

Nowthen City Office
8188 199th Ave. NW
Nowthen MN, 55330
(763)-441-1347



Council Meeting Location:
Historic Townhall
19800 Nowthen Blvd NW
Nowthen MN, 55330

Nowthen City Council
March 18, 2024
6:00pm – Council Work Session

Mary Rainville will be located at 5601 Highway A1A, #200, Indian River Shores, FL 32963
Anyone wishing to participate from this location please call 612-964-5228

1. Call to Order
 - Roll Call
 - Approve Agenda
2. Code Compliance Process and Action Items
3. Personnel Policy Phase 2
4. Adjourn



Nowthen Code Compliance

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Decisions/Actions needed for RRC to start Code Compliance:.....	1
a) Remove all non-Zoning items from Zoning section	1
b) Add items removed from Zoning to General or Nuisance section of Code	1
c) Review all current Nuisances and update as needed	1
d) Confirm 2023 City Ordinances have been codified and move to Code	1
e) Create new Code Compliant form for residents in Google Forms or Fillable PDF.....	1
f) Determine order and timeframe for each action step:	2
g) Review and update fee schedule for violations and hearings	2
h) Determine Nowthen Staff steps once complaint is received: (Sample below)	2
Additional Action Items	2
a) Update Code Format.....	2
b) Create resident information with FAQs of common complaints and code questions	3
c) Update website:.....	3
d) Create template for replies to complainant	3

Decisions/Actions needed for RRC to start Code Compliance:

- a) Remove all non-Zoning items from Zoning section
 - a. Animals
 - b. Lighting
 - c. Junkyards
- b) Add items removed from Zoning to General or Nuisance section of Code
- c) Review all current Nuisances and update as needed
 - a. Confirm unlicensed vehicles
 - b. Confirm state requirements
- d) Confirm 2023 City Ordinances have been codified and move to Code
 - a. MS4, THC, Cannabis Business Moratorium, Lawful Gambling, Extended Home Occupations
- e) Create new Code Compliant form for residents in Google Forms or Fillable PDF
 - a. Create checkboxes with common complaints
 - b. Sync to spreadsheet

c. How can residents submit complaints – Phone, E-signed form online, in person

f) Determine order and timeframe for each action step:

- a. Site visit(s)
- b. Notice of Potential Code Violation
- c. Citation Letter
- d. Admin Notice Letter
- e. Attorney involvement
- f. Abatement

g) Review and update fee schedule for violations and hearings

- a. How often should fees be assessed – Daily, weekly, every two weeks
- b. Should a cap be added for fee amount

CURRENT 2023 FEES	FEE	NOTES
Professional Consultant	Cost Incurred	
Special Meetings		
Public Hearing	\$500.00	
City Council	\$500.00	
Public Safety		
Littering and Illegal Dumping	\$100.00 + Costs Incurred	Costs Incurred include all disposal fees, administrative and staff time, legal and court costs. (Ordinance 2016-06, adopted December 13, 2016)
Administrative Enforcement Penalties		
Class A	\$50.00	Animal Violations outlined in Sections 3 and 4 of the City Code
Class B	\$200.00	All other City Code violations
Administrative Hearing	\$100.00	The Administrative Hearing Fee and any costs incurred throughout the hearing process shall be paid by the party who does not prevail.

h) Determine Nowthen Staff steps once complaint is received: (Sample below)

- a. Log code complaint in internal log
- b. Review complaint for validity against Nowthen Code
- c. If complaint is not a violation of city code, notify complainant
- d. If complaint is a violation of city code, forward to City Administrator
- e. City Administrator to contact resident or drive by for visual confirmation
- f. If violation is confirmed, City Administrator will send code violation to Rum River

Additional Action Items

- a) Update Code Format
 - a) Combine into one document
 - b) Make searchable
 - c) Add Bookmarks

b) Create resident information with FAQs of common complaints and code questions

c) Update website:

d) Add Updated, searchable Code

e) Add New form and information on how to submit a complaint

f) Add summary of code compliance action steps

g) Add FAQs

d) Create template for replies to complainant



2024 Personnel Policy Proposed Updates Phase 2

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2-3-3 RECRUITMENT AND SELECTION PROCESS

DRUG TESTS – Pre-employment Testing All Employees

1. **All candidates**, after a conditional offer of employment has been extended, shall have a pre-employment drug and alcohol test in accordance with the City’s Drug and Alcohol Testing Policy or the Federal Department of Transportation (DOT) Regulation 49 CR § 40.25. *(Page 10)*

Additional Information: Nowthen is not currently doing Drug or Alcohol testing. The LMC does not recommend testing **all** employees. If the city chooses to do testing on all employees, they must follow strict state and federal requirements. ¹ Drug testing **is** required on all CDL Drivers.

Question: Would the City like to perform pre-employment Drug and Alcohol testing for **all** employees or **only** CDL Drivers?

Response: _____

DRUG TESTS – City’s Drug and Alcohol Testing Policy

2. All candidates, after a conditional offer of employment has been extended, shall have a pre-employment drug and alcohol test in accordance with **the City’s Drug and Alcohol Testing Policy** or the Federal Department of Transportation (DOT) Regulation 49 CR § 40.25. *(Page 10)*

Additional Information: The City does not currently have the Drug and Alcohol policy referenced.

Question: Would the City prefer to remove this statement or adopt the LMC’s Non-DOT Drug and Alcohol Testing Policy?

Response: _____

DRUG TESTS – Pre-employment Testing DOT employees

3. **Pre-Employment DOT drug Testing**-²

Change Needed: The LMC has a separate DOT Drug and Alcohol Policy for CDL drivers that needs to be added and signed by all DOT employees. See Separate Policy.

Response: _____

DRUG TESTS – DOT Training

4. **DOT training for supervisors**³

Supervisors of DOT employees are required to participate in at least 120 minutes of mandatory training (at least 60 minutes on alcohol misuse and an additional 60 minutes on controlled substances use).

This training is required for implementing any reasonable suspicion testing, and must include training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

¹ <https://www.lmc.org/wp-content/uploads/documents/Drug-and-Alcohol-Testing-Toolkit.pdf>

² <https://www.lmc.org/wp-content/uploads/documents/Drug-and-Alcohol-Testing-Toolkit.pdf>

³ <https://www.lmc.org/wp-content/uploads/documents/Drug-and-Alcohol-Testing-Toolkit.pdf>

While ongoing training is not specifically mandated, the DOT recommends recurring training of supervisors as a best practice.

It can also be a best practice to offer training to all employees on the signs and symptoms associated with drug and alcohol use as well as the requirements of the city's DOT policy, rather than just the federally mandated training to supervisors.

Question: Would the City like training for supervisors or all DOT employees?
Would the City like one time or recurring training?

Response: _____

DRUG TESTS – Random and Reasonable Suspicion Testing

5. Once employed, **any** City employee shall be subject to drug/alcohol tests, either randomly or due to reasonable suspicion. (Page 17)

Question: Would the City like random or reasonable Drug and Alcohol testing for **all** employees or **only** CDL Drivers?

Response: _____

2-7-2 ADMINISTRATION OF PAY

PAY- Classification Schedules

6. Employees of the City will be compensated according to **classification schedules** adopted by the City Council. (Page 14)

Additional Information: The City does not currently have a classification schedule.

Change: Classification Schedules should be established or this verbiage updated.

Response: _____

PAY- Phone Reimbursement

7. Expense reimbursement, appropriate expense reimbursement **for phone** and travel expenses may be authorized by the City Administrator, in addition to regular pay. (Page 14)

LMC verbiage explaining rules for Phone Reimbursement:

A supervisor may authorize an employee to use his/her own personal phone for city business and be reimbursed by the city for those calls.

Regardless of who pays the bill, cell phone records about city business are subject to the Minnesota Government Data Practices Act. If a request were received, the city would be under the obligation to determine what information is public data and what information is private data and would need access to the employee's phone records and possibly the phone itself in order to provide the data being requested. Therefore, the best practice is to limit usage of personal cell phones for city business to that which is truly necessary or be prepared to produce your cell phone and the associated records if needed.

