

CHAPTER 22

MANDATED POLICIES

ARTICLE I – IDENTITY THEFT

22-1-1 PROGRAM ADOPTION. The City developed this Identity Theft Prevention Program pursuant to the Federal Trade Commission’s Red Flags Rule, which implements Section 114 of the Fair and Accurate Credit Transactions of 2003. 16 C.F.R. § 681.2. This Program was developed with oversight and approval of the City. After consideration of the size and complexity of the Utility’s operations and account systems, and the nature and scope of the Utility’s activities, the City Council determined that this Program was appropriate for the City, and therefore approved this Program on February 9, 2009.

22-1-2 PROGRAM PURPOSE AND DEFINITIONS.

(A) **Fulfilling Requirements of the Red Flags Rule.** Under the Red Flag Rule, every financial institution and creditor is required to establish an “Identity Theft Prevention Program” tailored to its size, complexity and the nature of its operation. Each program must contain reasonable policies and procedures to:

- (1) Identify relevant Red Flags for new and existing covered accounts and incorporate those Red Flags into the Program;
- (2) Detect Red Flags that have been incorporated into the Program;
- (3) Respond appropriately to any Red Flags that are detected to prevent and mitigate Identity Theft; and
- (4) Ensure the Program is updated periodically, to reflect changes in risks to customers or to the safety and soundness of the creditor from Identity Theft.

(B) **Red Flags Rule Definitions Used in this Program.** The Red Flags Rule defines “Identity Theft” as “fraud committed using the identifying information of another person” and a “Red Flag” as “a pattern, practice, or specific activity that indicates the possible existence of Identity Theft.”

According to the Rule, a municipal utility is a creditor subject to the Rule requirements. The Rule defines creditors “to include finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies. Where non-profit and government entities defer payment for goods or services, they, too, are to be considered creditors.”

All the Utility’s accounts that are individual utility service accounts held by customers of the utility whether residential, commercial or industrial are covered by the Rule. Under the Rule, a “covered account” is:

- (1) Any account the Utility offers or maintains primarily for personal, family or household purposes, that involves multiple payments or transactions; and
- (2) Any other account the Utility offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the Utility from Identity Theft.

“Identifying information” is defined under the Rules as “any name or number that may be used, alone or in conjunction with any other information, to identify a specific person,” including: name, address, telephone number, social security number, date of birth, government issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer identification number, unique electronic identification number, computer’s Internet Protocol address, or routing code.

22-1-3 IDENTIFICATION OF RED FLAGS. In order to identify relevant Red Flags, the Utility considers the types of accounts that it offers and maintains, the methods it provides to open its accounts, the methods it provides to access its accounts, and its previous experiences with Identity Theft. The Utility identifies the following red flags, in each of the listed categories:

- (A) **Notifications and Warnings from Credit Reporting Agencies; Red Flags.**
- (1) Report of fraud accompanying a credit report;
 - (2) Notice or report from a credit agency of a credit freeze on a customer or applicant;
 - (3) Notice or report from a credit agency of an active-duty alert for an applicant; and
 - (4) Indication from a credit report of activity that is inconsistent with a customer's usual pattern or activity.
- (B) **Suspicious Documents; Red Flags.**
- (1) Identification document or card that appears to be forged, altered or inauthentic;
 - (2) Identification document or card on which a person's photograph or physical description is not consistent with the person presenting the document;
 - (3) Other document with information that is not consistent with existing customer information (such as if a person's signature on a check appears forged); and
 - (4) Application for service that appears to have been altered or forged.
- (C) **Suspicious Personal Identifying Information; Red Flags.**
- (1) Identifying information presented that is inconsistent with other information the customer provides (example: inconsistent birth dates);
 - (2) Identifying information presented that is inconsistent with other sources of information (for instance, an address not matching an address on a credit report);
 - (3) Identifying information presented that is the same as information shown on other applications that were found to be fraudulent;
 - (4) Identifying information presented that is consistent with fraudulent activity (such as an invalid phone number or fictitious billing address);
 - (5) Social security number presented that is the same as one given by another customer;
 - (6) An address or phone number presented that is the same as that of another person;
 - (7) A person fails to provide complete personal identifying information on an application when reminded to do so (however, by law social security numbers must not be required); and
 - (8) A person's identifying information is not consistent with the information that is on file for the customer.
- (D) **Suspicious Account Activity or Unusual Use of Account; Red Flags.**
- (1) Change of address for an account followed by a request to change the account holder's name;
 - (2) Payments stop on an otherwise consistently up to date account;
 - (3) Account used in a way that is not consistent with prior use (example: very high activity);
 - (4) Mail sent to the account holder is repeatedly returned as undeliverable;
 - (5) Notice to the Utility that a customer is not receiving mail sent by the Utility;
 - (6) Notice to the Utility that an account has unauthorized activity;
 - (7) Breach in the Utility's computer system security; and
 - (8) Unauthorized access to or use of customer account information.

(E) **Alerts From Others, Red Flag.**

- (1) Notice to the Utility from a customer, identity theft victim, law enforcement or other person that it has opened or is maintaining a fraudulent account for a person engaged in Identity Theft.

22-1-4 DETECTING RED FLAGS.

(A) **New Accounts.** In order to detect any of the Red Flags identified above associated with the opening of a **new account**, Utility personnel will take the following steps to obtain and verify the identity of the person opening the account:

- (1) Require certain identifying information such as name, date of birth, residential or business address, principal place of business for an entity, driver's license or other identification;
- (2) Verify the customer's identity (for instance, review a driver's license or other identification card);
- (3) Review documentation showing the existence of a business entity; and
- (4) Independently contact the customer.

(B) **Existing Accounts.** In order to detect any of the Red Flags identified above for an **existing account**, Utility personnel will take the following steps to monitor transactions with an account:

- (1) Verify the identification of customers if they request information (in person, via telephone, via facsimile, via email);
- (2) Verify the validity of requests to change billing addresses; and
- (3) Verify changes in banking information given for billing and payment purposes.

22-1-5 PREVENTING AND MITIGATING IDENTITY THEFT.

(A) **Prevent and Mitigate.** In the event Utility personnel detect any identified Red Flags, such personnel shall take one or more of the following steps, depending on the degree of risk posed by the Red Flag:

- (1) Continue to monitor an account for evidence of Identity Theft;
- (2) Contact the customer;
- (3) Change any passwords or other security devices that permit access to accounts;
- (4) Not open a new account;
- (5) Close an existing account;
- (6) Reopen an account with a new number;
- (7) Notify the Program Administrator for determination of the appropriate step(s) to take;
- (8) Notify law enforcement; or
- (9) Determine that no response is warranted under the particular circumstances.

(B) **Protect Customer Identifying Information.** In order to further prevent the likelihood of Identity Theft occurring with respect to Utility accounts, the Utility will take the following steps with respect to its internal operating procedures to protect customer identifying information:

- (1) Ensure that its website is secure or provide clear notice that the website is not secure;
- (2) Ensure complete and secure destruction of paper documents and computer files containing customer information;
- (3) Ensure that office computers are password protected and that computer screens lock after a set period of time;
- (4) Keep offices clear of papers containing customer information;
- (5) Request only the last 4 digits of social security numbers (if any);
- (6) Ensure computer virus protection is up to date; and

- (7) Require and keep only the kinds of customer information that are necessary for utility purposes.

22-1-6 PROGRAM UPDATES. The Program Administrator will periodically review and update this Program to reflect changes in risks to customers and the soundness of the Utility from Identity Theft. In doing so, the Program Administrator will consider the Utility's experiences with Identity Theft situations, changes in Identity Theft methods, changes in Identity Theft detection and prevention methods, and changes in the Utility's business arrangements with other entities. After considering these factors, the Program Administrator will determine whether changes to the Program, including the listing of Red Flags, are warranted. If warranted, the Program Administrator will update the Program or present the City Council with his or her recommended changes and the City Council will make a determination of whether to accept, modify or reject those changes to the Program.

22-1-7 PROGRAM ADMINISTRATION.

(A) **Oversight.** Responsibility for developing, implementing and updating this Program lies with an Identity Theft Committee for the Utility. The Committee is headed by a Program Administrator who may be the head of the Utility or his or her appointee. Two or more other individuals appointed by the head of the Utility or the Program Administrator comprise the remainder of the committee membership. The Program Administrator will be responsible for the Program administration, for ensuring appropriate training of Utility staff on the Program, for reviewing any staff reports regarding the detection of Red Flags and the steps for preventing and mitigating Identity Theft, determining which steps of prevention and mitigation should be taken in particular circumstances and considering periodic changes to the Program.

(B) **Staff Training and Reports.** Utility staff responsible for implementing the Program shall be trained either by or under the direction of the Program Administrator in the detection of Red Flags, and the responsive steps to be taken when a Red Flag is detected.

(C) **Service Provider Arrangements.** In the event the Utility engages a service provider to perform an activity in connection with one or more accounts, the Utility will take the following steps to ensure the service provider performs its activity in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of Identity Theft.

- (1) Require, by contract, that service providers have such policies and procedures in place; and
- (2) Require, by contract, that service providers review the Utility's Program and report any Red Flags to the Program Administrator.

(D) **Non-Disclosure of Specific Practices.** For the effectiveness of this Identity Theft Prevention Program, knowledge about specific Red Flag identification, detection, mitigation and prevention practices must be limited to the Identity Theft Committee who developed this Program and to those employees with a need to know them. Any documents that may have been produced or are produced in order to develop or implement this program that list or describe such specific practices and the information those documents contain are considered "security information" as defined in Minnesota Statutes Section 13.37 and are unavailable to the public because disclosure of them would be likely to substantially jeopardized the security of information against improper use, that use being to circumvent the Utility's Identity Theft prevention efforts in order to facilitate the commission of Identity Theft.

ARTICLE II - USE OF SOCIAL SECURITY NUMBERS

22-2-1 DEFINITIONS.

"Person" means any individual in the employ of the City.

"Policy" or "Privacy Policy" means this document, as now or hereafter amended.

"Publicly post" or "publicly display" means to intentionally communicate or otherwise intentionally make available to the general public.

"Social Security Number" means the nine (9) digit number assigned to an individual by the United States Social Security Administration for the purposes authorized or required under the United States Social Security Act of August 14, 1935, as amended (Public Law 74-271).

22-2-2 PROHIBITED ACTIVITIES.

(A) No officer or employee of the City shall do any of the following:

- (1) Publicly post or publicly display in any manner an individual's Social Security Number.
- (2) Print an individual's Social Security Number on any card required for the individual to access products or services provided by the person or entity.
- (3) Require an individual to transmit his or her Social Security Number over the Internet, unless the connection is secure, or the Social Security Number is encrypted.
- (4) Print an individual's Social Security Number on any materials that are mailed to the individual, through the United States Postal Service, any private mail service, electronic mail, or a similar method of delivery, unless Illinois or federal law requires the Social Security Number to be on the document to be mailed. Notwithstanding any provision in this Section to the contrary, Social Security Numbers may be included in applications and forms sent by mail, including, but not limited to, any material mailed in connection with the administration of the Illinois Unemployment Insurance Act, any material mailed in connection with any tax administered by the Illinois Department of Revenue, and documents sent as part of an application or enrollment process or to establish, amend, or terminate an account, contract, or policy or to confirm the accuracy of the Social Security Number. A Social Security Number that may permissibly be mailed under this Section may not be printed, in whole or in part, on a postcard or other mailer that does not require an envelope or be visible on an envelope without the envelope having been opened.

(B) Except as otherwise provided in this policy, beginning immediately on the effective date of the City's authorizing Ordinance, no officer or employee of the City shall do any of the following:

- (1) Collect, use, or disclose a Social Security number from an individual, unless (i) required to do so under State or Federal law, rules, or regulations, or the collection, use, or disclosure of the Social Security Number is otherwise necessary for the performance of that agency's duties and responsibilities; (ii) the need and purpose for the Social Security Number is documented before collection of the Social Security Number; and (iii) the Social Security Number collected is relevant to the documented need and purpose.
- (2) Require an individual to use his or her Social Security Number to access an Internet website.
- (3) Use the Social Security Number for any purpose other than the purpose for which it was collected.

- (C) The prohibitions in subsection (B) do not apply in the following circumstances:
- (1) The disclosure of Social Security Numbers to agents, employees, contractors, or subcontractors of the City or disclosure to another governmental entity or its agents, employees, contractors, or subcontractors if disclosure is necessary in order for the entity to perform its duties and responsibilities; and, if disclosing to a contractor or subcontractor, prior to such disclosure, the officer or employee of the City must first receive from the contractor or subcontractor a copy of the contractor's or subcontractor's policy that sets forth how the requirements imposed under this Policy on the City to protect an individual's Social Security Number will be achieved.
 - (2) The disclosure of Social Security Numbers pursuant to a court order, warrant, or subpoena.
 - (3) The collection, use, or disclosure of Social Security Numbers in order to ensure the safety of: City employees; persons committed to correctional facilities, local jails, and other law enforcement facilities or retention centers; wards of the State; and all persons working in or visiting a City facility.
 - (4) The collection, use, or disclosure of Social Security Numbers for Internal verification or administrative purposes.
 - (5) The collection or use of Social Security Numbers to investigate or prevent fraud, to conduct background checks, to collect a debt, to obtain a credit report from a consumer reporting agency under the federal Fair Credit Reporting Act, to undertake any permissible purpose that is enumerated under the federal Gramm Leach Bliley Act, or to locate a missing person, a lost relative, or a person who is due a benefit such as a pension benefit or an unclaimed property benefit.
- (D) Any standards of the City for the collection, use, or disclosure of Social Security Numbers that are stricter than the standards under this Policy with respect to the protection of those Social Security Numbers, then, in the event of any conflict with the provisions of this Policy, the stricter standards adopted by the City shall control.

22-2-3 PUBLIC INSPECTION AND COPYING OF DOCUMENTS. Notwithstanding any other provision of this policy to the contrary, all officers and employees of the City must comply with the provisions of any other State law with respect to allowing the public inspection and copying of information or documents containing all or any portion of an individual's Social Security Number. All officers and employees of the City must redact Social Security Numbers from the information or documents before allowing the public inspection or copying of the information or documents.

