covered employees, keeping the requirement of four percent (4%) of gross salary and wages as contributions from covered employees in accordance with the provisions of Sections 70.705 and 70.730, RSMo., as amended.
- D. The City of Mound City hereby elects to adopt no change in the method of determining a member employee's final average salary, changing to a thirty-six (36) consecutive-month period for determining a member employee's final average salary in accordance with Sections 70.600 and 70.656, RSMo., as amended.
- E. The City of Mound City hereby elects to adopt a change in the Benefit Program of member employees, changing to Benefit Program L-6 (2.00%) in accordance with Section 70.655, RSMo.
- F. The City of Mound City hereby elects to adopt no change in the Retirement Age Provision of covered employees, keeping member employees Option of Retirement upon attaining minimum service retirement age in accordance with Sections 70.600, 70.645 and 70.646, RSMo.

- G. The City Clerk shall certify this election to the Missouri Local Government Employees' Retirement System within ten (10) days hereof.