Change: Add LMC verbiage on personal cell phone use for City business.

Response: _____

PAY- Expense Reimbursement

8. Expense reimbursement, appropriate expense reimbursement for phone and **travel expenses may be authorized by the City Administrator**, in addition to regular pay. (Page 14)

Additional Information: On page 28, it states “Employees will be reimbursed for all reasonable expenses incurred when traveling on City business, upon authorization by the Department Head and approval of such expenses by the City Council.”

Question: Should travel expenses be removed from this section as it is addressed later in the policy? Or should Approval by the City Council be added here?

Response: _____

PAY- Steps

9. An Employee promoted to a higher job class could be compensated with an increase in pay. If the increase is not equivalent to a **step**, the increase shall be to the **higher step** closest to the increase. (Page 14)

Additional Information: The City’s does not currently have a Step schedule.

LMC verbiage:

Promotion:

Movement of an employee from one job class to another within the city, where the maximum salary for the new position is higher than that of the employee’s former position.

Question: Would the City like to use the LMC verbiage?

Response: _____

OVERTIME PAY: Exempt and Non-exempt

10. **The City Council determines** whether each Employee is designated as “exempt” or “non-exempt” from earning overtime. (Page 15)

Additional information: Employees are required to be “exempt” or “non-exempt” as determined by the Fair Labor Standards Act's (FLSA) overtime regulations.

Change proposed: Remove this statement.

Response: _____

OVERTIME PAY: Authorization

11. All overtime must be authorized in advance by the Employee's supervisor or **designated representative**. (Page 15)

Change proposed: Update Designated Representative to City Administrator.

Response: _____

2-8-2 MOTOR VEHICLE RECORD/DRIVER'S LICENSE CHECK

12. Once employed, every employee at the City who drives City vehicles or equipment or who drives personal vehicles for City business will be subject to annual Motor Vehicle Record/Driver's License Check. The City Administrator will review each February the Motor Vehicle Record/Driver's License Check, **and will bring any concerns to the City Council** (Page 17)

Additional Information: License Checks are not being run today. They are required at least once per 12 months for all CDL drivers.

LMC/DOT verbiage: *If the information the city receives shows the applicant violated DOT drug or alcohol rules, the City must ensure the employee has successfully completed the DOT return-to-duty process before permitting the person to perform safety-sensitive duties.*

Change requested: Add LMC verbiage to replace bold sentence.

Response: _____

2-9-10 JURY AND WITNESS DUTY

13. In order to receive pay for the time served on jury duty, Employees must submit their jury duty pay to the **Finance Department**. (Page 24)

Change requested: Update Finance Department to Deputy Clerk.

Response: _____

2-9-12 REGULAR LEAVE WITHOUT PAY:

14. Benefits, including but not limited to: PTO, Holiday Leave or any other forms of indirect compensation shall not accrue during a period of unpaid leave. (Page 25)

Additional Information: Request received to update this verbiage as Holiday does not accrue.

LMC Verbiage: If an employee is on a regular leave without pay and is not working any hours, the employee will not accrue (or be paid for) holidays, ESST, or PTO.

Question: Would the City like to use LMC's verbiage?

Response: _____

2-9-15 RETURN TO WORK FROM MEDICAL LEAVE:

15. The City may require the Employee to be examined by the **City's designated physician**, at City expense, prior to the Employee returning to work. *(Page 26)*

Additional Information: The City does not have a designated physician.

Question: Would the City like to choose a designated physician or should this statement be removed?

Response: _____

2-10-6 INSURANCE CONTINUATION (COBRA):

16. **Human Resources** will provide Employees that participate in benefits, where COBRA continuation applies, a written notice describing their rights and obligations under COBRA. *(Page 27)*

Change requested: Update Human Resources to Deputy Clerk.

Response: _____

2-11-4 TRAVEL EXPENSES:

17. In order to receive reimbursement, the Employee must complete the appropriate **claim form**, attach original receipts, and submit it to the Finance Department for consideration and approval. *(Page 29)*

Additional Information: The City does not have a claim form today.

Question: Should the City use a Claim form or update this verbiage to "receipts"?

Response: _____

2-12-8 TECHNOLOGY POLICY

18. The City enforces a separate "**Technology Policy**," which includes the use of computers (internet and email), handheld personal devices, mobile phones, radios, etc. *(Page 36)*

Additional Information: The City does not have a Technology Policy today. The City does not currently issue City Cellphones but the LMC does have a Cellphone policy that could be added.

Change requested: Remove "handheld personal devices, mobile phones, radios, etc".
Adopt the LMC's Computer Use policy and See Separate Policy.

Response: _____

STAFF REQUESTS:

OVERTIME PAY – PTO and Holidays

19. Personal Time Off (PTO), and Holidays, are not allowed to be counted as hours worked in calculating overtime but are considered regular work hours. *(Page 16)*

Change Requested: To treat PTO and Holidays as a workday. Employees are in a paid status when using PTO/Holidays.

Response: _____

HOLIDAY PAY

20. Employees who call in sick the day before or after a holiday will not be paid for the holiday. *(Page 20)*

Change Requested: To pay employees and have Administrator manage. People do get sick around the Holidays.

Response: _____

PTO

21. PTO must be used in minimum increments of 60 minutes. *(Page 21)*

Change requested: City Staff would like to request this be changed to 30 minute increments.

Response: _____

Computer Use Policy

City of Nowthen, Minnesota Computer Use Policy

General Information

This policy serves to protect the security and integrity of the City's electronic communication and information systems by educating employees about appropriate and safe use of available technology resources.

Computers and related equipment used by City employees are property of the City. The City reserves the right to inspect, without notice, all data, emails, files, settings, or any other aspect of a City-owned computer or related system, including personal information created or maintained by an employee. The City may conduct inspections on an as-needed basis as determined by [the City Administrator](#).

Beyond this policy, the city's [IT vendor](#) may distribute information regarding precautions and actions needed to protect City systems; all employees are responsible for reading and following the guidance and directives in these communications.

Personal Use

The City recognizes that some personal use of City-owned computers and related equipment has and will continue to occur. Some controls are necessary, however, to protect the City's equipment and computer network and to prevent abuse of this privilege.

Reasonable, incidental personal use of City computers and software (e.g., word processing, spreadsheets, email, Internet, etc.) is allowed but should never preempt or interfere with work. All use of City computers and software, including personal use, must adhere to provisions in this policy, including the following:

- Employees shall not connect personal peripheral tools or equipment (such as printers, digital cameras, disks, USB drives, or flash cards) to City-owned systems, without prior approval from the [City Administrator](#). If permission to connect these tools/peripherals is granted, the employee must follow provided directions for protecting the City's computer network.
- Personal files should not be stored on City computer equipment. This also applies to personal media files, including but not limited to mp3 files, wav files, movie files, iTunes files, or any other file created by copying a music CD, DVD, or files from the Internet. [The IT Vendor](#) staff will delete these types of files if found on the network, computers, or other City-owned equipment. Exceptions would be recordings for which the City has created, owns, purchased, or has a license.
- City equipment or technology shall not be used for personal business interests, for-profit ventures, political activities, or other uses deemed by [the City Administrator](#) to be

inconsistent with City activities. If there is any question about whether a use is appropriate, it should be forwarded to [the City Administrator](#) for a determination.

Hardware

In general, the City will provide the hardware required for an employee to perform his or her job duties. Requests for new or different equipment should be made to your supervisor, who will forward the request to [the IT Vendor](#).

The City will not supply laptop computers based solely on the desire of employees to work offsite. A laptop request form will be required for each laptop deployment and must be signed off by the employee's supervisor and department head. Laptops will only be issued to employees who: travel frequently and require the use of a full computer while traveling; regularly use their laptop offsite; require a laptop for access to special software or systems; and/or have a documented business need for a laptop.