22-2-4 APPLICABILITY.

(A) This policy does not apply to the collection, use, or disclosure of a Social Security Number as required by State or Federal law, rule, or regulation.

(B) This policy does not apply to documents that are required to be open to the public under any State or Federal law, rule, or regulation, applicable case law, Supreme Court Rule, or the Constitution of the State of Illinois.

22-2-5 COMPLIANCE WITH FEDERAL LAW. If a federal law takes effect requiring any federal agency to establish a national unique patient health identifier program, the City shall follow that law.

22-2-6 **EMBEDDED SOCIAL SECURITY NUMBERS.** Beginning immediately on the effective date of the City's authorizing Ordinance, no officer or employee of the City may encode or embed a Social Security Number in or on a card or document, including, but not limited to, using a bar code, chip, magnetic strip, RFID technology, or other technology, in place of removing the Social Security Number as required by this Policy.

22-2-7 **IDENTITY--PROTECTION REQUIREMENTS.**

(A) All officers, employees and agents of the City identified as having access to Social Security Numbers in the course of performing their duties to be trained to protect the confidentiality of all Social Security Numbers. Training shall include instructions on the proper handling of information that contains Social Security Numbers from the time of collection through the destruction of the information.

(B) Only employees who are required to use or handle information or documents that contain Social Security Numbers have access to such information or documents.

(C) Social Security Numbers requested from an individual shall be provided in a manner that makes the Social Security Number easily redacted if required to be released as part of a public records' request.

(D) When collecting a Social Security Number or upon request by the individual, a statement of the purpose or purposes for which the City is collecting and using the Social Security Number be provided.

(E) A written copy of this Privacy Policy, and any amendment thereto, shall be filed with the City Council within **thirty (30) days** after approval of this Policy or any amendment thereto.

(F) The City shall advise its employees of the existence of the Policy and make a copy of this Policy available to each employee and shall also make this Privacy Policy available to any member of the public, upon request and at no charge for a single copy of this Privacy Policy. If the City amends this Privacy Policy, then the City shall also advise its employees of the existence of the amended Policy and make a copy of the amended Policy available to each employee.

22-2-8 **PENALTY.** Any person who violates any portion of this Article, as now or hereafter amended, shall be subject to a fine of not less than **One Hundred Dollars (\$100.00)** for the first such violation and a fine of not less than **Seven Hundred Fifty Dollars (\$750.00)** for each violation thereafter.

22-2-9 **AMENDMENT OF PRIVACY POLICY.** The Privacy Policy adopted in this Division and Chapter shall be subject to amendment from time to time by the City Council as the City Council shall deem necessary in its sole discretion in order to maintain the City's compliance with the Illinois Identity Protection Act as now or hereafter amended.

22-2-10 **CONFLICT WITH STRICTER LAWS.** This Policy does not supersede any more restrictive law, rule, or regulation regarding the collection, use, or disclosure of Social Security Numbers.

[NOTE: This Policy is to comply with Public Act 096-9874 of the State of Illinois, cited as the Identity Protection Act, and codified as Title 30, Act 5, Section 1, et seq., as now or hereafter amended.]

ARTICLE III - FREEDOM OF INFORMATION POLICY

22-3-1 PUBLIC RECORDS AVAILABLE. To the extent required by the Freedom of Information Act, **5 ILCS 140-1 et seq.** the City shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of the Freedom of Information Act, **5 ILCSA 140/7.**

22-3-2 DESIGNATION, DUTIES AND TRAINING OF FREEDOM OF INFORMATION ACT OFFICERS.

(A) The City Administrative Assistant is hereby designated to act as Freedom of Information Officer. The Officer shall receive requests submitted to the City under the Freedom of Information Act, ensure that the City responds to requests in a timely fashion, and issue responses under the Freedom of Information Act. The Freedom of Information officer shall develop a list of documents or categories of records that the City shall immediately disclose upon request.

(B) Upon receiving a request for a public record, the Freedom of Information Officer shall:

- (1) Note the date the City receives the written request;
- (2) Compute the date on which the period for response will expire and make a notation of that date on the written request;
- (3) Maintain an electronic or paper copy of the written request including all documents submitted with the request until the request has been complied with or denied; and
- (4) Create a file for the retention of the original request, a copy of the response, a record of written communications with the person making the request, and a copy of other communications regarding the request.

(C) The Freedom of Information Act officers shall successfully complete an electronic training curriculum to be developed by the Public Access Counselor in the office of the Attorney General of the State of Illinois and thereafter successfully complete an annual training program. Thereafter when a new Freedom of Information officer is designated by the City, that person shall successfully complete the electronic training curriculum within **thirty (30) days** after assuming the position. Successful completion of the required training curriculum within the periods provided shall be a prerequisite to continue serving as a Freedom of Information officer.

22-3-3 PROCEDURES. The City shall prominently display at the City Clerk's office, display on its website, make available for inspection and copying, and send through the mail as requested, each of the following:

(A) A brief description of the City, which will include, but not be limited to a block diagram giving its functional departments, the total amount of its operating budget, the number and location of all of its separate offices, the approximate number of full and part-time employees and the identification and membership of any board, commission, committee or council which operates in an advisory capacity relative to the operation of the City, or which exercises control over its policies or procedures; and

(B) A brief description of the methods whereby the public may request information and public records, a directory designating the Freedom of Information officers, the address where request for public records should be directed, and the fees relating thereto.

22-3-4 REQUESTS TO INSPECT OR COPY. All requests to inspect or copy records or documents prepared, maintained or under the control of the City shall be made in the following manner:

(A) All requests shall be in writing, shall state with reasonable particularity what records are to be inspected or copied, shall state whether the records are requested for a commercial

purpose, and shall be signed by the person making the request. The request may be, but is not required to be, submitted on a form provided by the City.

(B) The written request shall be submitted to the City Clerk or to the Mayor. If neither the City Clerk nor the Mayor is available, the request shall be submitted to any employee of the City acting under the direction of the City Clerk.

(C) The Officer receiving the request shall date stamp the request and indicate the date by which a response to the request must be made.

(D) Each request for other than commercial purposes shall be granted or denied in writing within **five (5) business days** after its receipt by the City, except as hereafter stated. The failure to grant or deny a request within **five (5) business days** shall operate as a denial, except as provided hereinbelow.

(E) The time limit set forth hereinabove may be extended for an additional **five (5) business days** by notice in writing to the person making the request of the **five (5) business days** extension. The notification shall state the reason(s) for the **five (5) business day's** extension and contain a date certain on which the requested record(s) will be available. The failure to grant or deny a request within the additional **five (5) business days** shall operate as a denial. The person making the request and the City may agree in writing to extend the time for compliance for a period to be determined by the parties. If the person making the request and the City agree to extend the period for compliance, a failure by the City to comply with any previous deadlines shall not be treated as a denial of the request for the records.

(F) Charges for copies of records and/or documents shall be imposed in accordance with the following:

- (1) No fees shall be charged for the first **fifty (50) pages** of black and white, letter or legal sized copies requested.
- (2) **Fifteen Cents (\$0.15)** for one-sided page for each black and white, letter, legal sized or 11" x 17" copy requested.
- (3) **One Dollar (\$1.00)** for each certified copy requested.
- (4) **Ten Cents (\$0.10)** for each audio recording.

(G) It shall be the responsibility of the person making the request to pick up the requested documents at City Hall. If the person making the request asks the City to mail the documents, he or she shall provide the City with his/her correct mailing address so as to efficiently process all requests. Copies of records requested to be mailed will be forwarded United States Certified Mail to the address provided. Pre-payment of **Two Dollars Fifty Cents (\$2.50)** per ounce shall be required.

(H) When a person requests a copy of a record maintained in an electronic format, the City shall furnish it in the electronic format specified by the person making the request, if feasible. If it is not feasible to furnish the public records in the specified electronic format, then the City shall furnish it in the format in which it is maintained by the City, or in paper format at the option of the person making the request.

22-3-5 REQUEST FOR COMMERCIAL PURPOSES. The City shall respond to a request for records to be used for a commercial purpose within **twenty-one (21) working days** after receipt. The response shall (1) provide to the person making the request an estimate of the time required by the City to provide the records requested and an estimate of the fees to be charged, which the City may require the person to pay in full before copying the requested documents, (2) deny the request pursuant to **one (1)** or more of the exemptions set out in the Freedom of Information Act, **5 ILCS 140/1 et seq.**, (3) notify the person making the request that the request is unduly burdensome and extend an opportunity to the person making the request to attempt to reduce the request to manageable portions, or (4) provide the records requested.

Unless the records are exempt from disclosure, the City shall comply with a commercial request within a reasonable period considering the size and complexity of the request and giving priority to records requested for non-commercial purposes.

It is unlawful for a person to knowingly obtain a public record for a commercial purpose within disclosing that it is for a commercial purpose, and any person obtaining a public record for commercial purpose without disclosing that it is for a commercial purpose shall be fined in accordance with the City Code.

22-3-6 FEES. The City Clerk shall determine when the established fees are subject to waiver or reduction because the release of the requested information is in the public interest.

22-3-7 PUBLIC FILE. The City Clerk shall establish and maintain a central file, open to the public, of all denials of requests for records which shall be indexed according to the exemption utilized to deny a request for records, and to the extent possible, according to the types of records requested.

22-3-8 GRANTING OR DENIAL OF REQUESTS. A request for all records within a category shall be granted unless the request constitutes an undue burden upon the City. Prior to denying a request based upon the burdensome nature of the request, an opportunity to narrow the request to manageable proportions shall be provided. If the attempt to narrow the request fails, the request may be denied because compliance will unduly burden the operations of the City and the burden outweighs the public interest in the information. The denial shall be in writing, specifying the reasons why compliance will be unduly burdensome and the extent to which compliance will so burden the operations of the City. Repeated requests from the same person for the same records that are unchanged or identical to records previously provided are properly denied under the Freedom of Information Act shall be deemed unduly burdensome under this Section.

22-3-9 CERTAIN INFORMATION EXEMPT FROM INSPECTION AND COPYING. If any record exempt from disclosure contains material which is not exempt, the information which is exempt shall be deleted and the remaining information shall be available for inspection and copying.

22-3-10 NOTICE OF DENIAL OF REQUEST; APPEALS.
(A) If the City denies the request, the City shall notify the person making the request in writing of:

- (1) the decision to deny the request;
- (2) the reasons for the denial, including a detailed factual basis for the application of any exemption claim;
- (3) the names and titles or positions of each person responsible for the denial;
- (4) the right to review by the Public Access Counselor and the address and phone number for the Public Access Counselor; and
- (5) the right to judicial review.

If an exemption is claimed, then the denial must include the specific reasons for the denial, including a detailed factual basis and a citation to support a legal authority.

(B) If the City asserts an exemption under Subsection (1)(c) or (1)(f) of Section 7 of the Freedom of Information Act, it shall, within the time periods provided for Respondent to request, provide written notice to the person making the request and the Public Access Counselor of its intent to deny the request in whole or in part. The notice shall include:

- (1) a copy of the request for access to records;
- (2) the proposed response from the City;
- (3) a detailed summary of the City's basis for asserting its exemption.

If the Public Access Counselor determines that further inquiry is warranted, the procedures set forth in the Freedom of Information Act, as amended from time to time, regarding the review of denials shall be applicable. Times for response compliance by the City to the request shall be tolled until the Public Access Counselor concludes his or her inquiry.

ARTICLE IV - FAIR HOUSING CODE

22-4-1 **DECLARATION OF POLICY.**

(A) In furthering the policy of the State of Illinois as expressed in its Constitution and other laws; in order that the safety and general welfare, peace and health of all the inhabitants of the City may be ensured, it is hereby declared the policy of the City to assure equal opportunity to all residents, regardless of race, color, religion, national origin or ancestry, sex, creed, or physical disability to live in decent, sanitary, healthful, standard living quarters.

(B) It is the policy of the City that no owner, lessee, sub-lessee, assignee, managing agent, or other person, firm or corporation having the right to sell, rent, lease (or otherwise control) any housing accommodation and/or real property within the City, or any agent of these shall refuse to sell, rent, lease, or otherwise deny to or withhold from any person or group of persons such housing accommodations and/or real property because of race, color, religion, national origin or ancestry, sex, creed, or disability of such person or persons or discriminate against any person or persons because of race, color, religion, national origin or ancestry, sex, creed, or disability in the conditions, terms, privileges of the sale, rental or lease of any housing accommodation and/or real property or in the furnishing of facilities and/or services in connection therewith.

(C) Relocation shall be carried out in a manner that will promote maximum choice within the community's total housing supply; lessen racial, ethnic, and economic concentrations; and facilitate desegregation and racially inclusive patterns of occupancy and use of public and private facilities.

22-4-2 **DEFINITIONS.** Unless a different meaning clearly appears from the context, the following terms shall have the meaning as described in this Section and as used in this Code:

(A) **"Decent, Sanitary, Healthful Standard Living Quarters".** "Decent, sanitary, healthful standard living quarters" is housing which is in sound, clean, and weather tight condition in conformance with applicable local, state, and national codes.

(B) **"Discriminate".** The terms "discriminate" or "discrimination" mean any difference expressed in any way toward a person or persons in the terms of the sale, exchange, lease, rental or financing for housing accommodation and/or real property in regard to such sale, exchange, rental, lease or finance because of race, color, religion, national origin or ancestry, sex, creed, or disability of such person.

(C) **"Financial Institution".** The term "financial institution" means any person, institution or business entity of any kind which loans money to persons and receives as security for said loans a secured interest of any kind in the real property of the borrower.

(D) **"Housing Accommodation".** The term "housing accommodation" includes any building, structure, or portion thereof which is used or occupied, maintained, arranged or designed to be used or occupied as a home, residence or sleeping place of **one (1)** or more human beings, or any real estate so used, designed or intended for such use.

(E) **"Owner".** An "owner" means any person/persons who hold legal or equitable title to or own any beneficial interest in any real property or who hold legal or equitable title to shares of, or hold any beneficial interest in any real estate cooperative which owns any real property and/or housing accommodations.

