**CHAPTER 2 – SUBSTANCE ABUSE/DRUG POLICY**

*NOTE: The Substance Abuse/Drug Policy was adopted by Council on December 2, 2002 as part of the Personnel Policy. When Council approved a new Personnel Policy on July 11, 2005 (which became effective on August 1, 2005), the Substance Abuse/Drug Policy was intentionally omitted from the new Personnel Policy and was left intact as a stand-alone policy by Resolution #R-05-019.*

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**Section 1. Purpose**

The Town of Elizabethtown will provide a safe, productive and drug free work environment for all employees and its citizens. Employees shall report for work and remain on the job in a condition free of alcohol and illegal drugs in which they can safely and efficiently perform their job duties. The employees of the Town of Elizabethtown shall comply with all rules and regulations set forth in the following policy.

**Section 2. Prohibitions**

 The Town of Elizabethtown expressly prohibits the possession, sale, use, distribution, dispensation, manufacture or purchase of controlled substance or related paraphernalia by Town employees while at the workplace. Such an act is grounds for immediate termination.

**Section 3. Grounds for Termination**

The Town of Elizabethtown prohibits the possession, sale, use, distribution, dispensation, manufacture, purchase or storage of alcohol by Town employees while at the work place. Such an act is grounds for immediate termination. Employees with substance abuse problems are encouraged to seek professional help from licensed counselors, medical professionals, or in treatment facilities. Participation in a treatment or rehabilitation program for substance abuse will not be grounds for dismissal provided the employee voluntarily enters such a program prior to being identified as a substance abuser by means identified in this section of this policy.

**Section 4. Drug Tests for CDL Operators**

The Omnibus Transportation Employee Testing Act of 1991 (final rules implemented February 15, 1994) requires in part, that any commercial motor vehicle operator who is subject to the commercial driver’s license (CDL) requirement in the State of North Carolina be tested for alcohol and controlled substances.

**Section 5. Drug Testing**

Department of Health and Human Services (DHHS) mandatory guidelines for controlled substances testing and quality assurance standards shall be used. Controlled substances testing shall be conducted by a laboratory certified by the Substance Abuse and Mental Health Services Administration (SAMHSA).

Federally mandated alcohol testing must be conducted by a Breath Alcohol Technician (BAT) trained to proficiency as demonstrated by successful completion of a course of instruction. Alcohol testing shall be conducted using an evidential Breath Testing (EBT) device.

**Section 6. Employees Who Must Be Tested For Alcohol and Drugs**

The following employees must be tested for alcohol and drugs:

1. Drivers of commercial motor vehicles with a gross vehicle weight rating (GVWR) of 26,001 pounds or more.
2. Drivers of commercial motor vehicles with a gross combination weight rating of 26,001 pounds or more, including a towed vehicle with a gross vehicle weight rating of 10,000 or more.
3. Drivers of motor vehicles designed to transport 16 or more passengers, including the driver.
4. Drivers of motor vehicles of any size transporting hazardous materials and amounts requiring placarding.

*Note: Fire Department personnel who operate emergency equipment are not covered by the above four paragraphs.*

**Section 7. Types of Drug and Alcohol Tests Required by the Regulations**

The following are the types of drug and alcohol tests required by the regulations:

1. Pre-Employment Testing – Drug testing only must be conducted prior to the first time a driver performs safety-sensitive functions. This testing must be conducted on external applicants as well as current employees transferring into positions requiring the performance of safety-sensitive functions. The test results must indicate a verified negative drug test.
2. Post Accident Testing – Must be conducted on any surviving driver who was performing safety-sensitive functions with respect to the vehicle, if:
	1. The accident involved a fatality; or
	2. The driver receives a citation under State or local law for a moving traffic violation arising from the accident.

 Testing for drugs and alcohol should occur within two hours of the accident. If the employee is unable to be tested within two hours, reasons for delay must be documented. If not administered within two hours, attempts to conduct the alcohol test shall cease and the reasons for the inability to conduct the test shall be documented. If a drug test required by this section is not administered within thirty-two hours of the accident, attempts to conduct the drug test shall cease and the reason for the inability to conduct the test shall be documented.

1. Random Testing – Must be conducted on a random, unannounced basis throughout the year on employees who perform safety-sensitive functions. Random testing for drugs and alcohol shall be conducted at the rate mandated by the federal regulations. During the first year of the program, regulations state that a minimum of 25 percent of the CDL holders must be tested for alcohol and 50 percent for drugs.
2. Reasonable Suspicion Testing – Must be conducted when a trained supervisor or Town official believes an employee has used a prohibited drug or has misused alcohol as defined in this Policy. The determination of reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odor of the driver.

 Testing for drugs and alcohol should occur within two hours of the determination of reasonable suspicion. If the employee is unable to be tested within two hours, reasons for the delay must be documented. If an alcohol test required by this section is not administered within eight hours, attempts to conduct the alcohol test shall cease and the reason for the inability to conduct the test shall be documented.

 Alcohol testing shall be conducted while the employee is performing safety-sensitive functions, immediately before the employee performs safety-sensitive functions, or immediately after the employee has performed safety-sensitive functions. Drug testing shall be conducted at any time while the employee is at work.