Only City staff may use City computer equipment. Use of City equipment by family members, friends, or others is strictly prohibited.

Employees are responsible for the proper use and care of City-owned computer equipment. City computer equipment must be secured while off City premises; do not leave computer equipment in an unlocked vehicle or unattended at any offsite facility. Computer equipment should not be exposed to extreme temperature or humidity. If a computer is exposed to extreme heat, cold, or humidity, it should be allowed to achieve normal room temperature and humidity before being turned on.

Software

In general, the City will provide the software required for an employee to perform his or her job duties. Requests for new or different software should be made to your supervisor, who will forward the request to [the IT Vendor](#).

Employees shall not download or install any software on their computer without the prior approval of [the IT Vendor](#). Exceptions to this include updates to software approved by Information Technology such as Microsoft updates, or other productivity software updates. [The IT Vendor](#) may, without notice, remove any unauthorized programs or software, equipment, downloads, or other resources.

Electronic Mail

The City provides employees with an email address for work-related use. Some personal use of the City email system by employees is allowed, provided it does not interfere with an employee's work and is consistent with all City policies.

Employee emails (including those that are personal in nature) may be considered public data for both e-discovery and information requests and may not be protected by privacy laws. Email may also be monitored as directed by the City authorized staff and without notice to the employee.

Employees must adhere to these email guidelines:

- Never transmit an email that you would not want your supervisor, other employees, members, city officials, or the media to read or publish (e.g., avoid gossip, personal information, swearing, etc.).
- Use caution or avoid corresponding by email on confidential communications (e.g., letters of reprimand, correspondence with attorneys, medical information).
- Do not open email attachments or links from an unknown sender. Delete junk or “spam” email without opening it if possible. Do not respond to unknown senders.
- Do not use harassing language (including sexually harassing language) or any other remarks, including insensitive language or derogatory, offensive, or insulting comments or jokes.

Electronic Calendars

A shared calendar environment is provided as part of the City’s email software program. All employees are required to keep their electronic calendar up to date and, at a minimum, must grant all staff the ability to view their calendar.

Instant Messaging

Due to data retention concerns, Instant Messaging (IM) is only allowed for transitory discussions and should be deleted after use. The City only allows IM via Microsoft Teams. Employees are not allowed to use IM as a mechanism for personal communication through the City’s computer network or when using City equipment and are not allowed to download or install any other IM software package on their City computer.

Personal Devices

Employees may choose to use their own equipment to read or compose email or other City data as governed in this policy. Employees understand that by connecting their personal equipment to the City’s email server, their personal devices could be searched during an e-discovery or other court-ordered scenarios and agree to grant access to their personal devices should such a situation arise.

Security

Passwords: Employees are responsible for maintaining computer/network passwords and must adhere to these guidelines:

- Passwords must be at least eight characters long and include at least three of the following: lowercase character; uppercase character; and a number or non-alpha-numeric character (e.g., *, &, %, etc.). Password requirements may be changed as necessary, as determined by [the IT Vendor](#).
- Passwords should not be shared or told to other staff. If it is necessary to access an employee’s computer when he or she is absent, contact your supervisor or the [IT Vendor](#); The [IT Vendor](#) will not provide access to staff accounts without approval of the [City Administrator](#).
- Passwords should not be stored in any location on or near the computer or stored electronically such as in a cell phone or other mobile device.

- Employees must change passwords every 60 days when prompted, or on another schedule as determined by the [IT Vendor](#).

Network access: Non-City-owned computer equipment used in the City’s building should only use the wireless connection to the Internet. Under no circumstances should any non-City-owned equipment be connected to the City’s computer network via a network cable. Exceptions may be granted by [The City Administrator](#).

Personal computer equipment may not be connected to the City’s network without prior approval of [The City Administrator](#). Personal equipment may be subject to password requirements or other electronic security measures as determined by the [IT Vendor](#).

Remote Access to the Network: Examples of remote access include, but are not limited to: Outlook Web Access (web mail), virtual private network (VPN), or Windows Remote Sessions. While connected to City computer resources remotely, all aspects of the City’s Computer Use Policy will apply, including the following:

- Remote access to the City’s network requires a request from a supervisor and approval from the [IT Vendor](#). Remote access privileges may be revoked at any time by [the City Administrator](#).
- If remote access is from a non-City-owned computer, updated anti-virus software must be installed and operational on the computer equipment, and all critical operating system updates must be installed prior to connecting to the City network remotely. Failure to comply could result in the termination of remote access privileges.
- Recreational use of remote connections to the City’s network is strictly forbidden. An example of this would be a family member utilizing the City’s internet connection to visit websites.
- Private or confidential data should not be transmitted over an unsecured wireless connection. Wireless connections are not secure and could pose a security risk if used to transmit City passwords or private data while connecting to City resources. Wireless connections include those over cellular networks and wireless access points, regardless of the technology used to connect.

Internet

The following considerations apply to all uses of the Internet:

- Information found on the Internet and used for City work must be verified to be accurate and factually correct.
- Reasonable personal use of the Internet is permitted. Employees may not at any time access inappropriate sites. Some examples of inappropriate sites include but are not limited to adult entertainment, sexually explicit material, or material advocating intolerance of other people, races, or religions. If you are unsure whether a site may include inappropriate information, you should not visit it.
- If an employee’s use of the Internet is compromising the integrity of the City’s network, [the IT Vendor](#) may temporarily restrict that employee’s access to the Internet. If [the IT Vendor](#) does restrict access, they will notify the employee, [the City Administrator](#), and the

employee's manager as soon as possible, and work with the employee and manager to rectify the situation.

- The City may monitor or restrict any employee's use of the Internet without prior notice, as deemed appropriate by [the City Administrator](#).
- Employees may use low-risk data with Artificial Intelligence (AI) technology to perform their work. Low-risk data is defined by Minnesota Statutes Chapter 13 as "public" and is intended to be available to the public. If you are unsure whether the data you enter into AI applications is classified as public data, consult your City's responsible authority or designee prior to using AI technologies. All data created with the use of AI is to be retained according to the City's records retention schedule.

Data Retention

Electronic data should be stored and retained in accordance with the City's records retention schedule.

Storing and Transferring Files: If you are unsure whether an email or other file is a government record for purposes of records retention laws or whether it is considered protected or private, check with your supervisor. If you are unsure how to create an appropriate file structure for saving and storing electronic information, contact [the IT Vendor](#).

Employees must adhere to these guidelines when transferring and storing electronic files:

- All electronic files must be stored on identified network drives and folder locations. The City will not back up documents stored on local computer hard drives and holds no responsibility for recovery of documents on local computer hard drives should they fail. Files may be temporarily stored on a laptop hard drive when an employee is traveling/offsite; however, the files should be copied to network as soon as possible.
- Electronic files, including emails and business-related materials created on an employee's home or personal computer for City business, must be transferred to and stored in designated locations on the City's network. City-related files should not be stored on an employee's personal computer, unless otherwise defined in this policy.
- All removable storage media (e.g., CD-ROM, flash or USB drive, or other storage media) must be verified to be virus-free before being connected to City equipment.
- Email that constitutes an official record of City business must be kept in accordance with all records retention requirements for the department and should be copied to the network for storage.
- Email that is simple correspondence and not an official record of City business should be deleted (from both the "Inbox" and the "Deleted" box) as soon as possible and should not be retained by employees for more than three months. The City will not retain emails longer than one year on the network or in network back-ups.
- Electronic files or emails that may be classified as protected or private information should be stored in a location on the City's network that is properly secured.
- Any files considered private or confidential should not be stored anywhere other than the City's network. If there is a need to take confidential information offsite, it must be stored on encrypted media; [the IT Vendor](#) can assist in the encryption of media.

Employee signature

I have received and read the above policy and have had an opportunity to ask any questions. I understand that my failure to follow this policy may result in disciplinary action, including revocation of system privileges or termination.

