City of Carroll

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MEMO TO: Honorable Mayor and City Council Members

FROM: Mike Pogge-Weaver, City Manager MPW

DATE: September 7, 2021

SUBJECT: Revised Policy 0907 – Substance Abuse Prevention Program for Drugs & Alcohol

Recent changes with regulations from the Federal Motor Carrier Safety Administration (FMCSA) necessitates the City to make changes to Policy 0907 related to Substance Abuse Prevention Program for Drugs & Alcohol. One of the changes is the creation of an online Clearinghouse that provides employers, FMCSA, State Driver Licensing Agencies, and State law enforcement personnel real-time information about CDL driver drug and alcohol program violations. The revised policy addresses the use and requirements of the new online Clearinghouse.

In addition to the Clearinghouse, the new policy also clarifies that medical marijuana remains unacceptable for any safety-sensitive employees and is not a valid medical explanation for a positive drug test. The policy also documents and clarifies current practices of the City around drugs & alcohol use.

RECOMMENDATION: Review and consider approving revised Policy 0907 – Substance Abuse Prevention Program for Drugs & Alcohol.

CITY OF CARROLL

POLICIES AND PROCEDURES MANUAL

Subject Substance Abuse Prevention Program for Drugs & Alcohol		Policy No. 0907
Responsible Division(s), Office(s) **All Departments**	Related Policies & Procedures	
Effective/Revision Date 12/26/95; 9/13/21	Approval(s) Michel J. Pogge-Weaver	

The City of Carroll prohibits the use of illegal drugs by its employees and applicants for employment. This policy is established to provide for testing as necessary to ensure compliance in a manner which respects constitutionally guaranteed rights of privacy.

The purpose of this policy is to assure employee fitness for duty and to protect City employees, customers, and the public from risk posed by a worker's use of drugs and/or alcohol. This Policy is intended to comply with all applicable Federal regulations governing workplace drug use and alcohol misuse in every person who performs safety sensitive functions. Regulations issued by the U.S. Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration (FMCSA) mandate urine drug testing and evidential breath alcohol testing for employees in safety sensitive positions. This Policy sets forth the Federal and City anti-drug and alcohol misuse program including the testing and reporting requirements for safety-sensitive and non-safety sensitive employees.

This policy applies to every person whose position requires the possession of a commercial driver's license (CDL); every candidate for full-time employment and seasonal/part-time employment including those in parks, golf, cemetery and library but excluding rec center and aquatic center seasonal/part-time employees.

It is the City's goal to prevent substance abuse and rehabilitate rather than terminate the employment of workers. However, violations of the Policy will result in discipline, up to and including termination, or in not being hired, for all persons covered by this Policy. Compliance with DOT/FMCSA drug and alcohol regulations and City Policy is a condition of employment.

The FMCSA has published Section 382.303, which mandates urine drug testing for employees in safety-sensitive positions and prohibits performance of safety-sensitive functions when there is a positive drug and/or alcohol test result. The U.S. Department of Transportation (DOT) has also published 49 CFR Part 40, as amended, which sets standards for the collection and testing of urine and breath specimens. In addition, the federal government published 49 CFR Part 29, "The Drug-Free Workplace Act of 1988," which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses. This policy incorporates these federal requirements for safety-sensitive employees and others when noted.

Random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year. Random testing will be conducted at all times of the day. Testing rates will meet or exceed the minimum annual percentage rate set each year within each DOT agency. The selection of employees for random drug and alcohol testing will be made by a third-party consortium. Each covered employee who is notified of selection for random drug or random alcohol testing must immediately proceed to the designated testing site.

Pre-Employment Testing: a negative pre-employment drug test result is required before an employee can be hired. If a pre-employment test is canceled, the individual will be required to undergo another test and successfully pass with a verified negative result before being hired.

