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CITY OF DYER, ARKANSAS

ORDINANCE NO. 2009-10-20-3

AN ORDINANCE ESTABLISHING A POLICY FOR A DRUG-FREE WORKPLACE.

WHEREAS, the City of Dyer currently does not have a clear policy concerning a drug-free workplace, and the City Council has determined that a clear policy related to this issue would be beneficial for the citizens of Dyer.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF DYER, ARKANSAS, AS FOLLOWS:

SECTION 1: Purpose of Policy

The City has a vital interest in providing for the safety and well being of all employees and the public, and maintaining efficiency and productivity in all of its operations. In fulfillment of its responsibilities, the City is committed to the maintenance of a drug and alcohol free workplace.

The City and certain employees who drive commercial motor vehicles are subject to the requirements of federal statutes and implementing regulations issued by the Federal Highway Administration of the U.S. Department of Transportation. However, certain city employees who perform safety and security-sensitive functions are not covered by the foregoing provisions. In addition, the City has an interest in maintaining the efficiency, productivity and well being of employees who do not perform safety or security-sensitive functions. In order to further provide a safe environment for city employees and the public, the City has adopted the following Drug-Free Workplace Policy for those employees who are not covered by federal law.

This policy does not govern or apply to employees who are subject to testing as commercial motor vehicle operators under the foregoing federal law and regulations. They are governed by a separate policy enacted pursuant to that legislation. However, such employees may be tested as authorized by this policy if the circumstances giving rise to such testing do not arise from the employee's operation of a commercial motor vehicle.

SECTION 2: Policy Statement

(a) All employees must be free from the effects of illegal drugs and alcohol during scheduled working hours as a condition of employment. Drinking alcoholic beverages or using drugs while on duty, on City property, in City vehicles, during

breaks or at lunch, or working or reporting for work when impaired by or under the influence of alcohol, or when drugs and/or drug metabolites are present in the employee's system, is strictly prohibited and grounds for disciplinary action up to and including immediate discharge. In addition, employees are subject to disciplinary action up to and including immediate discharge for the unlawful manufacture, distribution, dispensation, possession, concealment or sale of alcohol or drugs while on duty, on City property, in City vehicles, during breaks or at lunch.

(b) The City reserves the right to require employees to submit to urine drug testing and Breathalyzer alcohol testing to determine usage of drugs and/or alcohol as provided below. Employees must submit to all required tests. Any employee who refuses to submit to any required test without a valid medical explanation will be subject to immediate discharge. Refusal to execute any required consent forms, refusal to cooperate regarding the collection of samples, or submission or attempted submission of an adulterated or substituted urine sample shall be deemed refusal to submit to a required test.

(c) The City also reserves the right to require return to duty and follow-up testing as a result of a condition of reinstatement or continued employment in conjunction with or following completion of an approved drug and/or alcohol treatment, counseling or rehabilitation program.

SECTION 3: Safety and Security-Sensitive Positions Defined

(a) A safety-sensitive position is one in which a momentary lapse of attention may result in grave and immediate danger to the public. The following positions are considered safety sensitive:

(1) Law enforcement officers who carry firearms and jailers.

(2) Motor vehicle operators who carry passengers, including, but not limited to, ambulance drivers, bus or jitney drivers, and drivers who transport other city employees.

(3) Fire department employees who directly participate in fire-fighting activities.

(4) Medical personnel with direct patient care responsibilities including physicians, nurses, surgical scrub technicians, emergency medical technicians and trainees, medical and nurses assistants.

(5) Mechanics, welders and sheet metal workers who work on vehicles designed to carry passengers such as buses, ambulances, police cruisers, vans and the like.

(6) Other employees whose duties meet the definition of safety or security sensitive after consultation with and approval by the Arkansas Municipal League.

(b) A security sensitive position includes

(1) any police officer, jailer, police dispatcher and police department employee, including clerical workers, having access to information concerning ongoing criminal investigations and criminal cases, which information could, if revealed, compromise, hinder or prejudice the investigation or prosecution of the case.

(2) the City also considers law enforcement officers as holding security-sensitive positions by reason of their duty to enforce the laws pertaining to the use of illegal substances. Officers who themselves use such substances may be unsympathetic to the enforcement of the law and subject to blackmail and bribery.

SECTION 4: Drug-Free Awareness Program/Education and Training

The City will establish a Drug-Free Awareness Program to assist employees to understand and avoid the perils of drug and alcohol abuse. The City will use this program in an ongoing educational effort to prevent and eliminate drug and alcohol abuse that may affect the workplace.