_____ (Print Employee Name)

_____ (Employee Signature)

_____ (Print Department Name)

_____ (Date)

DOT Drug and Alcohol Testing for Commercial Drivers

City of Nowthen, Minnesota Drug and Alcohol Testing for Commercial Drivers Policy

Purpose and Objectives

The City of Nowthen (“City”) has a vital interest in maintaining safe, healthful, and efficient working conditions for employees, and recognizes that individuals who are impaired because of drugs and/or alcohol jeopardize the safety and health of other workers as well as themselves. The City is concerned about providing a safe workplace for its employees, and while the City does not intend to intrude into the private lives of its employees, it is the goal to provide a work environment conducive to maximum safety and optimum work standards. Alcohol and drug abuse can cause unsatisfactory job performance, increased tardiness and absenteeism, increased accidents and workers’ compensation claims, higher insurance rates, and an increase in theft of city property. The use, possession, manufacture, sale, transportation, or other distribution of controlled substance or controlled substance paraphernalia and the unauthorized use, possession transportation, sale, or other distribution of alcohol is contrary to this policy and jeopardizes public safety.

In response to regulations issued by United States Department of Transportation (“DOT”), the City has adopted this Policy on Alcohol and Controlled Substances for employees who hold a commercial driver’s license (CDL) to perform their duties.

Given the significant dangers of alcohol and controlled substance use, each applicant and driver must abide by this policy as a term and condition of hiring and continued employment. Moreover, federal law requires the City to implement such a policy.

To ensure this policy is clearly communicated to all drivers and applicants, and in order to comply with applicable federal law, drivers and applicants are required to review this policy and sign the “Certificate of Receipt” portion.

Because changes in applicable law and the City’s practices and procedures may occur from time to time, this policy may change in the future, and nothing in this policy is intended to be a contract, promise, or guarantee the City will follow any particular course of action, disciplinary, rehabilitative or otherwise, except as required by law. This policy does not in any way affect or change the status of any at-will employee.

Any revisions to the Federal Omnibus Transportation Employee Testing Act and Federal Motor Carrier Safety Administration (FMCSA) regulations will take precedent over this policy to the extent the policy has not incorporated those revisions.

Persons Subject to Testing & Types of Tests

All employees are subject to testing who job duties include performing “safety-sensitive duties” on City vehicles that:

1. Have a gross combination weight rating or gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater; or
2. Have a gross vehicle weight rating or gross vehicle weight of 26,0001 or more pounds whichever is greater; or
3. Are designed to transport 16 or more passengers, including the driver; or
4. Are of any size and are used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

The City requires firefighters to possess a Commercial Driver’s License, but they are not covered under this DOT policy. The Federal Highway Administration (FHWA) has granted states the option of waiving CDL requirements for firefighters. Since the state of Minnesota is one that gives firefighters the option of obtaining either a CDL or a non-commercial license, the state has exercised the option not to require CDLs. Therefore, 49 CFR Part 382 is not applicable to City firefighters.

The following functions are considered safety-sensitive:

- all time waiting to be dispatched to drive a commercial motor vehicle
- all time inspecting, servicing, or conditioning a commercial motor vehicle
- all time driving at the controls of the commercial motor vehicle
- all other time in or upon a commercial motor vehicle (except time spent resting in a sleeper berth)
- all time loading or unloading a commercial motor vehicle, attending the same, giving or receiving receipts for shipments being loaded or unloaded, or remaining in readiness to operate the vehicle
- all time repairing, obtaining assistance, or attending to a disable commercial motor vehicle.

The City may test any applicant to whom a conditional offer of employment has been made and any driver for controlled substance and alcohol under any of the following circumstances:

Pre-Employment Testing.

All applicants, including current employees seeking a transfer, applying for a position where duties include performing safety-sensitive duties described above, will be required to take a drug test prior to the first time a driver performs a safety-sensitive function for the City. A driver may not perform safety-sensitive functions unless the driver has received a controlled substance test result from the Medical Review Officer (“MRO”) indicating a verified negative test result. In addition to pre-employment controlled substance testing, applicants will be required to authorize in writing former employers to release alcohol test results of .04 or greater, positive controlled substance test results, refusals to test, other violations of drug and alcohol testing regulations, and completion of return to duty requirements within the preceding three years.

All applicants, including current employees seeking a transfer, applying for a position where duties include performing safety-sensitive duties described above, will be required to take an alcohol test prior to the first time a driver performs a safety-sensitive function for the City, but

only after a conditional offer of employment has been made. No applicant, including current employees seeking a transfer, will perform safety-sensitive functions unless the driver has received an alcohol test result from the MRO indicating a test result of .04 or less Blood Alcohol Content (“BAC”).

The City will contact the candidate’s DOT regulated previous and current employers within the last three years for drug and alcohol test results as referenced above and review the testing history if feasible before the employee first performs safety-sensitive functions for the city. Beginning in 2020, an applicant must provide consent to the city, and successfully pass a full query of the Federal Motor Carrier Safety Administration’s Clearinghouse. In addition, at least once a year, the City will conduct a limited query of the Clearinghouse for each currently employed CDL driver. If the limited query reveals that the Clearinghouse has information about resolved or unresolved drug and alcohol program violations by a candidate or current employee, he or she will be asked to provide electronic consent to a full query of the Clearinghouse (unless he or she has previously provided electronic consent). In the event a full query of the Clearinghouse reveals unresolved violation information for a candidate or current employee, the driver will not be permitted to perform safety-sensitive functions, including the operation of a Commercial Motor Vehicle and, in the case of a candidate, may have their conditional offer of employment rescinded or, in the case of a current employee, may be subject to discipline.

Post-Accident Testing

As soon as practicable following an accident involving a commercial motor vehicle operating on a public road, the City will test each surviving driver for controlled substances and alcohol when the following occurs:

- The accident involves a fatality or
- The driver receives a citation for a moving traffic violation from the accident and an injury is treated away from the accident scene or
- The driver receives a citation for a moving traffics violation from the accident and a vehicle is required to be towed from the accident scene.

The following chart summarizes when DOT post-accident testing needs to be conducted:

Type of accident involved	Citation issued to the DOT covered CDL driver?	Test must be performed by the City
i. Human fatality	YES	YES
	NO	YES
ii. Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
iii. Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

A driver subject to post-accident testing must remain readily available or the driver will be deemed to have refused to submit to testing. This requirement to remain ready for testing does not preclude a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary medical care.

Post – Accident Controlled Substance Testing

Drivers are required to submit a urine sample for post-accident controlled substance testing as soon as possible. If the driver is not tested within thirty-two (32) hours after the accident, the City will cease its attempts to test the driver and prepare and maintain on file a record stating why the test was not promptly administered.

Post- Accident Alcohol Testing

Drivers are required to submit to post-accident alcohol testing as soon as possible. After an accident, consuming alcohol is prohibited until the driver is tested. If the driver is not tested within two (2) hours after the accident, the City will prepare and maintain on file a record stating why the test was not administered within that time. If eight hours have elapsed since the accident and the driver has not submitted to an alcohol test, the City will cease its attempts to test the driver and prepare and maintain on file a record stating why the test was not administered.

The City may accept the results of a blood or breath test in place of an alcohol test and urine test for the use of controlled substances if:

- The tests are conducted by federal, state, or local officials having independent authority for the test, and
- The tests conform to applicable federal, state, or local testing requirements, and
- The test results can be obtained by the City.

Whenever such a test is conducted by a law enforcement officer, the driver must contact the City and immediately report the existence of the test, providing the name, badge number, and telephone number of the law enforcement officer who conducted the test.

Random Testing

Every driver will be subject to unannounced alcohol and controlled substance testing on a random selection basis. Drivers will be selected for testing by use of a scientifically valid method under which each driver has an equal chance of being selected each time selections are made. These random tests will be conducted throughout the calendar year. Each driver who is notified of selection for random testing must cease performing safety-sensitive functions and report to the designated test site immediately. It is mathematically possible drivers may be selected be picked and tested more than once, and others not at all.

