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# CITY OF KETTERING — ADMINISTRATIVE POLICIES

## PERSONNEL POLICIES & PROCEDURES

08/06

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### Policy No. 408: Alcohol and Drug Policy for Employees Who Operate Commercial Motor Vehicles

#### A. Policy

1. The purpose of this Policy is to comply with all applicable federal regulations adopted by the Federal Highway Administration (FHWA) that mandate alcohol and drug testing and establish testing standards for covered, “safety-sensitive” employees who operate “commercial motor vehicles.” **This Policy supplements, but does not replace or change, all existing City policies and agreements concerning the use of, and testing for, alcohol and drugs, unless otherwise required by law or regulation.**
2. The FHWA regulations require the City to provide each covered employee/driver with information explaining the FHWA requirements and the City's policies and procedures for meeting these requirements. The City is providing the information contained or referred to within this Policy to accomplish this objective.
3. The Director of Human Resources (or his/her designee) is the person designated by the City to: answer employee and supervisor/manager questions about these materials and the City's implementation of the FHWA regulations; to receive confidential information regarding alcohol and drug testing results; and to receive confidential information from Substance Abuse Professionals. The Director of Human Resources' designees include the two Human Resource Analysts and the two Human Resource Technicians in the Human Resource Department.
4. Employees subject to this Policy and their supervisors/managers should review the following applicable City of Kettering Personnel Policies and Procedures:
  - Policy No. 401: Safety
  - Policy No. 402: Alcohol and Drug Use
  - Policy No. 405: Medical Examinations

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## CITY OF KETTERING — ADMINISTRATIVE POLICIES

### PERSONNEL POLICIES & PROCEDURES

08/06

---

- Policy No. 407: Employee Assistance Program
5. The public expects services provided by City of Kettering employees to be delivered in the safest and most conscientious manner possible. Involvement with drugs and alcohol can adversely effect job performance and employee safety. The City's concern is that employees are in a condition to perform their duties safely and efficiently, in the best interests of their fellow workers and the public, as well as themselves. The presence of drugs or alcohol on the job, and the influence of these substances on employees during working hours, is inconsistent with the City's objective to maintain a drug and alcohol-free workplace.
  6. Employees who think they may have an alcohol or drug usage problem are urged to voluntarily seek assistance from the City's Employee Assistance Program. While the City will be supportive of those who seek help voluntarily, the City will be equally firm in identifying and disciplining those who are, or continue to be, substance abusers and do not seek help.
  7. To further our commitment of maintaining a drug and alcohol-free workplace in order to provide a safe work environment for employees and safe service delivery to the public, it is our policy to:
    - a. Ensure that employees who operate commercial motor vehicles are not impaired in their ability to perform their work in a safe and productive manner;
    - b. Conduct drug and alcohol testing as required by FHWA regulations; and
    - c. Encourage employees to seek professional assistance anytime alcohol or drug use adversely affects their ability to perform their work assignments.

#### **B. Covered Employees**

This Policy applies to all employees who operate a commercial motor vehicle to carry out their job duties for the City of Kettering or who are required as a condition of employment to possess and maintain a commercial driver's license (CDL). Participation in the City's CDL

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## CITY OF KETTERING — ADMINISTRATIVE POLICIES

### PERSONNEL POLICIES & PROCEDURES

08/06

---

Alcohol and Drug Testing Program is required for these employees and is considered to be a condition of employment.

A “commercial motor vehicle” is a vehicle that:

1. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
2. Has a gross vehicle weight rating of 26,001 or more pounds; or
3. Is designed to transport 16 or more passengers, including the driver; or
4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations.

#### C. Safety-Sensitive Functions

The FHWA alcohol and drug rules apply to employees/drivers when performing safety-sensitive functions. “Safety-sensitive” functions under these rules include any of the following:

1. All time waiting to be dispatched;
2. All time inspecting, servicing or conditioning any commercial motor vehicle;
3. All time driving a commercial motor vehicle;
4. All other time spent in or on any commercial motor vehicle;
5. 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;
6. All time spent dealing with a commercial motor vehicle accident; and
7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle.