(F) **"Real Estate Broker".** The term "real estate broker" means any person, partnership, association, corporation and/or agent thereof, who for a fee or other valuable consideration offers, sells, purchases, exchanges or rents, or negotiates for the sale, purchase, exchange or rental of a housing accommodation and/or real property of another, or collects rental for the use of housing accommodation and/or real property of another.

(G) **"Real Property".** The term "real property" means any real estate, vacant land, building, structure or housing accommodations within the corporate limits of the City.

22-4-3 **PROHIBITED ACTS.** It shall be an unlawful for any owner of real estate, lessee, sub-lessee, real estate broker or salesman, financial institution or employee of the financial institution, advertiser, or agent of any or all of the foregoing, to discriminate against any person or persons because of their race, color, religion, national origin or ancestry, sex, creed, or disability with regard to the sale, exchange or rental, or any dealing concerning any housing accommodation and/or real property.

In addition to the foregoing, it shall also be unlawful for any real estate broker or employee thereof, owner or other person, or financial institution dealing with housing or real property of the City:

(A) To discriminate against any person in the availability of or the price, terms, conditions, or privileges of any kind relating to the sale, rental, lease, or occupancy of any housing accommodation or real property in the City or in furnishing of any facilities or services in connection therewith.

(B) To publish or circulate, or cause to be published or circulated, any notice, statement or advertisement, or to announce a policy, or to use any form of application, for the purchase, lease, rental or financing of real property, or to make any record of inquiry in connection with the prospective purchase, rental or lease of such real estate, which expresses directly or indirectly any discrimination as to race, color, religion, national origin or ancestry, sex, creed or disability of any person.

(C) To discriminate in connection with lending money, guaranteeing loans, accepting mortgages or otherwise obtaining or making available funds for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation and/or real property.

(D) To solicit for sale, lease, or listing for the sale or lease, of any housing accommodation and/or real property on the grounds of loss of value because of the present or prospective entry into any neighborhood of any person or persons of any particular race, color, religion, national origin or ancestry, sex, creed, or disability.

(E) To distribute or cause to be distributed, written material or statements designed to induce any owner of any housing accommodation and/or real property to sell or lease his or her property because of any present or prospective change in the race, color, religion, national origin or ancestry, sex, creed, or disability of persons in the neighborhood.

(F) To make any misrepresentations concerning the listing for sale or the anticipated listing for sale or the sale of any housing accommodation and/or real property for the purpose of inducing or attempting to induce the sale or listing for sale of any housing accommodation and/or real property by representing that the presence or anticipated presence of persons of any particular race, color, religion, national origin or ancestry, sex, creed, or disability in the area will or may result in the lowering of property values in the block, neighborhood or area in which the property is located.

(G) For an owner to solicit any real estate broker to sell, rent or otherwise deal with such owner's housing accommodations and/or real property with any limitation on its sale based on race, color, religion, national origin or ancestry, sex, creed or disability.

(H) For an owner to refuse to sell, rent, or otherwise deal with any housing accommodation and/or real property because of race, color, religion, national origin or ancestry, sex, creed, or disability of the proposed buyer or tenant.

22-4-4 **PENALTY.** Any person convicted of violating any of the provisions of this Code shall be punished by a fine of not less than **One Hundred Dollars (\$100.00)** nor more than **Seven Hundred Fifty Dollars (\$750.00)**. Each day a violation continues shall constitute a separate violation. This Section shall in no way abrogate or impair the right of the City to specifically enforce, by any legal means, any of the provisions of this Code.

(65 ILCS 5/11-11.1-1)

ARTICLE V – INVESTMENT POLICY

22-5-1 **INVESTMENT POLICY.** It is the policy of the City to invest public funds in a manner which will provide the highest investment return with the maximum security while meeting the daily cash flow demands of the City and conforming to all State and local statutes governing the investment of public funds.

22-5-2 **SCOPE.** This policy includes all public funds of the City.

22-5-3 **PRUDENCE.** Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital, as well as the probable income to be derived.

The standard of prudence to be used by investment officials shall be the “prudent person” standard and shall be applied in the context of managing an overall portfolio.

22-5-4 **OBJECTIVE.** The primary objective, in order of priority, shall be:

(A) **Legality.** Conformance with federal, state and other legal requirements.

(B) **Safety.** Preservation of capital and protection of investment principal.

(C) **Liquidity.** Maintenance of sufficient liquidity to meet operating requirements.

(D) **Yield.** Attainment of market rates of return.

The portfolio should be reviewed periodically as to its effectiveness in meeting the City’s needs for safety, liquidity, rate of return, diversification and its general performance.

22-5-5 **DELEGATION OF AUTHORITY.** Management and administrative responsibility for the investment program is hereby delegated to the Treasurer who may establish written procedures for the operation of the investment program.

22-5-6 **ETHICS AND CONFLICTS OF INTEREST.** Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions.

22-5-7 **AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS.** The Treasurer will maintain a list of financial institutions authorized to provide investment services. In addition, a list will also be maintained of approved security brokers/dealers selected by creditworthiness.

22-5-8 **AUTHORIZED AND SUITABLE INVESTMENTS.** Investments may be made in any type of security allowed for in Illinois statutes regarding the investment of public funds. Investments shall be made that reflect the cash flow needs of the fund type being invested.

22-5-9 **COLLATERALIZATION.** Collateralization may be required, at the discretion of the City, on all funds held in banks or savings and loans above the insured limits provided by the FDIC or FSLIC. In order to anticipate market changes and provide a level of security for all funds, the collateralization level will be a minimum of **one hundred two percent (102%)** of market value of principal and accrued interest.

22-5-10 **SAFEKEEPING AND CUSTODY.** All security transactions, including collateral for repurchase agreements, entered into by the City, shall be conducted on a delivery-versus-payment (DVP) basis. Securities will be held by an independent third-party custodian designated by the Treasurer and evidenced by safekeeping receipts and a written custodial agreement.

22-5-11 **DIVERSIFICATION.** The City shall diversify its investments to the best of its ability based on the type of funds invested and the cash flow needs of those funds. Diversification can be by type of investment, number of institutions invested in, and length of maturity.

22-5-12 **MAXIMUM MATURITIES.** To the extent possible, the City shall attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the City will not directly invest in securities maturing more than **two (2) years** from the date of purchase.

Reserve funds may be invested in securities exceeding **two (2) years** if the maturity of such investments are made to coincide as nearly as practicable with the expected use of the funds.

22-5-13 **INTERNAL CONTROL.** The Treasurer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the City are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The internal controls shall address the following points:

- (A) Control of collusion.
- (B) Separation of transaction authority from accounting.
- (C) Custodial safekeeping.
- (D) Written confirmation of telephone transactions for investments and wire transfers.

22-5-14 **PERFORMANCE STANDARDS.** The investment portfolio will be managed in accordance with the parameters specified within this policy. The portfolio should obtain a comparable rate of return during a market/economic environment of stable interest rates. Portfolio performance should be compared to benchmarks with similar maturity, liquidity and credit quality as the portfolio maintained by the Illinois Public Treasurer's Investment Pool (IPTIP).

22-5-15 **REPORTING.** The Treasurer shall prepare an investment report at least monthly. The report should be provided to the City Council and available upon request. The report should be in a format suitable for review by the general public. An annual report should also be provided to the City Council. A statement of the market value of the portfolio shall be issued to the City Council quarterly.

22-5-16 **INVESTMENT POLICY ADOPTION AND MODIFICATION.** The investment policy has been adopted by ordinance. The policy shall be reviewed on an annual basis by the Treasurer, and any modifications made thereto shall be made by ordinance.

ARTICLE VI – ETHICS CODE

22-6-1 STATE OFFICIALS AND EMPLOYEES' ETHICS ACT.

(A) The regulations of Sections 5-15 (**5 ILCS 430/5-15**) and Article 10 (**5 ILCS 430/10-10 through 10-40**) of the State Officials and Employees Ethics Act, **5 ILCS 430/1-1 et seq.**, (hereinafter referred to as the "Act" in this Section) are hereby adopted by reference and made applicable to the officers and employees of the City to the extent required by **5 ILCS 430/70-5**.

(B) The solicitation or acceptance of gifts prohibited to be solicited or accepted under the Act, by any officer or any employee of the City, is hereby prohibited.

(C) The offering or making of gifts prohibited to be offered or made to an officer or employee of the City, is hereby prohibited.

(D) The participation in political activities prohibited under the Act, by any officer or employee of the City, is hereby prohibited.

(E) For the purposes of this Section, the terms "officer" and "employee" shall be defined as set forth in **5 ILCS 430/70-5(c)**.

(F) The penalties for violations of this Section shall be the same as those penalties set forth in **5 ILCS 430/50-5** for similar violations of the Act.

(G) This Section does not repeal or otherwise amend or modify any existing ordinances or policies which regulate the conduct of City officers and employees. To the extent that any such existing ordinances or policies are less restrictive than this Section, however, the provisions of this Section shall prevail in accordance with the provisions of **5 ILCS 430/70-5(a)**.

(H) Any amendment to the Act that becomes effective after the effective date of this Section shall be incorporated into this Section by reference and shall be applicable to the solicitation, acceptance, offering and making of gifts and to prohibited political activities. However, any amendment that makes its provisions optional for adoption by municipalities shall not be incorporated into this Section by reference without formal action by the corporate authorities of the City.

(I) If the Illinois Supreme Court declares the Act unconstitutional in its entirety, then this Section shall be repealed as of the date that the Illinois Supreme Court's decision becomes final and not subject to any further appeals or rehearings. This Section shall be deemed repealed without further action by the Corporate Authorities of the City if the Act is found unconstitutional by the Illinois Supreme Court.

(J) If the Illinois Supreme Court declares part of the Act unconstitutional but upholds the constitutionality of the remainder of the Act, or does not address the remainder of the Act, then the remainder of the Act as adopted by this Section shall remain in full force and effect; however, that part of this Section relating to the part of the Act found unconstitutional shall be deemed repealed without further action by the Corporate Authorities of the City.

ARTICLE VII - EQUAL EMPLOYMENT POLICY

22-7-1 **ADOPTION OF CODES.** The City hereby declares to uphold, defend, enforce, and advocate for all laws related to Equal Employment Opportunity including, but not limited to, the following:

(A) **Title VI of the Civil Rights Act of 1964** which prohibits discrimination in the participation in or benefits of programs or activities receiving federal financial assistance on the basis of race, color, or national origin.

(B) **Title VII of the Civil Rights Act of 1964** which prohibits discrimination because of race, color, religion, sex or national origin in all employment practices including hiring, firing, promotions, compensation, and other terms, privileges and conditions of employment.

(C) **Title IX of the Education Amendments of 1972** which prohibits discrimination in federally assisted education programs.

(D) **The Equal Pay Act of 1963** which covers all employees who are covered by the Fair Labor Standards Act. The Act forbids pay differentials on the basis of sex.

(E) **The Age Discrimination Act of 1967** which prohibits discrimination because of age against anyone between the ages of **forty (40)** and **sixty-five (65)**.

(F) **Federal Executive Order 11246** which requires every contract with federal financial assistance to contain a clause against discrimination because of race, color, religion, sex, or national origin.

(G) **Section 504 of the Rehabilitation Act of 1973 and DOL Implementing Regulations at 29 CFR 32** which prohibits any discrimination based on disability.

(H) **Section 188 of WIA and the U.S. DOL Regulations at 29 CFR Parts 31 and 32** which provides that no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination on the basis of race, color, or national origin, under any program or activity receiving Federal financial assistance from the Department of Labor.

(I) **Chapter 68, Article I, Section 17-19 of the Illinois Constitution** which prohibits discrimination based on race, color, creed, national ancestry, disability, and sex in the hiring and promotion practices of any employer.

(J) **The Americans with Disabilities Act of 1990** which prohibits any discrimination against qualified individuals with disabilities on the basis of their disability.

(K) **Illinois Human Rights Act (775 ILCS 5)** which prohibits discrimination based on race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service in connection with employment, real estate transactions, access to financial credit, and the availability of public accommodations.

22-7-2 **NON-DISCRIMINATORY PRACTICES.** The City will assure non-discriminatory employment practices in recruitment, recruitment advertising, employment, placement, layoff or termination, promotion, demotion or transfer, rate of pay or other forms of compensation and use of facilities.

22-7-3 **CONTRACTING WITH NON-COMPLAINTS.** The City will not contract with other agencies, banks, businesses, vendors, etc., who practice or establish a pattern of discrimination based on race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military.

(A) The City will incorporate into any contract for construction work, or modification thereof, subject to the relevant rules, regulations, and orders of the Secretary of Labor or of any prior authority that remain in effect, which is paid for in whole or in part with the aid of such financial assistance, the following "Equal Opportunity Clause":

- (1) In the event of the contractor's noncompliance with the provisions of this Equal Employment Opportunity Clause, the Act or the Rules and Regulations of the Department, the contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be cancelled or voided in whole or in part, and other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the contractor agrees as follows:
- (a) That he or she will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, sexual orientation, military status or an unfavorable discharge from military service; and, further, that he or she will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any underutilization.
 - (b) That, if he or she hires additional employees in order to perform this contract or any portion of this contract, he or she will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the areas from which he or she may reasonably recruit, and he or she will hire for each job classification for which employees are hired in a way that minorities and women are not underutilized.
 - (c) That, in all solicitations or advertisements for employees placed by him or her or on his or her behalf, he or she will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, sexual orientation, military status or an unfavorable discharge from military service.
 - (d) That he or she will send to each labor organization or representative of workers with which he or she has or is bound by a collective bargaining or other agreement or understanding, a notice advising the labor organization or representative of the contractor's obligations under the Act and the Department's Rules and Regulations. If any labor organization or representative fails or refuses to cooperate with the contractor in his or her efforts to comply with the Act and Rules and Regulations, the contractor will promptly notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations under the contract.
 - (e) That he or she will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Act and the Department's Rules and Regulations.
 - (f) That he or she will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain

compliance with the Act and the Department's Rules and Regulations.