The City's Drug-Free Awareness Program will inform employees about: (1) the dangers of drug and alcohol abuse in the workplace; (2) the City's policy of maintaining a drug and alcohol free workplace; (3) the availability of drug and alcohol treatment, counseling and rehabilitation programs; and (4) the penalties that may be imposed upon employees for drug and alcohol abuse violations.

As part of the Drug-Free Awareness Program, the City shall provide educational materials that explain the City's policies and procedures. Employees shall be provided with information concerning the effects of alcohol and drug use on an individual's health, work and personal life; signs and symptoms of an alcohol or drug problem; and available methods of intervening when an alcohol or drug problem is suspected, including confrontation and/or referral to management. Supervisors who may be asked to determine whether reasonable suspicion exists to require an employee to undergo drug and/or alcohol testing shall receive at least 60 minutes of training on alcohol misuse and 60 minutes of training on drug use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and drug use.

SECTION 5: Prohibited Substances/Legal Drugs/Unauthorized Items

(a) Prohibited Substances. Alcoholic beverages and drugs are considered to be prohibited substances in the workplace. For purposes of this policy, the term "drugs" includes controlled substances (as identified in Schedules I through V of Section 202 of the Controlled Substances Act, 21 U.S.C. ' 812, and the regulations promulgated thereunder, and defined in the Uniform Controlled Substances Act, Ark. Code Ann. ' 5-64-201-216), including synthetic narcotics, designer drugs, and prescription drugs, excepting: prescription drugs approved by and used in accordance with the directions of the employee's physician.

(b) Legal Drugs. The appropriate use of prescription drugs and over-the-counter medications is not prohibited. Any employee using a prescription drug should consult with his/her physician and pharmacist regarding the effects of the drug. Employees should read all labels carefully.

(c) Unauthorized Items. Employees may not have any unauthorized items in their possession or in any area used by them or under their control. Unauthorized items include, but are not limited to, alcoholic beverage containers and drug paraphernalia.

SECTION 6: Use of Alcohol and Drugs/Prohibited Conduct

All employees covered under this policy are subject to the following prohibitions regarding the use of alcohol and drugs (controlled substances):

- (1) Employees shall not report for duty or remain on duty while impaired by the consumption of alcohol. An employee will be deemed to be impaired by alcohol if that employee has a blood alcohol concentration of 0.04 or greater.
- (2) Employees shall not consume alcohol while on duty.
- (3) Employees required to undergo post-accident testing shall not use alcohol for 8 hours following the accident, or until they undergo a post-accident alcohol test.
- (4) Employees shall submit to all authorized drug or alcohol tests.
- (5) Employees shall not report for duty or remain on duty while under the influence of any controlled substance, except when the use thereof is pursuant to the instructions of a licensed physician who has advised the employee that the effect of the substance on the employee does not pose a significant risk of substantial harm to the employee or others in light of his/her normal job duties.

In addition, subject to disciplinary rules set forth below, employees who are found to have an alcohol concentration of 0.02 or greater, but less than 0.04, in any

authorized alcohol test shall be removed from duty, and may not return to duty until the start of the employee's next regularly scheduled shift, but not less than 24 hours following administration of the test.

The foregoing rules shall apply to all employees and shall apply while on duty, during periods when they are on breaks or at lunch, or not performing safety or security sensitive functions.

SECTION 7: When Drug and Alcohol Testing May Be Required of All Employees

Employees (and applicants) covered by this policy shall be required to submit to urine testing for use of prohibited drugs and/or Breathalyzer alcohol testing in the following circumstances:

(a) When the city has reasonable suspicion that an employee has violated any of the above prohibitions regarding use of alcohol or drugs.

For purposes of this rule, reasonable suspicion shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. The required observations must be made by a supervisor or city official or employee who is trained in detecting the signs and symptoms of misuse of alcohol and drug use.

(b) Return to duty testing is required after an employee has engaged in any of the above prohibitions concerning use of alcohol or drugs, unless the violation results in termination.

(c) As part of a pre-employment physical examination after a conditional job offer has been made, a fitness for duty physical examination, or any other lawful required periodic physical examination. Non-safety and non-security sensitive positions will not be required to undergo a pre-employment drug or alcohol test unless the applicant is otherwise required to undergo a pre-employment physical examination after a conditional job offer has been extended to the employee.

(d) When the City management has a reasonable suspicion based on observations or credible information submitted to the City, that the employee is currently using, impaired by or under the influence of drugs or alcohol.

(e) When an employee suffers an on-the-job injury or following a serious or potentially serious accident or incident in which safety precautions were violated, equipment or property was damaged, an employee or other person was injured, or careless acts were performed by the employee. Such testing will be required of

non-safety sensitive employees only when such factors, when taken alone or in combination with other factors, give rise to reasonable suspicion that the employee may be under the influence of drugs or alcohol.

