

## ARTICLE VI. DRUG AND ALCOHOL POLICY

### Section 1. Purpose and Scope of Policy

The purpose of this policy is to maintain a drug- and alcohol-free workplace and to provide procedures for the screening of job applicants and employees for the use of illegal drugs and the improper use of prescription drugs and/or alcohol.

Employees with substance abuse problems are encouraged to voluntarily seek help from the employee assistance program (EAP). EAPs are intended to help employees deal with personal problems that might adversely impact their work performance, health, and well-being. EAPs are defined as assessment, short-term counseling and referral services for employees and their household members. An employee who participates in a counseling, treatment, or rehabilitation program for drug and/or alcohol use or abuse will not be subject to disciplinary action for the disclosure of his or her problem or for his or her participation in the program provided that the employee voluntarily enters the program prior to being identified as a substance abuser by a testing program or before the Town of Blowing Rock has reasonable suspicion that the employee is a substance abuser.

All testing will be conducted in a manner that will protect the rights of employees and applicants subject to testing. Therefore, the Town will take necessary steps to safeguard the dignity and self-esteem of those being tested, and will ensure adherence to all procedures pertaining to the implementation of this policy. The Town will adhere strictly to all standards of confidentiality and assure all employees that testing records and results will be released only to those authorized to receive such information.

Employees who fail drug or alcohol tests as provided in this policy will be subject to disciplinary action, up to and including dismissal.

### Section 2. Definitions

Unless otherwise specifically provided or unless otherwise clearly required by the context in which such words or phrases are used, the words and phrases defined below shall have the meaning indicated when used throughout this Article:

- a. **Accident** -- Situation involving a commercial motor vehicle operating on a public road that results in a fatality; bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or disabling damage to one or more motor vehicles such that the vehicle(s) must be transported from the scene by a tow truck or other vehicle.
- b. **Alcohol Test** -- An assessment for the presence of alcohol in the body as determined through the use of a breath alcohol test, evidential breathalyzer test, or blood screening.
- c. **Commercial Motor Vehicle** -- 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 of 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 Material Transportation Act and requires the motor vehicle to be placarded under the Hazardous Materials Regulations.
- d. **Conviction** -- A finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of federal or state criminal drug statutes.
  - e. **Drug** -- A controlled substance as listed in Schedules I through V of Section 202 of the Controlled Substances Act (21 USC 812) or Chapter 90, Section 87(5) of the North Carolina General Statutes or a metabolite thereof.
  - f. **Drug Test or Drug Screening** -- An assessment, including providing the necessary sample of body fluid by the employee to be tested, for the presence of any of the following drugs or drug metabolites in the urine or blood of an employee:
    1. amphetamines
    2. barbiturates
    3. benzodiazepines
    4. cannabinoids
    5. cocaine
    6. methaqualone
    7. opiates
    8. phencyclidine
    9. propoxyphene
    10. other drugs that may be determined to reduce work safety or work efficiency
  - g. **Medical Review Officer** -- A North Carolina-licensed physician with specific training in the area of substance abuse.
  - h. **On Call or Standby Duty** -- When an employee is subject to receiving a call to report immediately to work for the Town.
  - i. **On Duty** -- When an employee is at the workplace, in a Town vehicle, or otherwise performing duties associated with his or her position with the Town.
  - j. **Other Substance** -- Any substance that has the potential to appreciably impair the mental or physical function of a person.

- k. **Positive** -- With respect to the results of a **drug test**, means a laboratory finding of the presence of a drug or a drug metabolite in the urine or blood of an employee at the levels identified by the Substance Abuse and Mental Health Services Administration (SAMHSA), or for drugs not subject to SAMHSA guidelines, at the levels identified by the Town. All positive tests will be confirmed using a different technology than was used for the first test, such as the gas chromatography/mass spectrometry (GC/MS) process.
- l. **Positive** -- With respect to the results of an **alcohol test**, means the presence of alcohol in an employee's system as defined by Federal DOT standards.
- m. **Negative** -- With respect to the results of a **drug test**, means a test result that does not show presence of drugs at a level specified to be a positive test.
- n. **Negative** -- With respect to the results of an **alcohol test**, means a test that indicates a breath alcohol concentration as defined by Federal DOT standards.
- o. **Qualified Negative** -- With respect to the results of a **drug test**, means a test in which the lab result is consistent with **legal** drug use.
- p. **Random Testing** -- Testing conducted on an employee assigned to a safety-sensitive position that is chosen by a method that provides an equal probability that any employee from a group of employees will be selected.
- q. **Reasonable Suspicion** -- A belief, based upon specific objective facts and rational inferences drawn from those facts that an employee has consumed or is under the influence of alcohol or illegal drugs. Circumstances that constitute a basis for determining reasonable suspicion may include but are not limited to any of the following:
  - 1. presence of the physical symptoms of drug or alcohol use (for example, glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes)
  - 2. a pattern of unusual or erratic behavior (for example, confusion, disorientation, lack of coordination, marked personality changes, irrational behavior, physical altercation, verbal altercation)
  - 3. an accident resulting in damage to property or personal injury
  - 4. direct observation of drug or alcohol use
  - 5. possession of drugs
  - 6. verifiable information obtained from other employees based upon their observations
  - 7. arrests, citations, and deferred prosecutions associated with drugs or alcohol
- r. **Pre-placement Testing** -- Testing conducted before a prospective employee initially performs safety-sensitive functions for the Town; or testing conducted on a current Town employee prior to his or her being promoted, transferred, or demoted into a safety-sensitive position.