- (g) That he or she will include verbatim or by reference the provisions of this clause in every subcontract awarded under which any portion of the contract obligations are undertaken or assumed, so that the provisions will be binding upon the subcontractor. In the same manner as with other provisions of this contract, the contractor will be liable for compliance with applicable provisions of this clause by subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply with the provisions. In addition, the contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

22-7-4 **OUTREACH TO ALL.** The City assures that it will actively provide nondiscriminatory outreach, selection, and service to all individuals.

22-7-5 **MINORITY HIRING.** Efforts will be made to hire minority individuals for all job categories so that minority employment in all categories of the work force will represent a proportionate share of minority populations in the City as well as surrounding areas.

22-7-6 **ACCOMMODATIONS FOR DISABLED.** The City will provide accommodations to the best of its ability for employees with disabilities, contingent on budget and structural limitations.

22-7-7 **COMPLIANCE BY EMPLOYEES.** All City employees are expected to adhere to the above policy and to work actively for its implementation both internally and in carrying out City program activities.

22-7-8 **DESIGNATED ENFORCERS.** The City designates the Mayor and the City Council to carry out the EEO/AA plan.

ARTICLE VIII – DRUG FREE WORKPLACE

22-8-1 **DEFINITIONS.**

(A) **"Drug Free Workplace"** means any place for the performance of work for or on behalf of the City, done by an employee of the City, or an employee of a contractor or subcontractor performing work for the City.

(B) **"Employee"** as used within the meaning of this Article, means an employee of the City as well as an employee of a contractor or subcontractor performing work for the City.

(C) **"Controlled Substance"** means a controlled substance as defined in the Illinois Controlled Substance Act, **720 ILCS 570/100 et seq.** (1992 State Bar Edition) or Cannabis as defined in the Cannabis Control Act, **720 ILCS 550/1 et seq.** (1992 State Bar Edition).

(D) **"Conviction"** means a finding of guilt, including a plea of nolo contendere, or imposition of sentence, or both, by any judicial body charged with determining violations of the Federal or State criminal drug statutes.

(E) **"Criminal Drug Statute"** means a criminal statute involving manufacture, distribution, dispensation, use, or possession of any controlled substance.

(F) **"State"** means all officers, boards, commissions, and agencies created by the Constitution, whether in the executive, legislative, or judicial branch; all officers, departments, boards, commissions, agencies, institutions, authorities, universities, bodies politic and corporate of the State; or administrative units or corporate outgrowths, of the State government which are created by or pursuant to statute.

22-8-2 **REQUIREMENTS FOR CITY.** The City shall provide a drug free workplace by:

(A) **Publishing a Statement.**

(1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the workplace.

(2) Specifying the actions that will be taken against employees for violations of such position.

(3) Notifying employee that, as a condition of employment, the employee will:
 (a) abide by the terms of the statement; and
 (b) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than **five (5) days** after such conviction.

(B) Establishing a drug free awareness program to be administered by a person appointed by the Mayor to inform employees about:

- (1) the dangers of drug abuse in the workplace;
- (2) the City's policy of maintaining a drug free workplace;
- (3) any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) the penalties that may be imposed upon employees for drug violations.

(C) A copy of the statement required by subsection (A) above shall be given to each employee and posted in a prominent place in the workplace.

(D) If the City receives a grant from the State or Contract for the procurement of any property or services from the State, then the City shall notify the contracting or granting agency within **ten (10) days** after receiving notice under part (b) of paragraph (3) of subsection (A) from an employee or otherwise receiving actual notice of such conviction.

(E) Within **thirty (30) days** from receiving notice from an employee of a conviction of a violation of a criminal drug statute occurring in the workplace, the Mayor shall take action against such employee as may be appropriate as determined by the Mayor and which may include but is not limited to reprimand; suspension for any length of time with or without pay; termination from employment; and/or a requirement to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(F) Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place.

(G) Making a good faith effort to continue to maintain a drug free workplace through implementation of this Section.

ARTICLE IX – POLICY PROHIBITING SEXUAL HARASSMENT

22-9-1 PROHIBITION ON SEXUAL HARASSMENT. It is unlawful to harass a person because of that person’s sex. The courts have determined that sexual harassment is a form of discrimination under Title VII of the U.S. Civil Rights Act of 1964, as amended in 1991. All persons have a right to work in an environment free from sexual harassment. Sexual harassment is unacceptable misconduct which affects individuals of all genders and sexual orientations. It is a policy of this City to prohibit harassment of any person by any municipal official, municipal agent, municipal employee or municipal agency or office on the basis of sex or gender. All municipal officials, municipal agents, municipal employees and municipal agencies or offices are prohibited from sexually harassing any person, regardless of any employment relationship or lack thereof.

22-9-2 DEFINITION OF SEXUAL HARASSMENT. This policy adopts the definition of sexual harassment as stated in the Illinois Human Rights Act, which currently defines sexual harassment as:

(A) Any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when:

- (1) Submission to such conduct is made a term or condition of an individual’s employment, either explicitly or implicitly; or
- (2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (3) Such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.

(B) Conduct which may constitute sexual harassment includes, but is not limited to:

- (1) **Verbal Harassment.** Sexual innuendoes, suggestive comments, insults, humor, jokes about: sex, anatomy or gender-specific traits, sexual propositions, threats, repeated requests for dates, or statements of a sexual nature about other employees, even outside of their presence.
- (2) **Non-verbal Harassment.** Suggestive or insulting sounds (whistling), leering, obscene gestures, sexually suggestive bodily gestures, “catcalls”, “smacking” or “kissing” noises.
- (3) **Visual.** Posters, signs, pin-ups or slogans of a sexual nature, viewing pornographic material or websites.
- (4) **Physical Harassment.** Touching, unwelcome hugging or kissing, pinching, brushing the body, any coerced sexual act or actual assault.
- (5) **Textual/Electronic Harassment.** “Sexting” (electronically sending messages with sexual content, including pictures or video), the use of sexually explicit language, harassment, cyber stalking and threats via all forms of electronic communication (e-mail, text/picture/video messages, intranet/on-line postings, blogs, instant messages and posts on social network websites like Facebook and Twitter).

(C) The most severe and overt forms of sexual harassment are easier to determine. On the other end of the spectrum, some sexual harassment is more subtle and depends, to some extent, on individual perception and interpretation. The courts will assess sexual harassment by a standard of what would offend a “reasonable person.”

22-9-3 PROCEDURE FOR REPORTING AN ALLEGATION OF SEXUAL HARASSMENT.

(A) An employee who either observes sexual harassment or believes herself/himself to be the object of sexual harassment should deal with the incident(s) as directly and firmly as possible

by clearly communicating his/her position to the offending employee, and his/her immediate supervisor. It is not necessary for sexual harassment to be directed at the person making the report.

(B) Any employee may report conduct which is believed to be sexual harassment, including the following:

- (1) **Electronic/Direct Communication.** If there is sexual harassment behavior in the workplace, the harassed employee should directly and clearly express his/her objection that the conduct is unwelcome and request that the offending behavior stop. The initial message may be verbal. If subsequent messages are needed, they should be put in writing in a note or a memo.
- (2) **Contact with Supervisory Personnel.** At the same time direct communication is undertaken, or in the event the employee feels threatened or intimidated by the situation, the problem must be promptly reported to the immediate supervisor of the person making the report, a department head, a director of human resources, an ethics officer, the city manager or administrator, or the chief executive officer of the Municipality.
The employee experiencing what she/he believes to be sexual harassment must not assume that the employer is aware of the conduct. If there are no witnesses and the victim fails to notify a supervisor or other responsible officer, the Municipality will not be presumed to have knowledge of the harassment.
- (3) **Resolution Outside Municipality.** The purpose of this policy is to establish prompt, thorough and effective procedures for responding to every report and incident so that problems can be identified and remedied by the Municipality. However, all municipal employees have the right to contact the Illinois Department of Human Rights (IDHR) or the Equal Employment Opportunity Commission (EEOC) for information regarding filing a formal complaint with those entities. An IDHR complaint must be filed within **three hundred (300) days** of the alleged incident(s) unless it is a continuing offense. A complaint with the EEOC must also be filed within **three hundred (300) days**.
- (4) **Allegations Made Against an Elected Official by Another Elected Official.** In addition to the methods of reporting included above, an elected official may request an independent review of a complaint of sexual harassment by another elected official. The request shall be made to the human resources director, the city manager or administrator or the chief elected official of the municipality. The official receiving the request shall take immediate action in keeping with the procurement process of the municipality to retain a qualified individual or entity for the independent review of the allegations of sexual harassment in violation of this policy. The outcome of the independent review shall be reported to the corporate authorities.

(C) Documentation of any incident may be submitted with any report (what was said or done, the date, the time and the location), including, but not limited to, written records such as letters, notes, memos and telephone messages.

(D) All allegations, including anonymous reports, will be accepted and investigated regardless of how the matter comes to the attention of the Municipality. However, because of the serious implications of sexual harassment charges and the difficulties associated with their investigation and the questions of credibility involved, the claimant's willing cooperation is a vital component of an effective inquiry and an appropriate outcome.

(Ord. No. 2020-10; 09-21-21)

22-9-4 PROHIBITION ON RETALIATION FOR REPORTING SEXUAL HARASSMENT ALLEGATIONS.

(A) No municipal official, municipal agency, municipal employee or municipal office shall take any retaliatory action against any municipal employee or official due to a municipal employee's or official's:

- (1) Disclosure or threatened disclosure of any violation of this policy; or
- (2) Providing information related to an investigation or testimony before any public body conducting an investigation, hearing or inquiry into any violation of this policy; or
- (3) Assistance with or participation in a proceeding to enforce the provisions of this policy.

(B) For the purposes of this policy, retaliatory action means the reprimand, discharge, suspension, demotion, denial of promotion or transfer or change in the terms or conditions of employment of any municipal employee that is taken in retaliation for a municipal employee's or official's involvement in protected activity pursuant to this policy.

(C) No individual making a report will be retaliated against, even if a report made in good faith is not substantiated. In addition, any witness will be protected from retaliation.

(D) Similar to the prohibition against retaliation contained herein, the State Officials and Employees Ethics Act (**5 ILCS 430/15-10**) provides whistleblower protection from retaliatory action, and this policy prohibits retaliatory action such as reprimand, discharge, suspension, demotion, or denial of promotion or transfer that occurs in retaliation for an employee who does any of the following:

- (1) Discloses or threatens to disclose to a supervisor or to a public body an activity, policy or practice of any officer, member, agency or other employee that the employee reasonably believes is in violation of a law, rule, or regulation; or
- (2) Provides information to or testifies before any public body conducting an investigation, hearing or inquiry into any violation of a law, rule or regulation by any officer, member, agency or other employee; or
- (3) Assists or participates in a proceeding to enforce the provisions of the State Officials and Employees Ethics Act or this policy.

(E) Pursuant to the Whistleblower Act (**740 ILCS 174/15(a)**), an employer may not retaliate against an employee who discloses information in a court, an administrative hearing, before a legislative commission or committee or in any other proceeding, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule or regulation. In addition, an employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule or regulation. (**740 ILCS 174/15(b)**).

(F) According to the Illinois Human Rights Act (**775 ILCS 5/6-101**), it is a civil rights violation for a person, or for two or more people to conspire to retaliate against a person because he/she has opposed that which he/she reasonably and in good faith believes to be sexual harassment in employment, because he/she has made a charge, filed a complaint, testified, assisted or participated in an investigation, proceeding or hearing under the Illinois Human Rights Act.

(G) An employee who is suddenly transferred to a lower paying job or passed over for a promotion after filing a complaint with IDHR or EEOC, may file a retaliation charge within **three hundred (300) days** of the alleged retaliation.

22-9-5 CONSEQUENCES OF A VIOLATION OF THE PROHIBITION ON SEXUAL HARASSMENT.

In addition to any and all other discipline that may be applicable pursuant to municipal policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreements, any person who violates this policy or the Prohibition on Sexual Harassment contained in **5 ILCS 430/5-65**, may be subject to a fine of up to **Five Thousand Dollars (\$5,000.00)** per offense, applicable disciplinary actions or discharge by the Municipality and any applicable fines and penalties established pursuant to local ordinance, State law or Federal law. Each violation may constitute a

separate offense. Any discipline imposed by the Municipality shall be separate and distinct from any penalty imposed by an ethics commission and any fines or penalties imposed by a court of law or a State or Federal agency.

22-9-6 CONSEQUENCES FOR KNOWINGLY MAKING A FALSE REPORT. A false report is a report of sexual harassment made by an accuser to accomplish an outcome other than stopping sexual harassment or stopping retaliation for reporting sexual harassment. A false report is not a report made in good faith which cannot be proven. Given the seriousness of the consequences for the accused, a false or frivolous report is a severe offense that can itself result in disciplinary action. Any person who intentionally makes a false report alleging a violation of any provision of this policy shall be subject to disciplinary action or discharge pursuant to applicable municipal policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreements.

In addition, any person who intentionally makes a false report alleging a violation of any provision of the State Officials and Employees Ethics Act to an ethics commission, an inspector general, the Illinois State Police, a State's Attorney, the Attorney General or any other law enforcement official is guilty of a Class A misdemeanor. An ethics commission may levy an administrative fine of up to **Five Thousand Dollars (\$5,000.00)** against any person who intentionally makes a false, frivolous or bad faith allegation.

(Ord. No. 2017-21-1; 12-18-17)

ARTICLE X – STANDARDS OF ETHICAL CONDUCT TO ADDRESS FRAUD, WASTE AND ABUSE

22-10-1 POLICY. In the spirit of sound and ethical governance and other applicable laws and regulations, the City believes that the ethical conduct of those in public service is of utmost importance. This policy is set forth in order to address fraud, waste and abuse in City government and establishes reasonable standards of ethical conduct for all City employees and officers. It is the intent of this policy to establish minimum expectations relative to employee and officer behavior and conduct in the execution of their duties as representatives of the City.

22-10-2 SCOPE. This policy applies to all City employees and officers (hereinafter “employees”). This policy is not intended to be all-inclusive or address every possible eventuality or circumstance. Instead, it is intended to establish reasonable standards and provide guidance relative to the ethical conduct of City employees while fulfilling the expectations of City residents.