Reasonable Suspicion Testing: All covered employees shall be subject to a drug and/or alcohol test when the City of Carroll has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing will be made by a trained supervisor or other trained company official on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. Covered employees may be subject to reasonable suspicion drug testing any time while on duty. Covered employees may be subject to reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

Post-Accident Testing: Covered employees shall be subject to FMCSA post-accident drug and alcohol testing under the following circumstances: (a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol for each of its surviving drivers: (1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or (2) Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved: (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle. (b) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for controlled substances for each of its surviving drivers: (1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or (2) Who receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved: (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle. In addition, any other covered employee whose performance could have contributed to the accident, as determined by the City of Carroll using the best information available at the time of the decision, will be tested. A covered employee subject to post-accident testing must remain readily available, or it is considered a refusal to test. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

Following any positive drug or alcohol test result (Breath Alcohol Content {BAC} at or above 0.04) or test refusal, the employee will be immediately removed from safety-sensitive duty and referred to a Substance Abuse Professional (SAP). Following a BAC of 0.02 or greater, but less than 0.04, the employee will be immediately removed from safety-sensitive duties until the start of the employee's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

If any potential employee or current employee receives a negative dilute, the potential employee or current employee will be required to undergo another test. Should this test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the Medical Review Officer (MRO).

Prescription Drug Use: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to the employee's supervisor. Medical advice should be sought, as appropriate, while taking such medication and before performing safety-sensitive duties.

The DOT's Drug and Alcohol Testing Regulation does not authorize "medical marijuana" under a state law to be a valid medical explanation for an employee's positive drug test result. Therefore, MROs will NOT verify a drug test as negative based upon information that a physician recommended that the employee use "medical marijuana." Please note that marijuana remains a drug listed in Schedule I of the Controlled Substances Act. It remains unacceptable for any safety-sensitive employee subject to drug testing under the DOT's drug testing regulations to use marijuana. Since the use of Cannabidiol products could lead to a positive drug test result, DOT regulated safety-sensitive employees should exercise caution when considering whether to use CBD products.

Effective January 6, 2020, personal information collected and maintained pursuant to Federal Motor Carrier Safety Administration (FMCSA) regulations will be reported to the FMCSA Clearinghouse, including: (1) any verified positive, adulterated, or substituted drug test result; (2) an alcohol confirmation test with a concentration of 0.04 or higher; (3) a refusal to submit to any test required by the regulations; (4) an employer's report of actual knowledge, as defined in the regulations, of on-duty alcohol use; pre-duty alcohol use following an accident; and controlled substance use; (5) a substance abuse professional report of the successful completion of the return-to-duty process; (6) a negative return-to-duty test; and (7) an employer's report of completion of follow-up testing. The FMCSA requires that the City conduct a pre-employment query of the Clearinghouse for drug and alcohol violation information on all applicants for FMCSA safety-sensitive positions and an annual query on employees in an FMCSA safety sensitive position. Employees are required to provide necessary, timely consent for these queries as a condition of employment.

RESOLUTION NO. _____

A RESOLUTION APPROVING REVISED POLICY 0907 – SUBSTANCE ABUSE PREVENTION PROGRAM FOR DRUGS & ALCOHOL

WHEREAS, Policy 0907 – Substance Abuse Prevention Program for Drugs & Alcohol has been revised; and

WHEREAS, the Substance Abuse Prevention Program for Drugs & Alcohol Policy is attached hereto as Exhibit "A"; and

WHEREAS, it is determined that the approval of the attached Substance Abuse Prevention Program for Drugs & Alcohol Policy is in the best interest of the City of Carroll, Iowa;

NOW, THEREFORE, BE IT RESOLVED that the Revised Policy 0907 – Substance Abuse Prevention Program for Drugs & Alcohol, attached as Exhibit "A", be authorized and approved.

PASSED AND APPROVED by the Carroll City Council of the City of Carroll, Iowa this 13th day of September, 2021.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

BY:_____
Eric P. Jensen, Mayor

ATTEST:

By:_____
Laura A. Schaefer, City Clerk