- s. **Safety Sensitive Position** -- The duties of the position create, or are accompanied by, such a great risk of injury to other persons or to property that even a momentary lapse of attention, judgment, or dexterity could have fateful consequences. Examples of these positions include:
  - 1. Full- or part-time positions requiring a commercial driver's license (CDL), performing maintenance on a commercial vehicle, and supervisors responsible for controlling the movement of commercial vehicles for the Town of Blowing Rock.
  - 2. Full- or part-time positions requiring the use of weapons (or potential use of weapons).
  - 3. Full- or part-time positions requiring the handling of hazardous materials, the mishandling of which may place the employee, fellow employees, or the general public at risk of serious injury, or the nature of which could create a security risk in the workplace.
  - 4. Other positions as determined on a case-by-case basis.
- a. Determination as to which positions are safety sensitive will be based on Department of Transportation guidelines or the recommendation of the Department Head and approval by the Town Manager.
- t. **Supervisor** -- Any employee who has the authority to direct the job activities of one or more other employees. With respect to a particular employee, the term means the employee's immediate supervisor, Department Head, the Town Manager, or any other person having indirect supervisory authority over the employee.
- u. **Pass a Drug Test** -- The result of the drug test is negative. The test either:
  - 1. showed no evidence or insufficient evidence of a prohibited drug or drug metabolite;
  - 2. showed evidence of a prohibited drug or drug metabolite, but there was a legitimate medical explanation for the result as determined by a medical review officer.
- v. **Pass an alcohol test** -- A negative alcohol test. The test showed no evidence or insufficient evidence of a prohibited level of alcohol.
- w. **Substance Abuse Professional** -- A licensed physician or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of both drug- and alcohol-related disorders.
- x. **Refuse to Submit** -- An employee: (1) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing; (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing; (3) refuses to sign the breath alcohol confirmation test certification; or (4) engages in conduct that clearly obstructs the testing process.

- y. **Workplace** -- The location or facility where an employee may be expected to perform any task related to the requirements of his or her job. This includes, but is not necessarily limited to, Town buildings and facilities, break rooms and restrooms, outdoor worksites, Town or personal vehicles (while the personal vehicle is being used for Town business), computer work stations, conference rooms, hallways, private offices, open or partitioned work areas, public contact or customer service areas, and parking lots.
- z. **Confirmation Test** -- For alcohol, a confirmation test means a second test, following a screening test with the result, as defined by Federal DOT standards that provides quantitative data of alcohol concentration. Confirmation test for controlled substances means a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screen test and that uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for the five SAMHSA drugs.

### Section 3. Drug and Alcohol Tests For Safety Sensitive Positions

This section covers all employees who must hold a commercial driver's license as a job requirement and all employees who perform other safety-sensitive functions.

- a. **Pre-placement.** Before an employee initially performs safety-sensitive functions for the Town, he or she must undergo testing for drugs. Applicants for safety-sensitive positions or current employees desiring a transfer into safety-sensitive positions must pass a pre-placement drug test.
- b. **Post Accident.** Post accident testing must be conducted on any driver or any other safety-sensitive employee *not* in the vehicle (for example, maintenance personnel) whose performance could have contributed to the accident. A determination whether to test covered employees who were not in the vehicle but who may have contributed to the accident will be made based on the best information available at the time of the decision. The Federal Highway Administration mandates that tests must be conducted in the event of a fatality or if the driver receives a citation under state or local law for a moving traffic violation arising from the accident.
- c. **Reasonable Suspicion.** A test will be conducted when there is reason to believe that the employee has used a prohibited drug or has misused alcohol as defined in this policy. Reasonable-suspicion testing is authorized only if the required observations and/or inferences are made by a supervisor or official of the Town.
- d. **Random Testing.** Employees designated as safety sensitive will be tested on an unannounced basis throughout the year. Random testing is required just before, during, and after performance of a safety-sensitive function on at least 25% of the employer's safety-sensitive employees annually.
- e. **Return to Duty.** An employee who has a positive breath alcohol test of as defined by Federal DOT standards will not be allowed to return to duty in the performance of a safety-sensitive function until he or she has been evaluated by a substance abuse professional and until he or she tests negative -- as defined by Federal DOT standards on a return-to-duty alcohol test.