If a driver is selected for a random test while he or she is absent, on leave or away from work, that driver may be required to undergo the test when he or she returns to work.

For 2020, federal law requires the City to test at a rate of at least fifty percent (50%) of its average number of drivers for controlled substance each year, and to test at a rate of at least ten percent (10%) of its average number of drivers for alcohol each year. These minimum testing rates are subject to change by the DOT.

Reasonable Suspicion Testing

When a supervisor has reasonable suspicion to believe a driver has engaged in conduct prohibited by federal law or this policy, the City will require the driver to submit to an alcohol and/or controlled substance test.

The City's determination that reasonable suspicion exists to require the driver to undergo an alcohol test will be based on "specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver." In the case of controlled substance, the observations may include indications of the chronic and withdrawal effects of a controlled substance.

The required observations for reasonable suspicion testing will be made by a supervisor or other person designated by the City who has received appropriate training in identification of actions, appearance and conduct of a driver which are indicative of the use of alcohol or controlled substance. These observations leading to an alcohol or controlled substance test, will be reflected in writing and signed by the supervisor who made the observations. The record will be retained by the City. The person who makes the determination that reasonable suspicion exists to conduct testing, will not be the person conducting the testing, which shall instead be conducted by another qualified person.

Alcohol testing is authorized only if the observations are made during, just before, or just after the driver has ceased performing such functions. If a reasonable suspicion alcohol test is not administered within two (2) hours following the determination of reasonable suspicion, the City will prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If a reasonable suspicion alcohol test is not administered within eight (8) hours following the determination of reasonable suspicion, the City will prepare and maintain on file a record stating the reasons the alcohol test was not administered and will cease attempts to conduct the alcohol test.

Notwithstanding the absence of a reasonable suspicion test, no driver may report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol use, nor will the City permit the driver to perform or continue to perform safety-sensitive functions until (1) an alcohol test is administered and the driver's alcohol concentration is less than .02; or (2) twenty-four (24) hours have elapsed following the determination of reasonable suspicion.

Return-to-Duty Testing

The City reserves the right to impose discipline against drivers who violate applicable FMCSA or DOT rules or this policy, subject to applicable personnel policy and collective bargaining agreements. Except as otherwise required by law, the City is not obligated to reinstate or requalify such drivers for a first positive test result.

Should the City consider reinstatement of a DOT covered driver, the driver must undergo a Substance Abuse Professional ("SAP") evaluation and participate in any prescribed education/treatment, and successfully complete return-to-duty alcohol test with a result

indicating an alcohol concentration of less than 0.02 and/or or a controlled substance test with a verified negative result, before the driver returns to duty requiring the performance of a safety-sensitive function. The SAP determines if the driver has completed the education/treatment as prescribed.

The employee is responsible for paying for all costs associated with the return-to-duty test. The controlled substance test will be conducted under direct observation.

Follow-Up Testing

The City reserves the right to impose discipline against drivers who violate applicable FMCSA or DOT rules or this policy, subject to applicable personnel policies and collective bargaining agreements. Except as otherwise required by law, the City is not obligated to reinstate or requalify such drivers.

Should the City reinstate a driver following a determination by a Substance Abuse Professional (SAP) that the driver is in need of assistance in resolving problems associated with alcohol use and/or use of controlled substance, the City will ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substance testing. The number and frequency of such follow-up testing will be directed by the SAP and will consist of at least six (6) tests in the first twelve (12) months following the driver's return to duty. Follow-up testing will not exceed sixty (60) months from the date of the driver's return to duty. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the SAP determines such test is no longer necessary. The employee is responsible for paying for all costs associated with follow-up tests.

Follow-up alcohol testing will be conducted only when the driver is performing safety-sensitive functions, or immediately prior to or after performing safety-sensitive functions.

Cost of Required Testing

The city will pay for the cost of pre-employment, post-accident, random, and reasonable suspicion alcohol and drug testing requested or required of all job applicants and employees. The driver must pay for the cost of all requested confirmatory re-tests, return-to-duty, and follow-up testing.

Prohibited Conduct

The following conduct is explicitly prohibited by applicable DOT and FMCSA regulations and therefore constitutes violation of City policy.

Under the influence of alcohol when reporting for duty or while on duty

No driver may report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. Drivers reporting for duty or remaining on duty to perform safety-sensitive functions while having an alcohol concentration of 0.02, but less than 0.04, will be removed from duty for 24 hours, escorted home and placed on PTO leave for hours missed from work.

On-Duty Use of Alcohol

No driver may use alcohol while performing safety-sensitive functions.

Pre-Duty Use of Alcohol

No driver may perform safety-sensitive functions within four (4) hours after using alcohol. If an employee has had alcohol within four hours they are to notify their supervisors before performing any safety-sensitive functions.

Alcohol Use Following an Accident

No driver required to take a post-accident alcohol test may use alcohol for eight (8) hours following the accident, or until the driver undergoes a post-accident alcohol test, whichever occurs first.

Refusal to Submit to a Required Alcohol or Controlled Substance Test

No applicant or driver may refuse to submit to pre-employment, post-accident, random, reasonable suspicion or follow-up alcohol or controlled substance testing.

In the event an applicant or driver does in fact refuse to submit to required alcohol or controlled substance testing, no test will be conducted. Refusal by a driver to submit to controlled substance or alcohol testing will be considered a positive test result, will cause disqualification from performing safety-sensitive functions, and may appear on the driver's permanent record. Drivers who refuse to submit to testing will be subject to discipline, up to and including termination.

In accordance with the Federal Motor Carrier Safety Administration's (FMCSA) Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse reporting requirements, beginning January 6, 2020, the City will report a driver's refusal to submit to a DOT test for drug or alcohol use to the Clearinghouse within three business days. If an applicant refuses to submit to pre-employment controlled substance testing, any applicable conditional offer will be withdrawn.

For purposes of this section, a driver is considered to have refused to submit to an alcohol or controlled substance test when the driver:

- Fails to provide adequate breath for alcohol testing without a valid medical explanation after he or she has received notice of the requirement for breath testing.
- Fails to provide adequate urine for controlled substance testing without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement for urine testing.
- Fails to report for testing within a reasonable period of time, as determined by the City.
- Fails to remain at a testing site until testing is complete.
- In the case of directly observed or monitored collection, fails to permit observation or monitoring.
- Fails or declines to take a second test as required by the City and/or collector.
- Fails to undergo a medical examination as directed by the City pursuant to federal law.
- Refuses to complete and sign the alcohol testing form, to provide a breath or saliva sample, to provide an adequate amount of breath, or otherwise cooperate in any way that prevents the completion of the testing process.
- Engages in conduct that clearly obstructs the test process.

Altering or attempting to alter a urine sample or breath test

A driver altering or attempting to alter a urine sample or controlled substance test, or substituting or attempting to substitute a urine sample, will be subject to providing a specimen under direct observation. Both specimens will be subject to laboratory testing. In such case, the employee may be subject to immediate termination of employment and any job offer made to an applicant will be immediately withdrawn.

Controlled Substance Use

No driver may report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the driver in writing the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. Drivers must forward this information regarding therapeutic controlled substance use to the City immediately after receiving any such advice.

Having a medical marijuana card and/or a cannabis prescription from a physician does not allow anyone to use or possess that drug in the city's workplace. The federal government still classifies cannabis as an illegal drug. *There is no acceptable concentration of marijuana metabolites in the urine or blood of an employee who performs safety-sensitive duties for the City.* Employees are still subject to being tested under our policies, as well as for being disciplined, suspended or terminated after testing positive for cannabis while at work.

Controlled Substance Testing

No driver may report for duty, remain on-duty or perform a safety-sensitive function if the driver tests positive for controlled substance.

Collection and Testing Procedures

Drivers are required to report immediately upon notification to the collection site. For random tests conducted off site, employees may use a City vehicle to drive to the collection site. Drivers will be expected to provide a photo ID card for identification to the collection staff. All drivers will be expected to cooperate with collection site personnel request to remove any unnecessary outer garments such as coats, sweaters or jackets and will be required to empty their pockets. Collection personnel will complete a Federal Custody and Control Form ("CCF") which drivers providing a sample will sign as well.