**Section 8. Conduct Prohibited**

The following conduct is prohibited under this policy:

1. No employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. A Breath Alcohol Test result of 0.04 or greater is considered a positive test result.
2. No employee shall be on duty or operate a commercial motor vehicle while the driver is in the possession of alcohol.
3. No employee shall use alcohol while performing safety-sensitive functions.
4. No employee shall perform safety-sensitive functions within four hours after using alcohol.
5. No employee required to take a post-accident test as defined in this policy shall use alcohol for eight hours following the accident, or until he undergoes a post-accident alcohol test, whichever comes first.
6. No employee shall refuse to submit to an alcohol or drug test required by pre-employment, post-accident, random, reasonable suspicion, return-to-duty, or follow-up testing requirements.
7. No employee shall 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 physician who has advised the driver that the substance does not adversely affect the driver’s ability to safely operate a commercial motor vehicle.
8. No employee shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive for drugs.

**Section 9. Consequences of Engaging in Prohibited Conduct**

The following are the consequences of engaging in prohibited conduct described in this policy:

1. No employee shall perform safety-sensitive functions, including the driving of a commercial motor vehicle, if the driver has engaged in conduct prohibited by this policy.
2. An employee who does not pass the drug test will be terminated.
3. An employee who does not pass the Breath Alcohol Test will be terminated.
4. An employee who refused to submit to a drug or alcohol test as required by this policy will be terminated.
5. An employee who has a confirmed Breath Alcohol Test result of 0.02-0.039 shall not be allowed to continue to perform safety-sensitive functions. The employee will be removed from duty without pay for this 24-hour period and will receive a notation in his/her personnel file about the importance of reporting to work without the presence of alcohol in his/her system. The driver can be subject to a return-to-duty alcohol test, under the authority of the Municipality.
6. An employee who tests positive for a controlled substance and/or alcohol shall be referred to a Substance Abuse Professional (SAP) for evaluation, counseling and further treatment, if necessary.

**Section 10. Additional Requirements**

The following are the additional requirements of this policy:

1. As required by the Federal Drug-Free Workplace Act, if an employee is convicted of a violation of a criminal drug statute and the violation occurred while the employee was at work, the employee must notify his department head of the conviction within five (5) days after the conviction. Failure to notify the department head of the conviction will result in termination.
2. All drug test results are reviewed and interpreted by a Medical Review Officer, or MRO. The MRO is a licensed physician with knowledge of substance abuse disorders. If the laboratory reports a positive test result to the MRO, the MRO will contact the driver, typically by telephone, and discuss the result with him. The MRO attempts to determine if there is a legitimate medical reason for the driver to have the drug in his system. If there is none, the test result is reported as positive. If there is a legitimate medical purpose for the use of the drug, the test result is reported as negative.
3. All employees are required to comply with other expanded drug and alcohol policies. This policy is not intended to take precedence over other Town policies.

**Section 11. Definitions**

For the purposes of this policy, the following words and phrases shall have the meanings respectively ascribed to them by this section:

***Alcohol Test***. A test for the presence of alcohol in the body. This presence must be determined by the use of a Breath Alcohol Test or other device approved by USDOT.

***Drug Test***. A test for the presence of the following drugs or drug metabolites in the urine or blood of an employee:

* Amphetamines (including methamphetamine)
* Cannabinoids (marijuana)
* Cocaine (including crack)
* Opiates
* Phencyclidine (PCP)

Other drugs may also be included as directed by Federal Law or expanded Town policy.

***Negative Drug Test***. A drug test which does not show the presence of drugs at a level specified to be a positive test.

***Positive Drug Test***. A drug test which does indicate the presence of a drug or drug metabolic in the urine or blood at the level specified to be positive by the Substance Abuse and Mental Health Services Administration (SAMHSA). All positive test results will be confirmed using a different technology than the first test, such as the Gas Chromatography Mass Spectrometry (GCMS) process.

***Negative Alcohol Test***. An alcohol test which indicates a breath alcohol concentration of less than 0.02.

***Positive Alcohol Test***. An alcohol test which indicates a breath alcohol concentration of 0.04 or greater.

***Refusal to Submit***. Occurs when an employee:

* Fails to provide an adequate amount of urine for a drug test without a valid medical explanation after he has received notice of the test.
* Fails to provide an adequate amount of breath for an alcohol test without a valid medical explanation after he has received notice of the test.
* Engages in conduct that clearly indicates that he is failing to follow through with the testing process or conduct that interferes with the ability to obtain an adequate specimen.

***Safety-Sensitive Function***. The following list of activities constitutes safety-sensitive functions:

* Driving a commercial motor vehicle.
* Inspecting, servicing, or conditioning any commercial motor vehicle.
* All time at a Town facility or other public property waiting to operate a commercial motor vehicle.
* Performing all other functions in or upon any commercial motor vehicle except resting in a sleeper berth.
* 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.
* All time spent performing the driver requirements associated with an accident.
* Repairing, obtaining assistance, or remaining in attendance of a disabled commercial motor vehicle.
* Performing a road test. (Regulation refers to the Omnibus Transportation Employee Testing Act of 1991, 49CFR.)

***Controlled Substance***. Those drugs listed as controlled by the North Carolina General Statutes, Chapter 80-89 through 90-94 inclusive, most recent revision.