- f. **Follow-up.** Once allowed to return to duty, an employee who has been determined by the evaluating substance abuse professional to be in need of assistance in resolving problems associated with misuse of drugs and/or alcohol must submit to a minimum of six follow-up tests within the first twelve months following rehabilitation. Follow-up testing may be extended for up to 36 months following return to duty as prescribed by the evaluating substance abuse professional.

#### **Section 4. Drug and Alcohol Abuse and Testing Policy for All Employees**

The unlawful manufacture, distribution, dispensation, possession, purchase, or use of drugs by employees is prohibited and constitutes grounds for immediate termination.

The manufacture, distribution, dispensation, possession, storage, purchase, or use of alcohol by employees while at the workplace is prohibited and constitutes grounds for immediate termination.

Employees who are disciplined or terminated as a result of a violation of this policy shall be referred to the employee assistance program as defined by section 8.01 for evaluation and further counseling or treatment by a substance abuse professional.

An employee who tests positive for alcohol and is not terminated will receive a five-day suspension without pay, 180-day performance probation, and a mandatory referral to a substance abuse professional. The employee shall be evaluated by the substance abuse professional and follow any rehabilitation program prescribed. The employee shall be subject to all other return-to-work provisions as outlined in this policy. Refusal to comply with the rehabilitation program prescribed by the substance abuse professional will result in termination. However, before proceeding with disciplinary action, the employee's Department Head must assure that the facts of the case are reviewed by the Town Manager. A second such occurrence of a positive alcohol test within three years of the first occurrence will result in termination.

No safety-sensitive employee shall use alcohol within four hours before going on duty, or operating, or having physical control of a commercial motor vehicle.

No employee shall report for duty or remain on duty in a safety-sensitive function while having an alcohol concentration as defined by Federal DOT standards. An employee who reports to work and whose breath alcohol test result indicates as defined by Federal DOT standards a level of alcohol in the employee's system shall be considered to have a positive alcohol test and shall be disciplined as outlined in this policy.

When there is reasonable suspicion (Section 8.02, Definitions) that an employee on duty has alcohol or drugs in his or her system, the employee will be tested. If the employee tests positive and management concludes that alcohol or drug consumption occurred on the job, the employee will be terminated. If the employee tests positive and management concludes that alcohol or drug consumption occurred while not on the job, the employee shall receive appropriate discipline, up to and including termination, as outlined in this policy.

A reasonable suspicion or post-accident alcohol test shall be administered no later than eight hours following the determination of reasonable suspicion or following the accident. If the test is not administered within two hours, the supervisor must document the reason(s) the alcohol test was not promptly administered. If the alcohol test is not administered within eight hours following the

determination of reasonable suspicion or following the accident, the supervisor shall cease attempts to administer the test and must document the reason(s) for not administering the test. In the event an alcohol test is not conducted within the eight-hour time frame, the following should occur:

- a. No employee, for whom a test should have been administered, shall be allowed to remain on duty until an alcohol test is administered and the employee's alcohol concentration measures less as defined by Federal DOT standards; or
- b. Twenty-four hours have elapsed following the determination of reasonable suspicion.

No safety-sensitive employee involved in an accident that requires an alcohol test will consume any alcohol for eight hours following the accident or until a post-accident alcohol test is performed, whichever comes first.

No employee may refuse to submit to an alcohol test as required by these regulations.

A written record shall be made of the observations leading to a reasonable suspicion drug or alcohol test and signed by the supervisor or departmental designee who made the observations. The written record shall be prepared within 24 hours of the observed behavior or before the results of the controlled substances test are released, whichever is earlier.

A reasonable suspicion or post-accident drug test shall be administered within 32 hours following the determination of reasonable suspicion or following the accident. If the test is not administered within two hours, the supervisor must document the reason(s) the drug test was not promptly administered. If the drug test is not administered within 32 hours, the supervisor shall cease attempts to administer a drug test and must document the reason(s) for not administering the test. In the event that a drug test is not conducted within the 32-hour time frame, the following should occur: No employee, for whom a test should have been administered, shall be allowed to remain on duty or return to duty until a drug test is administered with negative results.