#### D. Prohibited Conduct

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## CITY OF KETTERING — ADMINISTRATIVE POLICIES

### PERSONNEL POLICIES & PROCEDURES

08/06

---

The FHWA regulations include the following rules on prohibited conduct:

1. No employee/driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of .04 or greater (see Section I of this Policy on alcohol concentrations between .02 and .04);
2. No employee/driver shall be on duty or operate a commercial motor vehicle while the driver possesses alcohol, unless the alcohol is manifested and transported as part of a shipment;
3. No employee/driver shall use alcohol while performing safety-sensitive functions;
4. No employee/driver shall perform safety-sensitive functions within four hours after using alcohol;
5. No employee/driver shall use alcohol for eight hours following an accident, or until the driver undergoes a post-accident alcohol test, whichever occurs first;
6. No employee/driver shall refuse to submit to a post-accident alcohol or drug test, a random alcohol or drug test, a reasonable suspicion alcohol or drug test, or a follow-up alcohol or drug test; and
7. No employee/driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the employee/driver uses any drug, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle.

#### **E. Supervisor/Manager Responsibilities**

Supervisors/managers must not permit an employee/driver to perform safety-sensitive functions if they have actual knowledge that the employee:

1. Has a blood alcohol concentration of .02 or greater; or
2. Has alcohol in their possession; or
3. Is using alcohol on the job; or
4. Has used alcohol within the past four hours; or
5. Refused to submit to a alcohol or drug test required by this Policy; or
6. Has used a controlled substance; or

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## CITY OF KETTERING — ADMINISTRATIVE POLICIES

### PERSONNEL POLICIES & PROCEDURES

08/06

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7. Tested positive for drugs.

#### F. Alcohol and Drug Testing

A driver is subject to FHWA mandatory testing for alcohol and drugs under the following circumstances:

1. Pre-Employment/Pre-Duty Testing

An applicant or newly hired employee/driver must be tested for alcohol and drugs before the first time the driver performs any safety-sensitive function for the City.

2. Post-Accident Testing

An employee/driver must be tested for alcohol and drugs as soon as practicable following an accident involving a commercial motor vehicle, if:

- a. The employee/driver was performing a safety-sensitive function with respect to the vehicle, and the accident resulted in the loss of a human life (whether or not the driver caused the accident), or
- b. The employee/driver receives a citation under state or local law for a moving violation arising out of the accident.

3. Random Testing

Employees/drivers will be randomly selected for unannounced alcohol and drug testing. The minimum annual percentage rate for random alcohol testing will be 10% of the average number of driver positions. The minimum annual percentage for random drug testing will be 50% of the average number of driver positions. Employees/drivers will be selected on a random basis which assures that all drivers have an equal chance of being tested.

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## CITY OF KETTERING — ADMINISTRATIVE POLICIES

### PERSONNEL POLICIES & PROCEDURES

08/06

---

4. Reasonable Suspicion Testing

An employee/driver must be tested for alcohol or drugs if there is reasonable suspicion that a driver has violated the rules on the use of alcohol or drugs. Reasonable suspicion will be based on specific, current, describable, observations concerning the appearance, behavior, speech or body odors of the employee made during, just preceding, or just after the period of the work day that the employee is performing a safety-sensitive function. The observation and determination that a reasonable suspicion exists will be made by a supervisor, manager or other City official trained in detecting the symptoms of alcohol and drug use.

5. Return-to-Duty Testing

An employee/driver must be tested for alcohol and drugs before returning to any safety-sensitive duties following a violation of the FHWA alcohol or drug rules.

6. Follow-up Testing

An employee/driver who has been identified by a Substance Abuse Professional as needing assistance in resolving problems with alcohol or drugs and who has returned to duty is subject to a minimum of six follow-up alcohol or drug tests over the first 12 months following the return to duty. The Substance Abuse Professional may require the employee to undergo additional alcohol or drug testing for up to 60 months.

All alcohol and drug testing done under the FHWA rules will comply with 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. These procedures require separate screening and confirmation tests and a number of other procedures which are intended to protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver.