(f) As part of a return to duty or follow-up drug and/or alcohol test required under an agreement allowing an employee to return to duty following disciplinary action for a positive drug and/or alcohol test, or as the result of a condition of continued employment or reinstatement in conjunction with or following completion of an approved drug and/or alcohol treatment, counseling or rehabilitation program. In order to return to duty, an employee who has a positive drug or alcohol test (i.e. a verified positive drug test or an alcohol test indicating an alcohol concentration of 0.04 or greater) must have a verified negative drug test and/or an alcohol test indicating an alcohol concentration of less than 0.02, and be evaluated and released by a substance abuse professional (SAP). In addition, the employee shall be subject to follow-up testing for a period not to exceed 24 months from the date of the employee's return to duty, in accordance with an SAP's recommendations. (The City also reserves the right to require return to duty and follow-up testing of an employee who has an alcohol test indicating an alcohol concentration of 0.02 or greater, but less than 0.04, based on an SAP's recommendations.)

(g) When any prohibited drug or alcoholic beverage, is found in an employee's possession.

(h) When the laboratory values in any authorized drug test indicated the need for additional testing, as determined by the Medical Review Officer (MRO), or where any authorized drug test must be canceled due to a collection, chain of custody or other procedural problem.

SECTION 8: When Drug and Alcohol Testing May Be Required of Employees Holding Safety and Security-Sensitive Positions

Employees in (and applicants for) safety and security-sensitive positions shall be required to submit to urine testing for use of prohibited drugs and/or Breathalyzer alcohol testing in the foregoing and in the following circumstances:

(a) When a safety-sensitive employee is involved in an accident involving a motor vehicle on a public road, and the employee's position is safety-sensitive because it involves driving a motor vehicle.

(b) Random testing for drugs (but not alcohol) will be conducted. In order to treat all employees as equally as possible, and to maintain consistency in the administration of its efforts to maintain a drug-free workplace, random testing under this policy will be governed by 49 U.S.C. ' 31306 and implementing

regulations to the extent that it is lawful and feasible to do so. Further guidance must be found in The Omnibus Transportation Employee Testing Act of 1991 - Steps to Compliance for Arkansas Municipalities, published by the Arkansas Municipal League.

SECTION 9: Disciplinary Action

(a) Employees may be subject to disciplinary action, up to and including discharge, for any of the following infractions:

(1) Refusal to submit to an authorized drug or alcohol test. Refusal to submit to testing means that the employee fails to provide an adequate urine or breath sample for testing without a valid medical explanation after he/she has received notice of the requirement to be tested, or engages in conduct that clearly obstructs the testing process. Refusal to submit to testing includes, but is not limited to, refusal to execute any required consent forms, refusal to cooperate regarding the collection of samples, and/or submission or attempted submission of an adulterated or substituted urine sample.

(2) Drinking alcoholic beverages or using drugs while on duty, on City property, in City vehicles, during breaks or at lunch.

(3) Unlawful manufacture, distribution, dispensation, possession, concealment or sale of any prohibited substance, including an alcoholic beverage, while on duty, on City property, in City vehicles, during breaks or at lunch.

(4) Any criminal drug statute conviction and/or failure to notify the City of such conviction within five (5) days.

(5) Refusal to cooperate in a search.

(6) Having an alcohol concentration of .04% or greater in any authorized alcohol test.

(7) Testing positive for drugs and/or their metabolites in any authorized drug test. Although the foregoing infractions will ordinarily result in discharge regardless of the employee's position, the City reserves the right to consider extenuating circumstances and impose lesser discipline when such action is deemed appropriate.

(b) In order to be re-employed following completion of a suspension for a positive drug or alcohol test, the employee must undergo and pass a return to duty drug

and/or alcohol test, and be evaluated and released by an SAP. The City will schedule the return to duty drug and/or alcohol test and the evaluation by an SAP to avoid any lost work time beyond the period of the suspension. The employee will remain on disciplinary suspension, without pay, until the City has received written notice that the employee has passed the return to duty drug test (and/or notice from the collection site that the employee had an alcohol concentration of less than 0.02 in the return to duty alcohol test) and written notice from an SAP that the employee has been released to return to duty. However, the employee may use accumulated leave time between the end of the original suspension and being released to return to work. If the employee tests positive for any drug or has an alcohol concentration of 0.02 or greater in any subsequent test, he/she shall be subject to discharge.

(c) Rehabilitation and Additional Testing. In cases where an employee receives disciplinary action other than discharge for a drug and/or alcohol related infraction, the following procedures shall also apply:

(1) The City may require the employee to participate in an approved treatment, counseling or rehabilitation program for drug and/or alcohol abuse at the time discipline is imposed, based on the recommendations of an SAP.