No employee may refuse to submit to a drug test required by the regulations.

An employee who is tested (exclusive of the return-to-duty test) and found to have an alcohol concentration as defined by Federal DOT standards shall not perform or continue to perform his or her job functions until the start of the employee's next regularly scheduled duty period, but not less than 24 hours following administration of the test. The employee shall be removed from duty without pay for this 24 hour period and shall receive a notation in his or her performance evaluation about the requirement of reporting to work without the presence of alcohol in his or her system.

Employees assigned to positions that are determined to be safety-sensitive will be randomly tested for alcohol and drugs. Selected employees will be transported to the designated testing location. Random testing for drugs and alcohol shall be at the rate mandated by Department of Transportation or Town policy.

A drug and alcohol test will be included as part of the promotion, demotion, transfer, or selection process for employees determined to be final candidates for positions requiring a commercial driver's and for positions that are safety sensitive.

An employee who tests positive for alcohol must submit to a return-to-duty breath alcohol test before resuming the performance of his or her job duties following a disciplinary suspension. The return-to-duty alcohol test must indicate an alcohol concentration as defined by Federal DOT standards. A return-to-duty breath alcohol test result of as defined by Federal DOT standards will result in a five-day

suspension without pay. A return-to-duty breath alcohol test result as defined by Federal DOT standards will be considered as the second positive test within a three-year period and will result in termination.

An employee who refuses to submit to, or fails to follow through with, a drug or alcohol test when testing is required by this policy, will be terminated. However, before proceeding with disciplinary action, including termination, the employee's Department Head will review the facts of the case with the Town Manager.

If an employee alleges that, because of medical reasons, he or she is unable to provide a sufficient amount of breath to permit a valid breath test, the breath alcohol technician shall instruct the employee a second time to attempt to provide an adequate amount of breath. If the employee continues to allege an inability to provide a sufficient amount of breath for the test, the department shall be notified that the employee has refused to be tested. The employee will be directed to obtain, as soon as practicable after the attempted provision of breath, an evaluation from a licensed physician acceptable to the Town that addresses the employee's medical ability to provide the adequate amount of breath. If there is no medical reason acceptable to management for the employee's inability to provide the breath, the employee will be considered to have refused to submit to the alcohol test and will be disciplined, up to and including termination, according to the guidelines established by this policy.

An employee who does not pass the drug or alcohol test and is terminated will not be considered for re-employment for a two-year period following the date of the test and then will be considered only when (a) he or she provides documentary proof of successful completion of a drug and/or alcohol abuse treatment or rehabilitation program; and (b) he or she passes a pre-placement drug and/or alcohol test.

An employee shall inform his or her supervisor if, prior to beginning work or while he or she is on duty, that he or she has used or intends to use any prescription drug, over-the-counter drugs, or other substances that might impair his or her ability to satisfactorily perform duties. Employees are responsible for a thorough understanding of the effects and potential side effects of medications or other chemical substances taken. Failure to notify the supervisor under these circumstances may result in disciplinary action, up to and including termination, depending on the severity of the resulting incident. The Town Manager must be consulted prior to such discipline being imposed.

The medical review officer will review the findings of a drug test with the employee before a final determination is made that the employee did not pass the drug test. The purpose of the review is to ensure that the findings of a positive test are not based on factors other than the use of drugs for which the positive result is found.

Employees returning to work following the completion of a drug and/or alcohol rehabilitation program will be tested on an unannounced and periodic basis for drugs and/or alcohol during the 36 months following their return to work. Those employees covered by Department of Transportation guidelines must submit to a minimum of six follow-up tests within the first twelve months following rehabilitation. A follow-up breath alcohol test result as defined by Federal DOT standards within the prescribed 36-month period will result in a five-day suspension without pay. A second such occurrence of a follow-up breath alcohol test result as defined by Federal DOT standards within the prescribed 36-month period will result in termination.

If an employee is convicted of a violation of a criminal drug statute and such violation occurred while the employee was on duty, the employee must notify his or her Department Head of the conviction within five days after such conviction. Failure to comply with this requirement will result in termination.



## **Section 5. Applicant Testing**

Applicants determined to be final candidates for positions requiring a commercial driver's license or other positions designated as safety sensitive will be required to submit to drug screening. The drug screen shall be performed within 48 hours from the time the conditional job offer is made.

Applicants determined to be final candidates for positions requiring a commercial driver's license or other positions designated as safety sensitive will also be required to submit to an alcohol screening. The applicant must have a breath alcohol test result as defined by Federal DOT standards to be considered for employment.