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## CITY OF KETTERING — ADMINISTRATIVE POLICIES

### PERSONNEL POLICIES & PROCEDURES

08/06

---

#### G. Refusal to Submit to Alcohol or Drug Test

1. The FHWA rules mandate that an employee/driver submit to the alcohol and drug tests required by the FHWA rules. A refusal to submit is itself a violation of the FHWA rules.
2. A refusal to submit to an alcohol or drug test includes any of the following conduct:
  - a. Failure to provide adequate breath for alcohol testing, without a valid medical explanation, after the driver has received notice of the requirement for alcohol testing under the FHWA rules;
  - b. Failure to provide adequate urine for drug testing, without a valid medical explanation, after the driver has received notice of the requirement for drug testing under the FHWA rules;
  - c. Engaging in conduct that clearly obstructs the testing process; and
  - d. Failure to remain readily available for testing following an accident involving a commercial motor vehicle.
3. A refusal to take an alcohol or drug test required by the FHWA rules will have the following minimum consequences:
  - a. An applicant who refuses a pre-employment/pre-duty test will not be hired;
  - b. An employee who refuses a return-to-duty test will not be returned to duty; and
  - c. An employee who refuses a post-accident, random, reasonable suspicion or follow-up test will be treated as if he/she had a positive test result, as described in Paragraph H, which follows.

An employee who refuses to comply with a request for testing, who provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution, shall be removed from duty immediately and subject to discipline up to and including dismissal. Refusal can include an inability to provide a specimen or breath sample without a valid medical

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## CITY OF KETTERING — ADMINISTRATIVE POLICIES

### PERSONNEL POLICIES & PROCEDURES

08/06

---

explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test.

#### H. Employees/Drivers Who Violate the FHWA Rules on Alcohol or Drugs will:

1. Be removed from all safety-sensitive functions and placed on an unpaid leave of absence, unless otherwise determined appropriate by the Director of Human Resources or his/her designee;
2. Be referred to and evaluated by a Substance Abuse Professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol or drugs;
3. Not be returned to work unless the driver passes a return-to-duty alcohol test (if the violation involved alcohol) or a return-to-duty drug test (if the violation involved drugs) and has properly followed any rehabilitation program prescribed by the Substance Abuse Professional; and
4. Be subject to FHWA-mandated unannounced follow-up drug and alcohol testing, including a minimum of six tests during the first 12 months following the driver's return to work.

These are the minimum consequences mandated by the FHWA rules. The City may take additional disciplinary action, up to and including dismissal, for conduct which violates City work rules or policies.

#### I. Alcohol Test Result Between .02 and .04

A positive alcohol test is defined by the FHWA rules as a test finding an alcohol concentration of .04 or greater. However, if a driver's alcohol test finding is between .02 and .04, the driver must be removed from duty until the driver's next regularly scheduled duty period, but not less than 24 hours following the test.

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## CITY OF KETTERING — ADMINISTRATIVE POLICIES

### PERSONNEL POLICIES & PROCEDURES

08/06

---

#### J. Employee Requested Confirmation Testing

An employee who questions the results of a required drug test may request that an additional test be conducted at a different DHHS-certified laboratory. The test will be conducted on the split sample that was provided at the same time as the original sample. The cost of the second test will be borne by the employee, unless the second test invalidates the first.

The method of collecting, storing and testing the split sample is as prescribed by the procedures in 49 CFR Part 40. The employee's request for a split sample test must be made to the City's designated Medical Review Officer within 72 hours of notice of the initial test result. Requests after 72 hours will be accepted only if the delay was due to documentable facts that were beyond the control of the employee.

#### K. Confidentiality

Laboratory reports or test results shall not appear in an employee's general personnel folder. Information of this nature will be secured in a separate confidential folder in the Human Resource Department. The reports or test results may be disclosed to City management on a need-to-know basis and to the tested employee upon request. The City may also disclose confidential information required by FHWA to be maintained pertaining to an employee to: the decision makers in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee, and arising from the results of an alcohol and/or controlled substance test administered under FHWA rules, or from the City's determination that the employee engaged in prohibited conduct.