Alcohol Testing

Employees will be tested for alcohol just before, during, or immediately following performance of a safety-sensitive function. If a driver is also taking a DOT controlled substance test, generally speaking, the alcohol test is completed before the urine collection process begins. Screening tests for alcohol concentration will be performed utilizing a non-evidential screening device included by the National Highway Traffic Safety Administration on its conforming products list (e.g., a saliva screening device) or an evidential breath testing device ("EBT") operated by a trained breath alcohol technician ("BAT") at a collection site. An alcohol test usually takes approximately 15 minutes if the result is negative. If a driver's first attempt is positive (with an alcohol concentration of .02 or greater), the driver will be asked to wait at least 15 minutes and

then be tested again. The driver may not eat, drink or place anything in his/her mouth (e.g., cigarette, chewing gum) during this time. All confirmation tests will be conducted in a location that affords privacy to the driver being tested, unless unusual circumstances (e.g., when it is essential to conduct a test outdoors at the scene of an accident) make it impracticable to provide such privacy. Any results less than 0.02 alcohol concentration is considered a “negative” test result.

If the driver attempts and fails to provide an adequate amount of breath, he/she will be referred to a physician to determine if the driver’s inability to provide a specimen is genuine or constitutes a refusal to test. Alcohol test results are reported directly to the City by the collection site staff.

Controlled Substance Testing

The City will use a “split urine specimen” collection procedure for controlled substance testing. Collection of urine specimens for controlled substance testing will be conducted by an approved collector and will be conducted in a setting and manner to ensure the driver’s privacy.

Controlled substance testing generally takes about 15 minutes. At the collection site, the driver will be given a sealed container and must provide at least 45 ml of urine for testing. Once the sample is provided the collection personnel will check the temperature and color and look for signs of contamination. The urine is then split into two separate specimen containers (A, or “primary,” and B, or “split”) with identifying labels and security seals affixed to both. The collection facility will be responsible for maintaining a proper chain of custody for delivery of the sample to a DHHS-certified laboratory for analysis. The laboratory will retain a sufficient portion of any positive sample for testing and store that portion in a scientifically acceptable manner for a minimum 365-day period.

If an employee fails to provide a sufficient amount of urine to permit a controlled substance test (45 milliliters of urine), the collector will discard the insufficient specimen, unless there is evidence of tampering with that specimen. The collector will urge the driver to drink up to 40 ounces of fluid, distributed reasonably over a period of up to three hours, or until the driver has provided a sufficient urine specimen, whichever occurs first. If the driver has not provided a sufficient specimen within three hours of the first unsuccessful attempt, the collector will cease efforts to attempt to obtain a specimen. The driver must then obtain, within five calendar days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee’s failure to provide a sufficient specimen. If the licensed physician concludes the driver has a medical condition, or with a high degree of probability could have, precluded the driver from providing a sufficient amount of urine, the City will consider the test to have been canceled. If a licensed physician cannot make such a determination, the City will consider the driver to have engaged in a refusal to test and will take appropriate disciplinary action under this policy.

The primary specimen is used for the first test. If the test is negative, it is reported to the MRO who then reports the result, following a review of the CCF Form for compliance, to the City. If the initial result is positive or non-negative, a “confirmatory retest” will be conducted on the primary specimen. If the confirmatory re-test is also positive, the result will be sent to the MRO.

The MRO will contact the driver to verify the positive result. If the MRO is unable to reach the driver directly, the MRO must contact the City who will direct the driver to contact the MRO

Review of Test Results

The MRO is a licensed physician with knowledge and clinical experience in substance abuse disorders and is responsible for receiving and reviewing laboratory results of the controlled substances test as well as evaluating medical explanations for certain drug test results. Prior to making a final decision to verify a positive test result, the MRO will give the driver or the job applicant an opportunity to discuss the test result, typically through a phone call. The MRO, or a staff person under the MRO's supervision, will contact the individual directly, on a confidential basis, to determine whether the individual wishes to discuss the test result. If the employee or job applicant wishes to discuss the test result:

- The individual may be required to speak and/or meet with the MRO, who will review the individual's medical history, including any medical records provided.
- The individual will be afforded the opportunity to discuss the test results and to offer any additional or clarifying information which may explain the positive test result. If the employee or job applicant, believes a mistake was made at the collection site, at the labor, on a chain-of-custody form, or that the drug test results are caused by lawful substance use, the employee should tell the MRO.
- If there is some new information which may affect the original finding, the MRO may request the laboratory to perform additional testing on the original specimen in order to further clarify the results; and
- A final determination will be made by the MRO that the test is either positive or negative, and the individual will be so advised.

If the MRO upholds the positive, adulterated or substituted drug determination, that test result will be provided to the City. There is no opportunity to explain a positive alcohol test provided in the DOT regulations.

The driver can request the MRO to have the split specimen (the second "B" container) tested at the driver's expense. This includes all costs that may be associated with the re-test. There is no split specimen testing for an invalid result. The driver has 72 hours after they have been notified of the positive result to make this request. If the employee requests an analysis of the split specimen, the MRO will direct the laboratory to send the split specimen to another certified laboratory for analysis.

If an employee has not contacted the MRO within 72 hours, the employee may present information documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO, or other circumstances unavoidably prevented the employee from making timely contact. If the MRO concludes there is legitimate explanation for the employee's failure to contact within 72 hours, the MRO will direct the analysis of the split specimen.

If the results of the split specimen are negative, the City may pay for all costs associated with the rest and there will be no adverse action taken against the employee or job applicant.

Notification of Test Results

Employees

The City will notify a driver of the results of random, reasonable suspicion, and post-accident tests for controlled substance if the test results are verified positive and will inform the driver which controlled substance or substances were verified as positive. Results of alcohol tests will be immediately available from the collection agent.

Right to Confirmatory Retest

Within seventy-two (72) hours after receiving notice of a positive controlled substance test result, an applicant or driver may request through the MRO a re-analysis (confirmatory retest) of the driver's split specimen. Action required by federal regulation as a result of a positive controlled substance test (e.g., removal from safety-sensitive functions) will not be stayed during retesting of the split specimen. If the result of the confirmatory retest fails to reconfirm the presence of the controlled substance(s) or controlled substance metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO will cancel the test.

Dilute Specimens

Dilute Negatives Creatinine concentration of specimen is equal to or greater than 2 mg/dL, but less than or equal to 5 mg/dL. If the City receives information that a driver has provided a dilute negative specimen, the City will direct a recollection, pursuant to the MRO's direction, under direct observation.

Consequences for Drivers Engaging in Prohibited Conduct

Job Applicants

Any applicable conditional offer of employment will be withdrawn from a job applicant or employee seeking a transfer who refuses to be tested or tests positive for controlled substance pursuant to this policy.

Employees

Drivers who are known to have engaged in prohibited behavior with regard to alcohol misuse or use of controlled substance, as defined earlier in this policy, are subject to the following consequences:

- **Removal from Safety-Sensitive Functions**

No driver may perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by federal law.

No driver who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 may perform or continue to perform safety-sensitive functions for the City, including driving a commercial motor vehicle, until the start of the driver's next regularly scheduled duty, but not less than twenty-four (24) hours following administration of the test.

If a driver tests positive under this policy or is found to have an alcohol concentration of .02 or greater but less than .04, the driver will be removed from safety sensitive duties and escorted

home; the driver should not drive home but be escorted to his or her home. The driver will then use PTO for hours missed from work.

- **Notification of Resources Available**

The City will advise each driver who has engaged in conduct prohibited by federal law or who has a positive alcohol or controlled substance test of the resources available to the driver, in evaluating and resolving problems associated with the misuse of alcohol and use of a controlled substance, including the names, addresses, and telephone numbers of Substance Abuse Professionals and counseling and treatment programs. The City will provide this SAP listing in writing at no cost to the driver.