22-10-3 INTERPRETATION. This policy does not supplant any of the City’s labor contracts or Memoranda of Understanding (MOUs). Should this policy conflict with any law, regulation, or labor contract of which the City or its employees may be subject, that law, regulation, or contract shall take precedence. In the event this policy conflicts with any precedent or past practice of the City, management will resolve that conflict by means consistent with established procedures or practices.

22-10-4 DEFINITIONS.

(A) **Fraud, Waste and Abuse.** Any illegal, wasteful, or improper activity involving City assets or resources. It includes theft by means of deception, deceit or trickery; willful misrepresentation to obtain something of value; and the extravagant, careless or needless expenditure or consumption of City resources, whether intentional or not.

(B) **Fraud.** Theft by means of deception, deceit or trickery. Examples include but are not limited to forging or altering a City warrant or check; charging personal expenses to the City; or claiming overtime when not worked.

(C) **Waste.** The unnecessary or pointless consumption of resources, time or labor. Examples include but are not limited to using more of something when less will do; performing tasks that do not need to be performed; or maintaining excessive inventories.

(D) **Abuse.** Misuse of power, authority or control. Examples include but are not limited to using one’s authority to direct employees to perform non-City related work; causing employees to work overtime without compensation; or using City assets for non-City business without proper permission.

Additional definitions of terms to fraud, waste and abuse include:

(E) **Asset.** Anything of value, whether tangible or intangible. Examples include, but are not limited to cash, tools, equipment, fuel, office supplies and time.

(F) **Conflict of Interest.** Any circumstance in which the interests, duties, obligations or activities of an employee or an employee’s immediate family member are in conflict or incompatible with the interests of the City, the duties and obligations of the employee, or his or her capacity as an employee. Examples include but are not limited to: City employees bidding on City contracts; influencing City policy or activities for personal gain; or disclosing confidential City information to a friend or relative in order to assist them or benefit themselves.

(G) **Employee.** Any individual classified by the City as a full-time, part-time, seasonal, temporary full-time, temporary part-time, or per diem employee or officer of the City.

(H) **Gifts.** Any payment or item that gives a personal benefit to the recipient to the extent that something of equal or greater value is not received and includes a discount or rebate, unless the discount or rebate is available to all members of the public.

(I) **Immediate Family.** A spouse or dependent child of the employee.

- (J) **Reasonable Person.** Any person of average competence and ability to reason.
- (K) **Third Party.** Any person or entity other than an employee of the City or the City itself.

22-10-5 EXPECTATIONS. City employees shall adhere to and uphold this policy both in practice and in spirit. It is expected that employees act in the public’s interest first and not their own. It is further expected that their behavior, both on the job and off, reflects positively on the City, its reputation, and its employees. Pursuant to this policy, an employee’s duties and responsibilities include, but are not limited to:

(A) **Duty to Protect the Reputation of the City.** It is the duty of every employee to uphold and protect the good reputation of the City and his or her fellow workers.

(B) **Duty to Obey the Law.** It is the responsibility of every employee to obey the law in the execution of his or her duties. Ignorance of the law or a particular regulation may not be considered an excuse for committing a violation or oversight.

(C) **Duty to Comply with City Policies.** It is the responsibility of every employee to comply with all City policies.

(D) **Conflicts of Interest Must be Avoided.** In the broadest sense of the meaning, no employee shall engage in a behavior that may appear to be or give rise to a conflict of interest between him or herself and that employee’s official capacity or duties. Should a conflict of interest arise, the employee involved shall report it in the manner described below.

(E) **Disqualification from Acting on City Business.** An employee shall disqualify him or herself and shall not act on any matter in which he or she, a member of his or her immediate family, or another employer of the employee has a financial interest.

(F) **Prohibition of Certain Financial Interest or Activity.** No employee, regardless of any prior disclosure, who has a material interest, personally or through a member of his or her immediate family, in any business entity doing or seeking to do business within the City shall influence or attempt to influence the selection of the business entity or the making of a contract between such business entity and the City. Employees may not have financial interests in contracts.

(G) **Solicitation of Gifts or Loans is Prohibited.** No employee shall solicit anything of monetary value (even such things which might be returned or repaid) if it would appear to have been solicited with intent of obtaining something in return. Nothing shall prohibit contributions of gifts including political contributions, which are reported in accordance with applicable law or which are accepted on behalf of the City.

(H) **Gifts in Excess of the \$300 Annual Gift Limitation Amount are Prohibited.** No employee or family member of an employee shall accept gifts that exceed an aggregate value of the adjusted annual gift limitation amount in accordance with Government Code in any **twelve (12) consecutive months** from an individual or entity that is doing business with the City.

(I) **Improper Disclosure of Privileged, Personal or Confidential Information.** Unless expressly authorized, no employee shall intentionally disclose privileged, personal or confidential information obtained as a result of, or in connection with, his or her employment with the City for any purpose. Privileged, personal or confidential information does not include information that is a matter of public knowledge or that is available to the public on request. Nothing in this policy is intended to prohibit or infringe upon any communication, speech or expression that is protected or privileged under law. This includes speech and expression protected under state and federal constitutions as well as labor or other applicable laws.

(J) **Improper Using One’s City Employment.** No employee shall use or permit the use of any City assets for a non-City purpose that is for the private benefit of the employee or any other person unless available on equal terms to the general public.

(K) **Improper Influence.** No employee, except in the course of his or her official duties, shall assist any person in any transaction with the City when such employee’s assistance would appear to a reasonable person to be enhanced by that employee’s position with the City for their own personal benefit. This subsection shall not apply to any employee appearing on his own behalf or representing himself as to any matter in which he has a proprietary interest, if not otherwise prohibited by law.

(L) **Duty to Identify, Report and Work to Eliminate Fraud, Waste and Abuse.** It is the responsibility and duty of every employee to identify, report and work to eliminate fraud, waste and abuse at all levels of the City administration and operations. Employees are encouraged to bring to the attention of management any opportunity to reduce or eliminate fraud, waste and abuse.

(M) **Duty to Cooperate.** It is the duty of every employee to cooperate in an investigation involving a violation or an alleged violation of this policy. Upon the City's request, an employee will participate and fully cooperate in any investigation. This policy does not preclude an employee from exercising his or her Constitutional rights or those afforded to him or her by a City recognized labor contract. However, the exercising of one's rights does not preclude City from disciplining an employee for his or her failure to participate or cooperate in an investigation if the City may lawfully do so.

(N) **Handling of Anonymous Complaints or Allegations of Violations of this Policy.** Employees are prohibited from attempting to identify or intentionally exposing the identity of any party making an anonymous report or complaint pursuant to this policy.

22-10-6 REPORTING. Employees are expected to report all violations or suspected violations of this policy to management in a timely and professional manner. The City recognizes that the reporting party may desire or require anonymity. Thus, anonymous reports or concerns may be reported by any party to the City President or the City Trustees. It is the duty of every employee to report any known violation of this policy or what would appear to a reasonable person to be a violation of this policy. Employees are reminded that they may report anonymously any actions that detract from the efficiency and effectiveness of City operations include, but not limited to, fraud, waste, abuse, ethics violations, retaliation, discrimination and safety violations. It is a violation of this policy to retaliate against an employee who makes a report anonymously under Illinois Labor Code. The Illinois State Attorney General's Whistleblower Hotline number is (888) 814-4646.

22-10-7 INVESTIGATION AND ENFORCEMENT. All violations or alleged violations of this policy will be investigated. As stated above, it is the duty of every employee to cooperate in an investigation involving a violation or an alleged violation of this policy. Upon the request of the City, an employee will participate and fully cooperate in any investigation, whether conducted by the City or its agent(s). If as a result of good faith investigation and a resultant reasonable conclusion that a violation of this policy has occurred, the offending employee may be subject to disciplinary action up to and including termination.

ARTICLE XI – WHISTLEBLOWER PROTECTION POLICY

22-11-1 PURPOSE. The City provides whistleblower protections in two important areas: confidentiality and against retaliation. The confidentiality of a whistleblower will be maintained to the extent allowable by law, however, an identity may have to be disclosed to conduct a thorough investigation, to comply with the law and to provide accused individuals their legal rights of defense. A whistleblower may also waive confidentiality in writing. The City will not retaliate against a whistleblower. This includes, but is not limited to, protection from retaliation in the form of an adverse employment action such as termination, compensation decreases, or poor work assignments and threats of physical harm. Any whistleblower who believes they are being retaliated against must submit a written report to the Auditing Official within **sixty (60) days** of gaining knowledge of the retaliatory action. The right of a whistleblower for protection against retaliation does not include immunity for any personal wrongdoing that is alleged and investigated.

22-11-2 DEFINITIONS.

(A) **Whistleblower** means an employee, as defined in this Section, of the City who:

- (1) reports an improper governmental action as defined under **50 ILCS 105/4.1** (hereinafter Section 4.1);
- (2) cooperates with an investigation by an Auditing Official related to a report of improper governmental action; or,
- (3) testifies in a proceeding or prosecution arising out of an improper governmental action.

(B) **Auditing Official** means any elected, appointed or employed individual, by whatever name, in the City whose duties may include receiving, registering, and investigating complaints and information concerning misconduct, inefficiency and waste within the City; investigating the performance of officers, employees, functions and programs; and promoting economy, efficiency, effectiveness and integrity in the administration of the programs and operations of the City.

The Auditing Official shall be the Mayor until replaced by the City.

(C) **Employee** means anyone employed by the City, whether in a permanent or temporary position, including full-time, part-time, and intermittent workers. Employee also includes members of appointed boards or commissions, whether paid or unpaid. Employee also includes persons who have been terminated because of any report or complaint submitted under Section 4.1.

(D) **Improper governmental action** means any action by an employee of the City; an appointed member of a board, commission, or committee; or an elected official of the City that is undertaken in violation of a federal or state law or local ordinance; is an abuse of authority; violates the public’s trust or expectation of their conduct; is of substantial and specific danger to the public’s health or safety; or is a gross waste of public funds. The action need not be within the scope of the employee’s, elected official’s, board member’s, commission member’s or committee member’s official duties to be subject to claim of “improper governmental action.”

(1) Improper governmental action does not include the City’s personnel actions, including, but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployment, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands, or violations of collective bargaining agreements, except to the extent that the action amounts to retaliation.

(E) **Retaliate, retaliation or retaliatory action** means any adverse change in an employee’s employment status or the terms and conditions of employment that results from an employee’s protected activity under Section 4.1. Retaliatory action includes, but is not limited to, denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unsubstantial letters of reprimand or unsatisfactory performance

evaluations; demotion; reduction in pay; denial of promotion; transfer or reassignment; suspension or dismissal; or other disciplinary action made because of an employee's protected activity under Section 4.1.

22-11-3 DUTIES OF AN AUDITING OFFICIAL. Each Auditing Official shall establish written processes and procedures consistent with the terms of this policy and best practices for investigations for managing complaints filed under Section 4.1. Each Auditing Official shall investigate and dispose of reports of improper governmental action in accordance with these processes and procedures, and all other provisions of Section 4.1.

The Auditing Official must provide each employee a written summary or a complete copy of Section 4.1 upon commencement of employment and at least once each year of employment. At the same time, the employee shall also receive a copy of the written processes and procedures for reporting improper governmental actions from the applicable Auditing Official.

Auditing Officials may reinstate, reimburse for lost wages or expenses incurred, promote, or provide some other form of restitution.

In instances where an Auditing Official determines that restitution will not suffice, the Auditing Official may make their investigation findings available for the purposes of aiding in that employee's, or the employee's attorney's, effort to make the employee whole.

Auditing Officials are responsible for reading the full context of Section 4.1 and complying with all requirements.

22-11-4 DUTIES OF AN EMPLOYEE. All reports of illegal and dishonest activities will be promptly submitted to the Auditing Official who is responsible for investigating and coordinating corrective action.

If an employee has knowledge of, or a concern of, improper governmental action, the employee shall make a written report of the activity to the Auditing Official. The employee must exercise sound judgment to avoid baseless allegations. An employee who intentionally files a false report of wrongdoing will be subject to discipline up to and including termination.

The whistleblower is not responsible for investigating the activity or for determining fault or corrective measures; a designated Auditing Official is charged with these responsibilities.

22-11-5 DEFEND TRADE SECRETS ACT (18 U.S.C. § 1836) COMPLIANCE. Section 7(b): "Immunity from Liability for Confidential Disclosure of a Trade Secret to the Government or in a Court Filing:

(A) **Immunity.** An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (1) is made (a) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney; and, (b) solely for the purpose of reporting or investigating a suspected violation of law; or, (2) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(B) **Use of Trade Secret Information in Anti-Retaliation Lawsuit.** An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (1) files any document containing the trade secret under seal; and (2) does not disclose the trade secret, except pursuant to court order."

22-11-6 EMPLOYEE ACKNOWLEDGEMENT. Employees are required to sign a written acknowledgement that they have received, read, and understand this Policy, and to submit that acknowledgement to the Auditing Official or other designated official of the City. The form that follows on **Addendum "A"** will satisfy this requirement upon receipt.

ARTICLE XII – DRUG AND ALCOHOL ABUSE POLICY

22-12-1 PURPOSE. This government entity has adopted the following policy that not only meets but exceeds Federal Motor Carrier Safety Administration (FMCSA) on drug and alcohol abuse as set forth in 49 CFR Parts 40 and 382. This policy supersedes any previous government entity policy or agreement that may be in existence prior to the effective date of this policy.

All CDL drivers are subject to drug testing as required in 49 CFR Parts 40 and 382. All CDL drivers are subject to alcohol testing whenever they are performing a safety sensitive function, just prior to performing a safety sensitive function, or immediately after performing such functions as required in 49 CFR Parts 40 and 382.

Under the FMCSA drug and alcohol testing regulations for safety-sensitive drivers, the testing for the following **five (5) drugs** and alcohol is required: marijuana, cocaine, opiates, phencyclidine and amphetamines. When drugs are mentioned in this policy it will include these drugs. When alcohol is mentioned in this policy, it will include the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.