#### L. FHWA Mandated Alcohol/Drug Evaluation/Treatment

Employees/drivers who test positive for the presence of alcohol or illegal drugs will be referred to, and evaluated by, a Substance Abuse Professional (SAP). A Substance Abuse Professional is a licensed or certified physician, psychologist, social worker, employee assistance professional, or addiction counselor with knowledge of, and clinical experience in, the diagnosis and treatment of drug and alcohol-related disorders. The Substance Abuse Professional will evaluate each employee to determine what assistance, if any, the employee needs to resolve problems associated with prohibited substance abuse or misuse of alcohol.

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## CITY OF KETTERING — ADMINISTRATIVE POLICIES

### PERSONNEL POLICIES & PROCEDURES

08/06

---

Under certain circumstances, including positive alcohol or drug tests, employees may be required to undergo treatment for substance abuse. If an employee is not discharged, but is allowed to return to duty after such evaluation and/or treatment, he/she must properly follow the rehabilitation program prescribed by the Substance Abuse Professional, must pass the return to duty alcohol and drug test(s) and be subject to unannounced follow-up tests for a period of one to five years, as determined by the Substance Abuse Professional or as required by federal law. Any employee who refuses treatment when required, or fails to comply with the Individualized Treatment Plan prescribed by the Substance Abuse Professional for treatment, aftercare, or return to duty, shall be subject to disciplinary action, up to and including discharge.

#### M. Additional Alcohol and Drug Information

1. The use of alcohol or drugs can have negative effects on an individual's health, work and personal life.
2. Copies of the FHWA rules on alcohol and drug use and testing, 49 CFR Part 382, and the Department of Transportation rule on procedures for Transportation Workplace Drug and Alcohol Testing Programs, 49 CFR Part 40, are available for review in the Human Resource Department.
3. Employees are urged to request assistance with any drug or alcohol problem before disciplinary action is necessary. If an employee advises the City of a drug or alcohol problem, the employee will be urged to receive counseling and, if appropriate and necessary, will be permitted to take accrued paid sick leave or vacation to receive the recommended treatment. If an employee has exhausted accrued paid sick leave and vacation, he/she may apply for an unpaid personal leave of absence for the period of time necessary to receive the recommended treatment.
4. Alcohol and drug dependencies are treatable. Employees covered by City-sponsored employee assistance program and/or health insurance plan have limited coverage for

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## CITY OF KETTERING — ADMINISTRATIVE POLICIES

### PERSONNEL POLICIES & PROCEDURES

08/06

---

treatment of alcoholism and drug dependency. Any costs associated with treatment that are not covered by insurance will be the responsibility of the employee.

5. Employees who suspect that another employee is in violation of the FHWA alcohol and drug rules should immediately report their suspicion, and the basis for it, to their supervisor/manager or to the Director of Human Resources, or his/her designee so that appropriate action may be taken, and a potentially unsafe situation avoided.

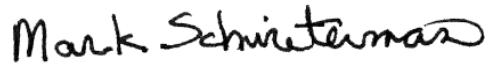
The City Manager hereby delegates the appropriate responsibility and authority to administer this Policy to the City's Assistant City Managers and Department Directors.

Approved:

9/18/06

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Date



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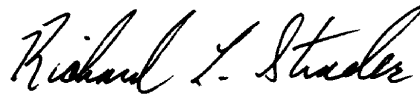
Mark Schwieterman  
City Manager

Issued:

10/27/06

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Date



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Richard L. Strader  
Director of Human Resources

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**CITY OF KETTERING — ADMINISTRATIVE POLICIES**

**PERSONNEL POLICIES & PROCEDURES**

**08/06**

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**CERTIFICATE OF RECEIPT**

I certify that I have received a copy of the City of Kettering Policy No. 408: Alcohol and Drug Policy for Employees Who Operate Commercial Motor Vehicles.

\_\_\_\_\_  
Employee Name (Print)

\_\_\_\_\_  
Employee Job Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Employee Department

\_\_\_\_\_  
Date