- **Discipline**

The City reserves the right to impose whatever discipline the City deems appropriate in its sole discretion, up to and including termination for a first occurrence, against drivers who violate applicable FMCSA or DOT rules or this policy, subject to applicable personnel policies and collective bargaining agreements. Except as otherwise required by law, the City is not obligated to reinstate or requalify such drivers following a first positive confirmed controlled substance or alcohol test result.

- **Evaluation, and Return to Duty Testing**

Should the City wish to consider reinstatement of a driver who engaged in conduct prohibited by federal law and/or who had a positive alcohol or controlled substance test, the driver must undergo a SAP evaluation, participate in any prescribed education/treatment, and successfully complete return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 and/or or a controlled substance test with a verified negative result, before the driver returns to duty requiring the performance of a safety-sensitive function. The SAP will determine what assistance, if any, the driver needs in resolving problems associated with alcohol misuse and controlled substance use and will ensure the driver properly follows any rehabilitation program and submits to unannounced follow-up alcohol and controlled substance testing.

- **Follow-Up Testing**

If the driver passes the return-to-duty test, he/she will be subject to unannounced follow-up alcohol and/or controlled substance testing. The number and frequency for such follow-up testing will be as directed by the SAP and will consist of at least six tests in the first twelve months. These tests will be conducted under direct observation.

- **Refusal to test**

All drivers and applicants have the right to refuse to take a required alcohol and/or controlled substance test. If an employee refuses to undergo testing, the employee will be considered to have tested positive and may be subject to disciplinary action, up to and including termination. Refer to Refusing to Test provided earlier in this policy.

- **Responsibility for Cost of Evaluation and Rehabilitation**

Drivers will be responsible for paying the cost of evaluation and rehabilitation (including services provided by a Substance Abuse Professional) recommended or required by the City or FMCSA or DOT rules, except to the extent that such expense is covered by an applicable employee benefit plan or imposed on the City pursuant to a collective bargaining agreement.

- **Reporting to the FMCSA's CDL Drug and Alcohol Clearinghouse**

In accordance with the Federal Motor Carrier Safety Administration's (FMCSA) Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse reporting requirements beginning January 6, 2020, the City will report the following information to the Clearinghouse within three business days:

- ✓ A DOT alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
- ✓ A negative DOT return-to-duty test result;
- ✓ The driver's refusal to submit to a DOT test for drug or alcohol use;
- ✓ Actual knowledge a driver has used alcohol or controlled substances, based on the employer's direct observation, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances, or an employee's admission of alcohol or controlled substance abuse except as provided in § 382.121) of:
 - On duty alcohol use pursuant to § 382.205;
 - Pre-duty alcohol use pursuant to § 382.207;
 - Alcohol use following an accident pursuant to § 382.209;
 - Controlled substance use pursuant to § 382.213;
- ✓ Employers will also report negative return-to-duty (RTD) test results and the successful completion of a driver's follow-up testing plan as ordered by a SAP.

Loss of CDL License for Traffic Violations in Commercial and Personal Vehicles

Effective August 1, 2005, the FMCSA established strict rules impacting when CDL license holders can lose their CDL for certain traffic offenses in a commercial or personal vehicle. Employees are required to notify their supervisor immediately if the status of their CDL license changes in anyway.

Maintenance and Disclosure of Records

Except as required or authorized by law, the City will not release driver's information that is contained in records required to be maintained by this policy or FMCSA and DOT regulations. Beginning in 2020, the city will be required to query and report to the agency's Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse prior to hiring new drivers, will conduct annual checks of existing CDL-drivers, and will report certain violations of the DOT drug and alcohol testing program for holders of CDLs. In addition, a driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or a controlled substance, including any records pertaining to his or her alcohol or controlled substance tests.

Policy Contact for Additional Information

If you have any questions about this policy or the City's controlled substance and alcohol testing procedures, you may contact the City Administrator to obtain additional information.

Definitions

Accident:

Means an occurrence involving a commercial motor vehicle operating on a public road which results in a fatality; bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle. The term "accident" does not include an occurrence involving only boarding and alighting from a stationary motor vehicle; an occurrence involving only the loading or unloading of cargo; or an occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle unless the vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 49 C.F.R. § 177.823; 49 C.F.R. § 382.303(a); 49 C.F.R. § 382.303(f).

Alcohol Concentration (or Content):

Means the alcohol on a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test. 49 C.F.R. § 382.107.

Alcohol Use:

Means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol. 49 C.F.R. § 382.107.

Applicant:

Means a person applying to drive a commercial motor vehicle. 49 C.F.R. § 382.107.

Breath Alcohol Technician or BAT:

Means an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT). 49 C.F.R. § 40.3.

City:

Means City of Nowthen.

City Premises:

Means all job sites, facilities, offices, buildings, structures, equipment, vehicles and parking areas, whether owned, leased, used or under the control of the City.

Collection Site:

Means a place designated by the City where drivers present themselves for the purpose of providing a specimen of their urine or breath to be analyzed for the presence of alcohol or controlled substances. 49 C.F.R. § 40.3.

Commercial Motor Vehicle:

Means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle (1) has a gross combination weight rating or gross combination weight of 26,001 or more pounds, whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater; or (2) has a gross vehicle weight rating or gross vehicle weight of 26,001 or more pounds, whichever is greater; or (3) is designed to transport sixteen (16) or more passengers, including the driver; or (4) is of any size and is used in the transportation of materials found to be in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulation. (49 C.F.R. part 172, subpart F) § 382.107.

Confirmation (or Confirmatory) Test:

For alcohol testing means a second test, following a positive non-evidential test, following a positive non-evidential (e.g., saliva) screening test or a breath alcohol screening test with the result of 0.02 or greater, that provides quantitative data of alcohol concentration. For controlled substance testing, “Confirmation (or Confirmatory) Test” means a second analytical procedure to identify the presence of a specific controlled substance or metabolite which is independent of the screen test and which uses a different technique and chemical principal from that of the screen test in order to ensure reliability and accuracy. 49 C.F.R. § 382.107.

Controlled Substance:

Means those substances identified in 49 C.F.R. § 40.85. Marijuana, amphetamines, opioids, (including heroin), phencyclidine (PCP), cocaine, and any of their metabolites are included within this definition. 49 C.F.R. § 382.107; 49 C.F.R. § 40.85.

Department of Transportation or DOT:

Means the United States Department of Transportation.

DHHS:

Means the Department of Health & Human Services or any designee of the Secretary, Department of Health & Human Services. 49 C.F.R. § 40.3.

Disabling Damage:

Means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs, including damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

Disabling damage does not include damage which can be remedied temporarily at the scene of the accident without special tools or parts, tire disablement without other damage even if no spare tire is available, headlight or tail light damage or damage to turn signals, horn or windshield wipers which make them inoperative. 49 C.F.R. § 382.107.

Driver:

Means any person who operates a commercial motor vehicle. This includes, but is not limited to full-time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers

and independent owner-operator contractors who are either directly employed by or under lease to the City or who operate a commercial motor vehicle at the direction of or with the consent of the City. For purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle. 49 C.F.R. § 382.107.

Drug:

Has the same meaning as “controlled substance.”

Employee seeking a transfer:

Refers to an employee who is not subject to DOT regulations seeking a transfer to a position that will subject them to DOT regulations in the sought after position.

Evidential Breath Testing Device or EBT:

Means a device approved by the National Highway Traffic Safety Administration (“NHTSA”) for the evidential testing of breath and placed on NHTSA’s “Conforming Products List of Evidential Breath Measurement Devices.” 49 C.F.R. § 40.3.

Federal Motor Carrier Safety Administration or FMCSA:

Means the Federal Motor Carrier Safety Administration of the United States Department of Transportation.