This policy becomes effective **August 14, 2001**.

Any questions or assistance needed regarding our government entity's CDL drug and alcohol testing program should be directed to the City Clerk's office at 217-773-2513.

22-12-2 DEFINITIONS.

"Adulterated Specimen". A specimen that contains a substance that is not expected to be present in human urine or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

"Air Blank". A reading by an evidential breath testing device (EBT) of ambient air containing no alcohol. (In EBT's using gas chromatography technology, a reading of the device's internal standard.)

"Alcohol Screening Device (ASD)". A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration and placed on the Conforming Products List for such devices.

"Alcohol Use". The drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

"Breath Alcohol Technician (BAT)" is an individual who instructs and assists individuals in the alcohol testing process and operates an EBT. A BAT may also act as a Screening Test Technician (STT) who instructs and assists individuals in the alcohol testing process and operates an ASD.

"Canceled or Invalid Test". A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or in which 49 CFR Part 40 otherwise requires a test to be cancelled. A cancelled test is neither a positive nor a negative test.

"Collector" is a person who instructs and assists individuals at a collection site and who receives and makes a screen examination of the urine specimen provided by individuals.

"Commercial Drivers License (CDL)" means a license issued by a State or other jurisdiction, in accordance with the standards contained in 49 CFR Part 383, to an individual which authorizes the individual to operate a class of commercial motor vehicle.

"Commercial Motor Vehicle (CMV)" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- (A) 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
- (B) has a gross vehicle weight rating of 26,001 or more pounds; or
- (C) is designed to transport 16 or more passengers, including the driver; or
- (D) 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.

"Confirmation (or confirmatory) Test". In drug testing, a second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite. Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method

of cocaine, marijuana, opiates, amphetamines, and phencyclidine. In alcohol testing, a second test, following a screening test with a result of 0.02 or higher, that provides a quantitative data of alcohol concentration.

"Consortium". The Consortium is the Mid-West Truckers Association Drug and Alcohol Testing Consortium (hereinafter called the Consortium). The Consortium is a service agent that provides and coordinates the provisions of a variety of drug and alcohol testing services through other services agents for its participants.

"Department of Health and Human Services (DHHS)". The Department or any designee of the Secretary, Department of Health and Human Services.

"Dilute Specimen". A specimen with creatinine and specific gravity values that are lower than expected for human urine.

"DOT" means the U.S. Department of Transportation.

"Driver" means any person who operates any commercial motor vehicle. This includes, but is not limited to: full-time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer. Driver includes both applicants for employment (subject to pre-employment testing) and current drivers employed by this employer.

"Employee" means the same as driver.

"Employer" means a person or entity employing **one (1)** or more employees (including an individual who is self-employed) that is subject to 49 CFR Parts 382 and 40. The term employer includes an employer's officers, designated representatives or management personnel.

"Evidential Breath Testing Device (EBT)". A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the .02 and .04 alcohol concentrations, placed on NHTSA's Conforming Products List (CPL) of Evidential Breath Measurement Devices, and identified on the CPL as conforming with model specifications available from the NHTSA's Traffic Safety Programs.

"Federal Motor Carrier Safety Administration (FMCSA)". The federal agency responsible for the administration of federal regulations for commercial motor vehicle drivers.

"Government Entity" means the same as Employer.

"Initial Test (or screening test)". In drug testing, the test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites. In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

"Licensed Medical Practitioner" means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, state, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

"Medical Review Officer (MRO)" is a licensed physician (Medical Doctor or Doctor of Osteopathy) responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results. The MRO must be knowledgeable of and have clinical experience in controlled substances abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed drug test results. The MRO must be knowledgeable about issues relating to adulterated and substituted specimens as well as the possible causes of specimens having an invalid result.

"Primary Specimen". In drug testing, the urine specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of validity testing.

"Refusal to Test (alcohol or controlled substances)" means that a driver:

- (A) Fails to show up for any test within a reasonable time after being directed to do so by the employer or to remain at the testing site until the testing process is complete. This includes the failure of a driver (including an owner/operator) to appear for a test when called by the Consortium;
- (B) Fails to provide a urine specimen or fails to attempt to provide a saliva or breath specimen for any drug or alcohol test as required by this policy and 49 CFR Parts 382 and 40;
- (C) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring in providing a specimen;

- (D) Fails to sign the certification at Step 2 of the Alcohol Testing Form;
- (E) Fails to provide a sufficient amount of urine or a sufficient amount of breath, when directed; unless it has been determined, through a required medical evaluation, that there was an adequate medical explanation for the failure;
- (F) Fails or declines to take a second test the employer or collector has directed the driver to take;
- (G) Fails to undergo an additional medical examination or evaluation as directed by the MRO as part of the verification process, or as directed by the employer concerning the evaluation as part of the shy bladder or insufficient breath procedures;
- (H) Fails to cooperate (e.g., leaves the test site before the testing process is completed, refuses to empty pockets) with any part of the drug or alcohol testing process; or
- (I) Verbally refuses to test as required by this policy and 49 CFR Parts 382 and 40.

It is also considered a refusal to test (which is the same as a positive test) when the MRO reports to the employer/Consortium, a driver has a verified adulterated or substituted drug test result.

"Safety Sensitive Function" means the time period when a driver begins to work or is required to be in readiness to work until the time, he/she is relieved from work and all responsibility for performing work.

Safety Sensitive Functions shall include:

- (A) All time at the employer or shipper plant, terminal, facility or other property, or any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- (B) All time inspecting equipment as required by 49 CFR Parts 392.7 and 392.8 or otherwise inspecting, servicing or conditioning any commercial motor vehicle at any time;
- (C) All time spent at the driving controls of a commercial motor vehicle in operation;
- (D) All time, other than driving time, in or upon any commercial motor vehicle except time resting in a sleeper berth (a berth conforming to requirements of 49 CFR Part 393.76);
- (E) All time loading and 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; and
- (F) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

"Screening Test Technician (STT)". A person who instructs and assists individuals in the alcohol testing process and operates an alcohol screening device (ASD).

"Split Specimen". A part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests it to be tested following a verified positive, adulterated or substituted test of the primary specimen.

"Substance Abuse and Mental Health Services Administration (SAMHSA)". A federal agency under the Department of Health and Human Services (DHHS) responsible for the certification of laboratories used as part of the drug testing program.

"Substance Abuse Professional (SAP)" means a licensed physician (Medical Doctor or Doctor of Osteopathy); or a licensed or certified psychologist, licensed or certified social worker, or a licensed or certified employee assistance professional; or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse). A qualified SAP must be knowledgeable about and have clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders, must be knowledgeable about the SAP function as it relates to employer interests in safety-sensitive duties and, must be knowledgeable about 49 CFR Parts 382 and 40, the DOT SAP Guidelines and stay current on any changes to these materials.

"Substituted Specimen". A urine specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

"Validity Test". The initial validity testing is conducted to determine if a urine specimen is adulterated, diluted or substituted. The confirmation validity testing is a second test conducted on a urine specimen to further support a validity test result.

"Verified Test". A drug test result or validity test result from a DHHS/SAMHSA-certified laboratory that has undergone review and final determination by the MRO.

22-12-3 USE PROHIBITED. 49 CFR (Code of Federal Regulations) Parts 382 and 40 prohibit the use/misuse of controlled substances and/or alcohol by drivers of commercial motor vehicles.

Notwithstanding the disciplinary action as cited in this policy, under this employer's independent authority, the unlawful manufacture, distribution, dispensation or possession of drugs are prohibited on this employer's premises, in any employer-owned or leased commercial motor vehicle, or other location at which the driver is to perform work. If this employer proves a driver is engaging in activities as stated above, the driver shall be subject to termination. Any driver who faces criminal action as a result of engaging in activities as stated above will be immediately suspended without pay until the court makes a final determination. If the driver is convicted, the driver will be immediately terminated. If the driver is found not guilty, the driver will be placed back into a safety sensitive function. No retroactive pay will be given to the driver.

Under this employer's independent authority, we may conduct reasonable searches for illegal drugs or alcohol on the employer premises or in employer-owned or leased motor vehicles. Searches of drivers and their personal property may be conducted when there are reasonable grounds to believe the driver is in violation of this policy. All drivers are expected to cooperate in such searches. A driver's refusal to cooperate or consent to such searches may result in disciplinary action, including termination.

The only exception to alcohol possession in this Policy is alcohol not intended for human consumption or products containing alcohol which, when ingested would not impair driving ability while performing safety-sensitive functions.

This employer will maintain a pre-employment screening program designed to prohibit the hiring of anyone who uses any illegal drugs.

No driver, at any work site, in any employer-owned or leased vehicle, will possess any quantity of any controlled substance or alcohol, lawful or unlawful, which in sufficient quantity could result in impaired performance. The only exception being a substance administered by or under the direction of a licensed medical practitioner, as stated elsewhere in this Section.

No driver will report for duty or remain on duty requiring the performance of safety-sensitive functions (including driving a CMV) when the driver uses any controlled substance (marijuana, amphetamines, cocaine, opiates and phencyclidine), while on or off duty, except as provided in the following paragraph of this Section. No driver shall report for duty, remain on duty or perform safety-sensitive functions (including driving a CMV) if the driver tests positive or has adulterated or substituted a drug test. No employer having actual knowledge that the driver has tested positive or has adulterated or substituted a drug test, shall permit the driver to perform or continue to perform safety-sensitive functions (including driving a CMV). The employer can obtain actual knowledge that a driver has used alcohol or drugs based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or drugs or an employee's admission of alcohol or drug use.

A driver may use a substance administered by or under direction of a licensed medical practitioner who has advised the driver that the substance will not adversely affect the driver's ability to safely perform safety-sensitive functions. A driver may use an over-the-counter substance that will not adversely affect the driver's ability to safely perform safety-sensitive functions. Under this employer's independent authority, the driver may be required to inform the employer of any prescribed or over-the-counter substances which may impair their ability to perform a safety-sensitive function. The employer may require written verification from the licensed medical practitioner or pharmacist that the substance will not adversely affect their ability to safely perform a safety-sensitive function. The driver shall promptly provide such written verification to the employer. If the substance should adversely affect their ability to perform a safety-sensitive function, or, if the driver does not promptly provide written verification from the licensed medical practitioner or pharmacist, the employer will temporarily remove or reassign the driver from a safety-sensitive function, if deemed appropriate.

The consumption of alcohol is prohibited while the driver is performing a safety-sensitive function. No driver shall report for duty or remain on duty, requiring the performance of safety-sensitive functions, while consuming or having consumed alcohol within **four (4) hours** of reporting for such duties, or having a BAC of .04 or greater. No employer having knowledge of such conditions shall allow a driver to perform or continue to perform safety-sensitive functions. Any driver having a BAC of .04 or greater shall be subject to the disciplinary action set forth in **Section 12-1-10** of this policy.

No driver required to take a post-accident alcohol test shall use alcohol for up to **eight (8) hours** after the accident or until a post-accident test is completed.

No driver shall refuse to submit to a drug or alcohol test (see Refusal to Test definition in **Section 22-12-2**) when required in accordance with 49 CFR Parts 382 and 40. It is a violation of this policy when a driver refuses to test. A driver shall not be permitted to perform or continue to perform safety-sensitive functions when he/she refuses to submit to a drug or an alcohol test and will be subject to the Disciplinary Action in **Section 22-12-10** of this policy.

Any driver who has engaged in conduct prohibited in this Section shall be advised by this employer of the resources available in evaluating and resolving problems associated with the misuse of alcohol and/or drugs by providing the driver with the name, address and telephone number of **one (1)** or more SAP's and treatment facilities. The driver will also be subject to the Disciplinary Action in **Section 22-12-10** of this policy.

22-12-4 TYPES OF TESTING. According to Part 382, drivers shall be subject to **six (6) types** of drug and/or alcohol testing – pre-employment, random, post-accident, reasonable cause, return-to-duty and follow-up. **(See Section 22-12-10 of this policy for disciplinary action resulting from alcohol and/or drug misuse.)**

(A) **Pre-Employment Testing.** Prior to the first time a driver performs a safety-sensitive function for this employer, the driver shall be pre-employment drug tested except when the conditions of the exceptions below apply. This employer shall not allow a driver who it intends to hire or use, to perform safety-sensitive functions until the employer has received a verified negative drug test result for the driver. **(Attachment A must be completed by the driver.)**

Exceptions To Pre-Employment Drug Testing. This employer is not required to pre-employment test a driver if the driver has participated in a qualified drug and alcohol testing program that meets the requirements of 49 CFR Parts 382 and 40 within the previous **thirty (30) days** and, while participating in that program, **either** was drug tested within the past **six (6) months** (from date of application with the employer) **or** has participated in a random drug and alcohol testing program for at least the previous **twelve (12) months** (from date of application with the employer). The employer must ensure that no previous employer of the driver of whom the employer is aware of has records of a violation of 49 CFR Part 382 or the drug testing rule of any other DOT agency within the previous **six (6) months**. **(Attachment B must be signed by the driver in order to get this information.)**

In order to find out if the conditions of the exceptions above apply, this employer shall send or fax the Attachment B to the co/previous employer through which the driver participates or participated in its drug and alcohol testing program. This employer shall obtain and retain from the co/previous employer the completed Attachment B which includes the information in the preceding paragraph and the following: the name and address of the program, verification the driver participates or participated in the program, verify the program conforms to 49 CFR Part 40, verify the driver is qualified under the rules of 49 CFR Part 382, including the driver has not refused to be tested for drugs, the date the driver was last tested for drugs, and the results of any tests taken within the previous **six (6) months**, and any other violations as stated in **Section 22-12-3 (Use Prohibited)**. If this employer cannot verify the above information, this employer shall conduct a pre-employment drug test on the driver.

The "Return to Duty" and "Follow-Up Testing" provisions of this Section do not apply to a driver who refuses to submit to a pre-employment drug test or who receives a positive pre-employment drug test result, if this employer does not intend to hire the driver.