(2) If the employee is required to enroll in such a program, his/her reinstatement or continued employment shall be contingent upon successful completion of the program and remaining drug and alcohol free for its duration. The employee must submit to any drug and/or alcohol testing administered as part of the program, and provide the City with the results of such tests. The employee must also provide the City with progress reports from his/her therapist, or the agency running the program, on at least a monthly basis. (Failure to provide such reports or the results of such tests may result in discipline up to and including termination.)

(3) An employee who has been identified as needing assistance in resolving problems associated with use of drugs and/or misuse of alcohol may be administered unannounced follow-up drug and/or alcohol tests for a period of up to 24 months.

(4) The employee will be responsible for all costs and expenses associated with additional testing, treatment, evaluation, rehabilitation, and/or counseling required by the City for reinstatement or re-employment following suspension or other discipline for a positive drug or alcohol test.

SECTION 10: Employment Status Pending Receipt of Test Results

In addition to appropriate disciplinary measures, including suspension, which may be taken in response to the incident or course of conduct which gave rise to the test, the City reserves the right to decide whether the incident or course of conduct prompting the test is of such a nature that the employee should not be put back to work until the test results are received. If such a decision is made, the employee will be suspended without pay. Where the test result is negative, the employee will be reinstated with back pay, provided the employee has not been given an appropriate disciplinary suspension for violation of another work rule which also covers the time missed waiting for the test results.

SECTION 11: Voluntary Drug and Alcohol Rehabilitation

If an employee who is not otherwise subject to disciplinary action for use of drugs and/or alcohol voluntarily admits that he/she has a drug and/or alcohol abuse problem, the Mayor (or his/her designee) will meet with the employee to discuss the various treatment, counseling and rehabilitation options that are available. For purposes of this section, an employee's admission to having a drug and/or alcohol abuse problem will not be defined as "voluntary" if it is made after the employee learns that he or she has been selected for a random drug test.

These options may include allowing the employee to continue working while receiving outpatient treatment, counseling or rehabilitation in an approved drug and/or alcohol abuse program, or placing the employee on a medical leave of absence while he/she is receiving treatment, counseling or rehabilitation in an approved inpatient or outpatient drug and/or alcohol abuse program.

When an employee voluntarily admits that he/she has a drug and/or alcohol abuse problem, the City shall have the right to require the employee to be evaluated by an SAP and/or submit to drug and/or alcohol testing prior to deciding what action is appropriate. No disciplinary action will be taken by the City against an employee who voluntarily admits that he/she has a drug and/or alcohol abuse problem in the situation described above. However, the City shall have the following rights in such a situation:

(1) The employee may be required to enroll in and successfully complete an approved inpatient or outpatient drug and/or alcohol abuse program, and remain drug and alcohol free for its duration as a condition of reinstatement or continued employment. However, the city will not be responsible for financial obligations associated with treatment.

(2) If the employee is required to enroll in such a program, he/she must submit to any drug and/or alcohol tests administered as part of the program, and provide the City with the results of such tests. The employee must also provide the City with

progress reports from his/her therapist, or the agency running the program, on at least a monthly basis. (Failure to provide such reports or the results of such tests will result in discipline up to and including termination.)

(3) The employee shall be required to agree to be subject to unannounced follow-up drug and/or alcohol tests, at the City's discretion, for a period of up to 24 months.

(4) The employee will be responsible for all costs and expenses associated with additional testing, treatment, evaluation, rehabilitation, and/or counseling required by the City for reinstatement, re-employment, or continued employment following a voluntary admission of a drug and/or alcohol abuse problem.

SECTION 12: If any Court of competent jurisdiction deems any portion of this ordinance unlawful or unenforceable such portion shall be struck from the ordinance and the remaining sections of the ordinance shall remain in full force and effect.

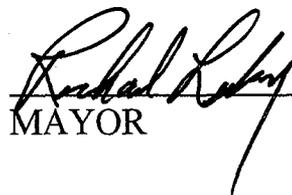
SECTION 13: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 14: This ordinance is deemed important for the immediate protection and preservation of the public peace, health, safety, and welfare of the citizens of Dyer, Arkansas, because of the current lack of a drug/alcohol abuse policy regarding employees of the City of Dyer and the hazards that situation poses to the citizens. Therefore an emergency is hereby declared and this ordinance shall be and take effect and be in full force after its passage, approval, and publication.

PASSED AND APPROVED THIS 20th DAY OF October, 2009.

APPROVED:

ATTESTED:


MAYOR


RECORDER/TREASURER