Applicants for temporary positions requiring a commercial driver's license or other positions designated as safety sensitive will be required to submit to drug and alcohol screening. Candidates for other temporary positions will be required to submit to a drug or alcohol screen if the department determines that the nature of the job and the length of the assignment justify a test.

An applicant will have four hours to provide an acceptable urine specimen. An applicant who refuses to submit to, or fails to follow through with, the drug test as required, will not be considered for employment for a two-year period.

An applicant who does not pass the drug or alcohol test as required will not be considered for employment for a two-year period following the date of the test and then will be considered only when (1) such applicant provides documentary proof that he or she has successfully completed a drug and/or alcohol abuse or rehabilitation program and (2) such applicant passes a pre-placement drug and/or alcohol test.

Any applicant whose breath alcohol test result indicates an alcohol concentration as defined by Federal DOT standards or greater will not be considered for employment for a two-year period following administration of the test.

Applicants having completed a drug or alcohol rehabilitation program within two years prior to their employment with the Town will be required to certify that they have successfully completed the program before they can be hired. If hired, these employees will be tested on an unannounced and periodic basis for drugs and/or alcohol during the 36 months following their hire.

## **Section 6. Compliance with Law**

Information regarding the testing and referral of employees and applicants under this policy will be treated as confidential in accordance with the requirements of North Carolina law governing the privacy of employee personnel records.

Searches and seizures are to be conducted in a legal manner. The Town reserves the right to conduct searches or inspections of property assigned to an employee whenever a Department Head or his designee determines that the search is reasonable under all the circumstances.

## **Section 7. Supervisory Responsibilities**

Every supervisor shall:

- a. Consistently apply this policy to all employees under his or her supervision. A supervisor, who fails to apply this policy when he or she believes, or reasonably should believe, that an employee under his or her supervision has committed a violation, will be subject to appropriate discipline.
- b. Initiate the process for having a drug or alcohol test conducted on an employee if there is reasonable suspicion that the employee under his or her supervision, when such employee is on duty, has an illegal drug or alcohol in his or her system or is using any legal drug in a manner other than it was intended.
- c. Insure that the employees that he or she supervises are aware of the requirements and consequences of this policy.
- d. Follow the procedure established by the Department Head for assuring that an employee who is to be tested for alcohol or other drugs is transported to the designated test site, and that those employees for whom there is reasonable suspicion of substance abuse or who have had a breath alcohol test result as defined by Federal DOT standards or greater are transported home -- either by personal family, friends, or by arranged transportation.
- e. When making recommendations for disciplinary action, supervisors and Department Heads shall consider factors which include (1) the employee's work history; (2) job assignment; (3) length of employment; (4) current job performance; (5) existence of past disciplinary action; and (6) danger or potential danger to fellow employees and the public at large due to the employee's job duties.

## **Section 8. Employee Responsibilities**

Each employee shall have the responsibility to:

- a. Abide by this policy as a condition of employment.
- b. Comply with all applicable laws regulating the manufacture, distribution, dispensation, use or possession of illegal drugs, alcohol, or prescription drugs.
- c. Assure that his or her ability to perform his or her job duties is not negatively affected due to use of drug or alcohol when scheduled to report to work or when on "on call" status. Should any employee be requested to report to work for a safety-sensitive job earlier than his or her normal or previously-assigned time, it is the employee's responsibility to advise his or her supervisor of an inability to perform his or her job duties or that he or she has consumed alcohol within the last four hours prior to reporting for duty. If the employee had received prior notice that he or she might be called back into work, the employee shall be considered Absent Without Leave if he or she is unable to report to duty. An employee may be subject to other disciplinary action, up to and including termination, due to the inability to report for duty.
- d. Submit immediately to a drug or alcohol test when requested by his or her supervisor. An employee, who refuses to submit to post-accident or random testing or to other testing when reasonable suspicion of drug/alcohol use has been identified and documented, will be subject to disciplinary action, up to and including dismissal. In addition, an employee requesting a delay of a test scheduled under the provisions of this policy or failing to appear for a test will be considered to have refused to submit to the test.

- e. An employee charged with or convicted of an alcohol-related offense or a drug-related offense shall notify his or her Department Head no later than five (5) days after such charge or conviction. Failure to notify the Department Head of such a charge or conviction shall be grounds for disciplinary action, up to and including dismissal.

An employee officially charged with a drug-related offense or an alcohol-related offense off the job may be suspended and/or dismissed in accordance with the existing Town policies and procedures for employees facing civil or criminal charges.