(B) **Random Testing.** All drivers covered by this policy will be included as a part of the Mid-West Truckers Association Drug and Alcohol Testing Consortium group from which the Consortium will randomly select a sufficient number of drivers for testing each calendar year to equal an annual rate of not less than a minimum annual percentage for random alcohol (currently **ten percent (10%)**) and drug testing (currently **fifty percent (50%)**) as determined by the FMCSA Administrator.

On a monthly basis, our MRO will, from the total group, randomly select by a computer-based random number generated program that is matched with the membership numbers, the drivers' names and their social security numbers. Under the selection process used, each driver shall have an equal chance of being selected each time selections are made.

Once the MRO makes the monthly selections, the random list will be forwarded to the Consortium who will notify the employers under whose drug and alcohol policies those selected are covered. If any of the employer's drivers are selected, this employer will be given a date before which the driver must be tested per the random selection process. Failure of this employer to ensure the random testing is conducted within the time allotted will cause the employer to be out of compliance with the random testing requirement of Section 382.305 of the Federal Motor Carrier Safety Regulations.

This employer shall ensure that random drug and alcohol tests conducted under the random testing regulations are unannounced.

A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(C) **Post-Accident.** As soon as possible following an accident involving a CMV on a public road, a post-accident drug and alcohol test shall be conducted when either of the two circumstances below applies:

- (1) If an accident involves a fatality;
- (2) If a driver receives a citation for a moving traffic violation **and either** the accident involves bodily injury to a person who as a result of the accident immediately receives medical treatment away from the scene of the accident, **OR**, one or more motor vehicles incur disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by tow truck or other motor vehicle.

If a post accident alcohol test is not conducted within **two (2) hours** following the accident, we shall prepare and maintain on file a record stating why the alcohol test was not promptly administered. If the alcohol test is not conducted within **eight (8) hours** following the accident, we shall cease all attempts to complete the alcohol test and shall prepare and maintain a record stating why the alcohol test was not promptly administered. **(See Attachment C)**

If a post-accident drug test is not conducted within **thirty-two (32) hours** following the accident, we shall cease all attempts to conduct the drug tests and prepare and maintain on file a record stating why the drug test was not promptly administered. **(See Attachment C)**

A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by this employer as a refusal to test. Nothing in this Section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary medical care.

This employer shall provide the driver with necessary post-accident information, procedures and instructions prior to the driver operating a CMV, so that the driver will be able to comply with the requirements of this Section. **(See Attachment D)**

Drug and/or breath or blood alcohol tests conducted by federal, state or local officials, having independent authority for the test, shall be considered to meet the post-accident testing requirements, provided such testing conforms to the applicable federal, state or local drug and/or alcohol testing requirements and that the results are obtained by the employer.

(D) **Reasonable Cause Testing.** All persons designated by this employer who supervise the employer's drivers must complete supervisory training in accordance with Part 382.603. When the designated person(s) has reasonable suspicion that a driver has violated the "Use Prohibited" provision of **Section 22-12-3** of this Policy, that driver shall be required to submit to an alcohol and/or drug test. This employer's determination that reasonable suspicion exists to require the driver undergo an alcohol and/or drug test must be based on specific contemporaneous, articulable observations concerning the appearance, behavior, speech or body odor of the driver. **(See Attachment E)**

Alcohol testing is authorized only when observations of the driver are made during, just before or just after the period of the workday the driver is required to be in compliance with Part 382. The driver may be required to undergo reasonable suspicion alcohol testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased such functions.

If a reasonable cause alcohol test is not conducted within **two (2) hours** after observing the driver, this employer shall prepare and maintain on file a record stating the reason why the test was not

promptly administered. If the test is not conducted within **eight (8) hours** after observing the driver, this employer shall cease attempts to conduct the test and prepare and maintain on file a record stating the reasons why the test was not administered.

No driver shall report for duty or remain on duty when this employer's designated person(s) has observed the driver as under the influence of alcohol or impaired by alcohol. This employer shall not permit the driver to perform or continue to perform safety-sensitive functions until an alcohol test is conducted and the driver's alcohol test result is less than .02 or **twenty-four (24) hours** have elapsed since this employer's first suspicion of the driver being under the influence of or impaired by alcohol.

Refusal to submit to a reasonable cause test shall be considered a positive test.

The reasonable cause observation form must be completed and signed by at least **one (1)** of this employer's designated person(s) who made the observations either within **twenty-four (24) hours** of the observed behavior or before the drug test results are released, whichever is earlier. **(See Attachment F)**

(E) **Return to Duty Testing.** Any driver who has engaged in conduct prohibited in the "Use Prohibited" (**Section 22-12-3**) of this Policy or any other DOT drug and alcohol regulation shall be advised by this employer of the resources available in evaluating and resolving problems associated with the misuse of alcohol and/or drugs by providing the driver with the name, address and telephone number of **one (1)** or more SAP's and treatment facilities.

Any driver who has violated the "Use Prohibited" (**Section 22-12-3**) of this Policy or any other DOT drug and alcohol regulation shall have a face-to-face clinical assessment and evaluation by a SAP to determine what assistance is needed for the driver to resolve problems associated with alcohol and/or drug use. The SAP must refer the driver to an appropriate education and/or treatment plan and provide a letter to the employer stating the specific recommendations of assistance for the driver. The driver shall have a face-to-face follow-up evaluation to determine if the driver has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations. Successful compliance could mean full or partial completion of the evaluation recommendations.

If the SAP feels the driver has not successfully complied with the recommendations of assistance, the SAP must provide a letter to the employer stating so. The driver will not be allowed to return to safety-sensitive functions and the employer may take employment action against the driver, up to and including termination.

If the SAP feels the driver has successfully complied or is continuing to comply with the recommendations of assistance, the SAP must provide a letter to the employer stating so. The SAP letter may include requirements for further recommendations of assistance and follow-up evaluations if the SAP believes that ongoing services are needed to assist the driver in maintaining sobriety or abstinence from drug use after the driver returns to safety-sensitive functions. The SAP letter provided to the employer shall also include the SAP's follow-up testing plan for the driver.

The employer shall fax or mail a copy of the SAP letter to the Illinois Municipal League, which will forward a copy to the Consortium, who shall fax a copy to the MRO. The MRO will assist the employer in determining the driver has complied with the SAP's recommendations and if the employer is ready for the driver to return to safety-sensitive functions, a return to duty test will be scheduled.

The SAP may direct the driver to undergo both a drug and alcohol test if the SAP determines that return to duty testing for both drugs and alcohol are necessary for the driver. If the alcohol test result is less than .02, and the drug test result is negative, the driver may return to safety-sensitive functions.

The employer may choose to have all return to duty drug tests conducted under direct observation.

The provisions of this Section do not apply to an applicant who refuses to submit to a pre-employment drug test or who receives a positive pre-employment drug test result and will not be hired. The provisions of this Section will not apply if this employer has chosen not to rehire a driver who previously violated a provision of this employer's Policy.

(F) **Follow-Up Testing.** The driver will be subject to unannounced follow-up drug and/or alcohol tests following the driver's return to safety-sensitive functions. The number and frequency of such tests shall be determined by the SAP and shall consist of at least **six (6) tests** in the first **twelve (12) months** of the driver's return to duty. The SAP may direct the driver to undergo both drug and alcohol tests if the SAP determines that follow-up testing for both drugs and alcohol are necessary

for that driver. Follow-up testing shall not exceed **sixty (60) months** from the date of the driver's return to duty. The MRO will assist the employer in ensuring that follow-up testing is conducted in accordance with the plan established by the SAP.

The provisions of this Section do not apply to applicants who refuse to submit to a pre-employment drug test or who receives a positive pre-employment drug test result and will not be hired. The provisions of this Section will not apply if this employer has chosen not to rehire a driver who previously violated a provision of this employer's Policy.

22-12-5 DRUG TESTING.

(A) **Drug Testing Procedures.** All drug testing procedures will be followed in accordance with 49 CFR Part 40.

To ensure the integrity of collections, the facilities to be used for testing must be secured during drug testing by visual inspection to ensure that no foreign or unauthorized substances are present, to ensure other persons are not present and to ensure undetected access is not possible.

Bluing agents shall be put in the toilet bowl and in a moveable toilet tank (unless the tank is taped or otherwise secured). Any water source shall be secured or otherwise made unavailable to the driver. All soaps, disinfectants, cleaning agents or other possible adulterants shall be removed from the facility or otherwise secured, if not removable. All areas and items in the facility that could conceal contaminants shall be secured. All of the above shall be rechecked following each collection.

A driver shall appear at the collection site at the time specified by the employer. If the driver does not appear at the specified time, the collector shall notify the employer to determine how long it should take for the driver to arrive at the collection site. If the driver has not arrived by that time, the collector will contact the employer to inform him/her the driver has not reported for testing.

When the driver arrives at the collection site, the testing process will begin without undue delay. To ensure the security during the testing process, only one collection will be conducted at a time. The driver must have positive identification either by photo identification or by the identification of the driver by the employer representative. The collector will explain the basic collection procedures and show the driver the instructions on the back of the Federal Drug Testing Custody and Control Form (hereinafter called CCF). The driver will be instructed to remove and leave with the collector, or in a mutually agreeable location, any outer clothing (such as a coat, hat, coveralls) along with any briefcase, purse or other personal belongings. The driver may retain his/her wallet.

The driver will be directed to empty his/her pockets and display the items in them. If the collector determines none of the items could adulterate the specimen, the driver may return the items into his/her pockets. If there is any material that could adulterate a specimen, the collector must determine whether the material was accidentally brought in or intentionally brought in to adulterate the specimen. If it was accidental, the collector will retain the material and return it to the driver when the testing process is complete. If it was intentional, a direct observation test will take place immediately.

The driver will be instructed not to list any medications that he/she is currently taking on the CCF (unless it is the driver's copy).

The collector shall complete Step 1 of the CCF. The driver shall wash and dry his/her hands before providing the specimen. Thereafter, the driver will have no further access to water or other materials until the specimen is given to the collector. The driver will select a collection kit and the seal on the collection container will be broken in front of the collector and the driver. The driver will be instructed to go into the room, provide at least 45 mL of urine, not flush the toilet and return to the collector with the specimen. The driver will provide the specimen in private, except in the case of an observed or monitored collection. Any conduct that clearly indicates an attempt to tamper with a specimen will cause a new collection under direct observation to take place immediately.

The collector will ensure there is at least 45 mL of urine in the collection container and the temperature of the specimen is within the range of 90-100 degrees. If the temperature is out of that range, a new collection under direct observation will take place immediately. The specimen will also be inspected for unusual color, the presence of foreign objects or material or for other signs of tampering. If it is apparent the driver has tampered with the specimen, a new collection under direct observation will take place immediately.

The collector shall explain to the driver the reason for a direct observation test, except when the employer is required to do so. If the collector is not the same gender as the driver, a same gender observer will watch the driver urinate into the collection container. The observer will continue to watch the specimen until it is given to the collector.

A monitored collection will only be conducted if a multi-stalled restroom is used, and all sources of water or potential adulterants cannot be secured. The collector must be the same gender, unless he or she is a medical professional. An observer must be the same gender. A bluing agent shall be put in the toilet the driver will use. The driver shall provide the urine specimen behind a closed stall door with the collector/observer standing outside of the stall door listening to the driver urinate into the collection container. If the collector/observer hears sounds or makes other observations of the driver attempting to tamper with a specimen, another collection will take place immediately under direct observation.

The tabs on the specimen bottles will be broken in front of the collector and the driver. The driver will give the specimen container to the collector and the collector will pour the urine specimen into the split specimen bottles. The primary specimen shall be at least 30 mL of urine. The split specimen shall be at least 15 mL of urine. The driver should observe the specimen at all times until the lids/caps are secured and the tamper-evident bottle seals are put over the lids/caps (this is for the driver's protection to ensure it is his/her specimen). The driver is to initial the tamper-evident bottle seals on the bottles for proof that it is his/her specimen. The driver will also be required to sign the CCF as proof that the specimen identified as having been collected is in fact the driver's. The collector will complete the CCF and place the specimen bottles and Copy 1 of the CCF in the pouches of the plastic bag and secure both pouches. The driver will then be dismissed from the collection site.

Both specimens are then sent by overnight delivery to the DHHS/SAMHSA-certified laboratory for testing of the five drugs or classes of drugs (as described in **Section 22-12-1**) and for validity testing.

All results will be reviewed by the MRO. Negative results will be released by the MRO to the Consortium, who will forward the results to the Illinois Municipal League, who will forward the results to this employer.

Before a laboratory-confirmed positive test, adulterated test, substituted test or invalid test result will be released to the Consortium, the MRO will conduct a verification interview with the driver by telephone unless: the driver declines to discuss the test result; the MRO or the employer cannot make contact with the driver within **ten (10) days** of the MRO receiving the laboratory result; or more than **seventy-two (72) hours** have passed since the employer has contacted the driver to call the MRO.

Before the start of the verification interview with the driver, the MRO will warn the driver that any medical information given to the MRO (medical conditions, medications or other substances affecting the performance of safety-sensitive functions the driver reports having or using) will be provided to third parties (the employer, a SAP evaluating a driver as part of the return to duty process, DOT, another federal safety agency or any other safety agency) if the MRO determines the information is likely to result in the driver being medically unqualified to perform safety-sensitive functions or is likely to pose a significant safety risk if the driver is allowed to continue performing safety-sensitive functions.

During the verification process, if the driver can give the MRO a legitimate medical explanation for the positive, adulterated or substituted test result, the MRO will report the verified test result as negative. If the driver cannot give the MRO a legitimate medical explanation, the verified positive test result will be reported as positive and the verified adulterated or substituted test result will be reported as a refusal to test. If the test result is invalid or contains an unexplained interfering substance and the driver cannot give the MRO an acceptable explanation or a valid prescription and the driver does not admit to adulterating or substituting the specimen, the verified test result will be reported as a cancelled test with a second collection to take place immediately with the driver under direct observation. If the driver can give the MRO an acceptable explanation, the verified test result will be a cancelled test with no further testing needed unless a negative result is needed for pre-employment, return to duty or follow-up testing. If the driver admits to adulterating or substituting the specimen, the verified test result will be reported as a refusal to test.