Medical Review Officer or MRO:

Means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by a controlled substance testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual’s confirmed positive test result together with his or her medical history and any other relevant biomedical information. 49 C.F.R. § 40.3

Performing (a Safety-Sensitive Function):

Means any period in which a driver is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions. 49 C.F.R. § 382.107.

Positive Test Result:

Means a finding of the presence of alcohol or controlled substance, or their metabolites, in the sample tested in levels at or above the threshold detection levels established by applicable law.

Reasonable Suspicion:

Means a belief a driver has engaged in conduct prohibited by the FMCSA controlled substance and alcohol testing regulations, except when related solely to the possession of alcohol, based on specific contemporaneous, articulable observations made by a supervisor or City official who has received appropriate training concerning the appearance, behavior, speech or body odors of the driver. The determination of reasonable suspicion will be made in writing on a Reasonable Suspicion Record Form during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this policy. In the case of a controlled substance, the observations may include indications of the chronic and withdrawal effects of a controlled substance.

Safety-Sensitive Function:

Means all time from the time a driver begins to work or is required to be in readiness to work until the time he or she is relieved from work and all responsibility for performing work. Safety-sensitive functions include:

- All time at a city plant, terminal, facility, or other property, or on any public property,
- waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- All time inspecting equipment as required by 49 C.F.R. § 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- All time spent at the driving controls of a commercial motor vehicle in operation;
- All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 C.F.R. § 393.76);
- All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle. 49 C.F.R. § 382.107.

Screening Test (also known as Initial Test):

In alcohol testing, mean an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in her or her system. Screening tests may be conducted by utilizing a non-evidential screening device included by the National Highway Traffic Administration on its conforming products list (e.g., a saliva screening device) or an evidential breath testing device (“EBT”) operated by a trained breath alcohol technician (“BAT”). In controlled substance testing, “Screening Test” means an immunoassay screen to eliminate “negative” urine specimens form further consideration. 49 C.F.R. § 382.107.

Substance Abuse Professional” or “SAP”:

Means a licensed physician (medical doctor or doctor of osteopathy), licensed or certified psychologist, licensed or certified social worker, licensed or certified employee assistance professional, or licensed or certified addiction counselor (certified by the National Association of Alcoholism and Controlled Substance Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders. 49 C.F.R. § 40.281.

Informed Consent and Notice for Drug and Alcohol Screening of City Employees and Applicants

CITY OF NOWTHEN CITY EMPLOYEE AND APPLICANT NOTIFICATION AND DRUG SCREENING CONSENT FORM**

I acknowledge that I have received and understand the City's Controlled Substance and Alcohol Testing for Commercial Drivers (DOT) Policy.

I agree to comply with the City's policy on controlled substance and/or alcohol and understand failure to comply is grounds for disciplinary action, up to and including termination. As an applicant, I understand my conditional job offer will be withdrawn if I refuse to test or test positive for a controlled substance.

I hereby consent to undergo controlled substance and/or alcohol testing pursuant to said policy, and I authorize collection of a urine and/or breath sample from me for these purposes.

I understand that the procedure employed in this process will insure the integrity of the sample and is designed to comply with medical and legal requirements.

I consent to the release of the controlled substance and/or alcohol test results in accordance with the City's Controlled Substance and Alcohol Testing (DOT) Policy to the City's third-party administrator [REDACTED], and within the City on a need-to-know basis, and to additional parties in accordance with written authorization or as otherwise required by applicable or state law.

I further understand that the results of this testing may affect my employment status, as described in the policy as well as federal law updates, as applicable.

In the event of a post-accident test, the drug and/or alcohol test result(s) may also be provided to the workers' compensation insurance carrier.

I understand that if I am an applicant, the City will conduct a "full query" of the Federal Motor Carrier Safety Administration's Clearinghouse to determine whether a record exists for me. In addition, I understand that if I become or am an employee, the City will, at least once a year, conduct a limited query of the Clearinghouse to determine whether a record exists for me. Therefore, I hereby consent to the City conducting limited queries of the FMCSA Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) to determine whether drug or alcohol violation information about me exists in the Clearinghouse for purposes of my candidacy and throughout the duration of my employment, as applicable.

I also understand that if the limited query conducted by the City indicates that drug or alcohol violation information about me exists in the Clearinghouse, FMCSA will not disclose that information to the City without first obtaining additional specific consent from me.

I further understand that if I refuse to provide consent for the City to conduct a limited query of

the Clearinghouse, the City must prohibit me from performing safety-sensitive functions, including driving a commercial motor vehicle, as required by FMCSA’s drug and alcohol program regulations.

*** As an applicant I understand I will need to register with the FMCSA Clearinghouse to complete the registration process before I can respond to employer consent requests or access my driver record in the FMCSA Commercial Driver’s License Drug and Alcohol Clearinghouse. Visit <https://clearinghouse.fmcsa.dot.gov/register> and click Go to login.gov.*

Signature of Applicant/Employee

Signature of Witness

Date

Drug Screening Refusal of Consent

I hereby refuse to submit to the drug and alcohol testing process.

I have seen a copy of the City’s Controlled Substance and Alcohol Testing for Commercial Drivers (DOT) Policy and understand that, if I am an applicant, my refusal to submit to testing will subject me to withdrawal of the City’s conditional offer of employment, and if I am an employee, my refusal to submit to testing will subject me to disciplinary proceedings including, but not limited to, employment discharge.

Signature of Applicant/Employee

Signature of Witness

Date

If employee refuses to sign, indicate “Refused to sign”.

DATA PRIVACY NOTICE

The information collected pursuant to this policy is used to determine your eligibility for employment and the performance of certain safety sensitive functions. You are not required to provide information and submit to the tests, but your failure to do so will result in the City withdrawing a conditional job offer or you may be disciplined (up to and including discharge) from employment, whichever may apply. The results of the tests performed will be private data and will not be released to other employers, governmental agencies, or persons without the written consent of the employee tested, except as otherwise provided by regulation and law pursuant to a court order. Only those individuals with a necessity to perform their functions under this policy will have access to the test results.

Drug and Alcohol

<p>This list has been compiled by the League of Minnesota Cities. Last Updated: 03/2024</p>	
<p>Advanced Drug Testing Inc. 107 - 22nd Street West PO Box 1452 Williston ND 58801 701-577-0498 https://advancedrugtesting.com/</p>	<p>ChoicePoint www.choicepoint.com 877-547-2518</p>
<p>Concorde Inc. (Statewide) Eleven Penn Center 1835 Market St., Suite 1200 Philadelphia, PA 19103 www.concorde2000.com</p>	<p>Consolidated Medical Services (subsidiary of Medtox) 402 West County Road D St. Paul MN 55112 www.medtox.com 800-832-3244 651-636-7466 Used by Plymouth, Ham Lake, Northfield, New Hope, Roseville, Bloomington</p>
<p>Lakes County Service Cooperative 1001 E. Mount Faith Fergus Falls, MN 56537 218-739-2459 West Central MN Website</p>	<p>Vault Welsh Commons 1354 Welsh Road, Suite C-2 North Wales, PA 19454-1913 https://www.vaulthealth.com/ 215-641-4959 800-732-DRUG (3784)</p>
<p>Hire Right https://www.hireright.com/ 917 Chapin Road PO Box 353 Chapin, SC 29036 jdammann@geninfo.com office: 866.260.0493 cell: 216.288.9106 fax: 803.932.3510</p>	<p>Industrial Health Services Network, Inc. https://www.ihsn.com/ P.O. Box 490 Hudson, WI 54016 800-880-4444 Statewide</p>

Drug & Alcohol Testing

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<p>Minnesota Municipal Utilities Association – MMUA 3025 Harbor Lane North, Suite 400 Plymouth, MN 55447-5142 www.mmua.org 763-551-1230 Statewide FMCSA only</p>	<p>Lakes County Service Cooperative 1001 E. Mount Faith Fergus Falls, MN 56537 218-739-2459 West Central MN Website</p>
<p>DISCLAIMER: The inclusion of vendor information does not constitute an endorsement of any specific vendor.</p>	