All verified positive, refusal to test (adulterated or substituted) and cancelled test results will be released by the MRO to the Consortium, who will forward the results to the Illinois Municipal League, who will forward the results to this employer.

(B) **Dilute Specimens.** The employer will treat a verified positive drug test result that is dilute the same as a verified positive drug test result.

This employer may choose to have a second collection conducted on all negative dilute test results or may choose to have a second collection conducted on only certain types of negative dilute test results (e.g., all pre-employment negative dilute test results, but not any other type of test). The second collection would not be conducted under the direct observation. This employer may also choose to not have any second collections conducted on negative dilute test results. If a second collection is conducted, the second test result will be the test of record. This employer will inform all drivers in advance if the employer's choice is to conduct second collections on negative dilute test results and for which types of tests. All drivers will be treated the same.

(C) **Shy Bladder.** After a driver's first unsuccessful attempt to provide a minimum of 45 mL of urine, the shy bladder time starts. Any insufficient specimen shall be discarded. The driver will be urged to drink up to **forty (40) ounces** of fluids, reasonably through a period of up to **three (3) hours**; however, it is not considered a refusal to test if the driver chooses not to drink fluids. If the driver does not provide a sufficient amount of specimen within **three (3) hours**, the collection will be discontinued, and the employer will be notified. The employer will consult with the MRO, then direct the driver to obtain, within **five (5) working days**, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues associated with the driver's inability to provide an adequate amount of specimen. The physician must provide to the MRO a written statement of his/her recommendations and the basis for them. If the driver has a medical condition that could have prevented him/her from providing a sufficient amount of urine, and the MRO agrees with the physician's recommendation, the MRO will report the test result as a cancelled test. If the driver does not have a medical condition that could have prevented him/her from providing a sufficient amount of urine and the MRO agrees with the physician's recommendation, the MRO will report the test result as a refusal to test.

(D) **Split Specimen Tests.** When a driver is notified of a positive drug test or a refusal to test because of adulteration or substitution, the driver has **seventy-two (72) hours** from the time of notification by the MRO to request a test of the split specimen either verbally or in writing to the MRO. The MRO will then prepare the documentation and forward it to the laboratory that is storing the split specimen. That lab will then prepare the documentation and send both the split specimen and the documentation to another DHHS/SAMHSA lab for the split specimen testing. Pending the result of the split specimen test, the driver is not allowed to remain in a safety-sensitive function.

If the driver is unable to contact the MRO within **seventy-two (72) hours**, the driver may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified test result, or other circumstances unavoidably prevented the driver from timely contacting the MRO. If the MRO concludes there is a legitimate explanation for the driver's failure to contact the MRO within **seventy-two (72) hours**, the MRO shall direct that the test of the split specimen take place.

Another DHHS/SAMHSA laboratory will test the split specimen to either reconfirm or fail to reconfirm the positive, adulterated or substituted drug test result from the result of the primary specimen. If the split specimen reconfirms the positive, adulterated or substituted result, the positive or refusal to test result will stand. If the split specimen fails to reconfirm the positive, adulterated or substituted result, both the primary specimen and the split specimen test results will be cancelled by the MRO.

If the driver notifies the MRO to test the split specimen and the laboratory reports to the MRO the split specimen is not available, the MRO will cancel both the primary specimen and the split specimen test results and direct the employer to conduct another collection on the driver immediately under direct observation.

Under this employer's independent authority, any driver who requests a test of his/her split specimen shall reimburse the employer for the cost of the split specimen test assessed to this employer by the Consortium.

22-12-6 ALCOHOL TESTING.

(A) **Alcohol Testing Procedures.** All alcohol testing procedures will be followed in accordance with 49 CFR Part 40. All alcohol testing will be administered by a BAT/STT who has met the qualification training requirements in 49 CFR Part 40.

A driver shall only be tested for alcohol while the driver is performing a safety-sensitive function, just before a driver is to perform a safety-sensitive function, or just after the driver has ceased performing a safety-sensitive function.

If both a drug and alcohol test is to be conducted on the driver, the alcohol test must be completed before the urine collection process begins.

To ensure the security of the alcohol testing site, only authorized personnel shall be allowed to enter the testing site. The BAT/STT shall ensure that the driver is given privacy while an alcohol test is being conducted to prevent unauthorized persons from seeing or hearing the test result. Alcohol testing will be conducted on one driver at a time. The screening test and confirmation test, if needed, will be completed on a driver before the BAT/STT starts an alcohol test on another driver to be tested.

A driver shall appear at the collection site at the time specified by the employer. If the driver does not appear at the specified time, the BAT/STT shall notify the employer to determine how long it should take for the driver to arrive at the collection site. If the driver has not arrived by that time, the BAT/STT will contact the employer to inform him/her the driver has not reported for testing.

When the driver arrives at the collection site, the testing process will begin without undue delay. The driver must have positive identification either by photo identification or by the identification of the driver by the employer representative. The BAT/STT will explain the testing procedures and show the instructions on the back of the DOT Alcohol Testing Form (hereinafter called ATF) to the driver. The BAT/STT shall complete Step 1 on the ATF. The driver will then be directed to complete Step 2 on the ATF and sign the certification. If the driver refuses to sign the certification, the BAT/STT will document on the ATF that the driver has refused to test, and the employer will be immediately notified.

If a saliva ASD (hereinafter called device) is used for the screening test, the BAT/STT will check the expiration date on the device and show it to the driver. If it is beyond the expiration date, the device shall be disposed of and a new device shall be used.

The BAT/STT will offer the driver the choice of using the swab himself/herself, or having the BAT/STT use the swab. If the driver uses it, the BAT/STT will instruct the driver to insert the absorbent end of the swab in his/her mouth and actively swab around the cheeks, gums and under the tongue for **thirty (30) to sixty (60) seconds** or until the cotton swab is thoroughly wet. Otherwise, if the driver chooses not to use the device, the BAT/STT will swab the driver's mouth. The BAT/STT will wear single-use examination or similar gloves when swabbing the driver's mouth and will change the gloves following each test given.

If the swab breaks or is contaminated (dropped on the floor or on a surface) or the swab is removed or falls from the device before the device is activated, the BAT/STT shall discard the device and conduct a new test using a new device. The BAT/STT shall note in the remarks section of the ATF the reason for the new test. The BAT/STT will offer the driver the choice of using the swab himself/herself, or having the BAT/STT use the swab, unless the BAT/STT feels the driver was responsible for the new test needing to be conducted.

On the new device, if the swab breaks or is contaminated (dropped on the floor or on a surface) or the swab is removed or falls from the device before the device is activated, the collection shall be terminated, and an explanation shall be noted in the remarks section of the ATF. A new test shall then be conducted immediately by a BAT using an EBT for the screening test.

The BAT/STT shall place the device on a flat surface or hold the device at a slight angle and insert the swab into the entry port. The BAT/STT shall then apply gentle, steady pressure until the device indicates it is activated.

If the saliva ASD procedures are correctly followed but the device does not activate, the BAT/STT shall discard the device and conduct a new test on a new device. In all cases where a new test is necessary because the device does not activate, the BAT/STT will swab the driver's mouth.

The BAT/STT shall read the result displayed on the device **two (2) minutes** after inserting the swab into the entry port. The BAT/STT shall show the device and its reading to the driver and shall record the result on the ATF. The BAT/STT shall also enter that a saliva ASD was used in Step 3 on the ATF.

If the result is less than .02 alcohol concentration, the BAT/STT shall sign and date Step 3 of the ATF. The BAT/STT must immediately transmit the alcohol test result using Copy 1 of the ATF by telephone, electronic means, or in person to the employer. All devices and materials used in the testing process shall be properly disposed of.

If an EBT is used for the screening test, the BAT or the driver will select an individually sealed mouthpiece. The BAT will open the sealed mouthpiece in front of the driver and insert it into the EBT. The driver will be requested to blow steadily and forcefully into the mouthpiece for at least **six (6) seconds** or until the EBT indicates that enough breath has been obtained. The driver will be shown the breath alcohol test result and the result will be affixed to the ATF with tamper-evident tape.

If the result is less than .02 alcohol concentration, the BAT shall sign and date Step 3 on the ATF. The BAT must transmit the alcohol test result using Copy 1 of the ATF immediately by telephone, electronic means or in person to the employer.

If the alcohol concentration is .02 or greater, a confirmation test shall be conducted with an EBT not less than **fifteen (15) minutes** nor more than **thirty (30) minutes** after the completion of the screening test. During that time, the driver will be asked not to eat, drink, belch or put anything into his/her mouth to prevent an accumulation of mouth alcohol that could lead to an artificially high reading on the confirmation test. The BAT/STT will note in the remarks on the ATF these instructions were given and will also note on the ATF if the driver chose to ignore the instructions. The confirmation test will still be conducted. If the confirmation test will be conducted at a different site, the BAT/STT or the employer must transport the driver to the testing site. The driver will not be allowed to drive a motor vehicle.

If the confirmation test is conducted more than **thirty (30) minutes** after the result of the screening test, the BAT shall note in the remarks on the ATF the reason the confirmation test could not be conducted within the **fifteen (15) to thirty (30) minute** time frame. The confirmation test will still be conducted.

If the screening test was conducted by a STT or if the confirmation test is to be conducted by a different BAT, the STT or BAT who conducted the screening test shall complete and sign Step 3 on the ATF and give the driver Copy 2 of the ATF. A new ATF will be used by the BAT who will be conducting the confirmation test. The BAT will require positive identification of the driver and explain the confirmation testing procedures. The BAT shall complete Step 1 on the ATF. The driver will then be directed to complete Step 2 on the ATF and sign the certification. If the driver refuses to sign the certification, the BAT/STT will document on the ATF that the driver has refused to test, and the employer will be immediately notified.

Before the confirmation test is conducted, the BAT must conduct an air blank test on the EBT that reads "0.00" and show the reading to the driver. An individually sealed mouthpiece will be opened in front of the driver and attached to the EBT. The BAT and the driver shall read the sequential test number displayed on the EBT. The driver will be requested to blow steadily and forcefully into the mouthpiece for at least **six (6) seconds** or until the EBT indicates that enough breath has been obtained. The driver will be shown the breath alcohol test result and the result will be affixed to the ATF with tamper-evident tape.

If the confirmation test result is less than .02 alcohol concentration, the BAT shall sign and date Step 3 on the ATF. The BAT must transmit the alcohol test result using Copy 1 of the ATF immediately by telephone, electronic means or in person to the employer.

If the confirmation test result is .02 or greater alcohol concentration, the driver shall be directed to sign Step 4 on the ATF. If the driver does not sign, the BAT will note in the remarks on the ATF of the driver's failure to sign Step 4. The driver's failure to sign Step 4 will not be considered a refusal to test. The BAT must immediately notify the employer by any means of an alcohol test result of .02 or greater to ensure the result is immediately received by the employer.

If a screening or confirmation test is invalid, the BAT/STT will inform the driver that the test is cancelled and note the problem on the remarks line on the ATF. If a new screening or confirmation test is capable of being done, a screening test will be repeated, or a retest will be conducted for the confirmation test on the driver.

(B) **Inability to Provide an Adequate Amount of Saliva or Breath.** If a driver is unable to provide sufficient saliva to complete a test on the saliva ASD to activate the device, the BAT/STT shall conduct a new test using a new saliva ASD. If the driver refuses to complete the new test, the BAT/STT shall terminate testing and immediately notify the employer.

If a new test is conducted and the driver is still not able to provide sufficient saliva to complete the test, the employer shall be immediately notified, and the alcohol test will then be administered by a BAT using an EBT.

If a driver is unable or alleges he/she is unable to provide an amount of breath sufficient to give a reading on the EBT, the BAT should again instruct the driver to attempt to provide an adequate amount of breath and the proper way to do so. If the driver refuses to make a second attempt, the BAT shall discontinue the test and immediately notify the employer.

If the driver does make an attempt again and fails to provide an adequate amount of breath, the BAT may provide another opportunity to the driver if the BAT feels there is a strong likelihood the driver could provide a sufficient amount of breath. If the driver fails to provide an adequate amount of breath, the BAT shall note the failure on the remarks of the ATF and immediately notify the employer. The employer will then direct the driver to obtain, within **five (5) days**, an evaluation from a licensed physician who is acceptable to the employer and has expertise in the medical issues associated with the driver's inability to provide a sufficient specimen. The employer will tell the physician the driver was required to take a DOT breath alcohol test but was unable to provide a sufficient amount of breath and the consequences for refusing to take the required alcohol test. The employer must also tell the physician to provide to the employer a signed statement of the physician's conclusions and the basis for them. If the physician determines the driver has a medical condition that could have prevented him/her from providing a sufficient amount of breath, the test will be cancelled. No further testing will be required except when the driver needs a test result of less than .02 for a return to duty or a follow-up test. If the physician determines the driver does not have a medical condition that could have prevented him/her from providing a sufficient amount of breath, it will be considered a refusal to test. The employer shall notify the driver of the physician's conclusions.

(C) **Other Alcohol-Related Conduct.** No driver tested under **Section 22-12-4** of this Policy who is found to have an alcohol concentration of .02 or greater, but less than .04, shall perform or continue to perform safety-sensitive functions, including driving a CMV, nor shall this employer allow a driver to perform or continue to perform safety-sensitive functions, including driving a CMV, until the start of the driver's next regularly scheduled duty period, but not less than **twenty-four (24) hours** following the administration of the alcohol test.

22-12-7 ACCESS TO RECORDS. All records pertaining to the employer's drug and alcohol testing program shall be maintained in a secure location with controlled access and shall be maintained according to 49 CFR 382.401. Records, including drug and alcohol test results, shall only be released in the following circumstances.

Drivers are entitled to copies of their records pertaining to their use of drugs and alcohol, including any records pertaining to their drug and alcohol tests. This employer shall promptly provide records requested by the drivers. Access to the driver's records shall not be conditional upon payment for records, other than those they are specifically requesting.

Records to subsequent employers shall be made available upon receipt of a written authorization from the driver. This employer will only disclose information that is expressly authorized by the terms of the driver's authorization request. This employer shall provide such information and results requested promptly to the subsequent employer at no charge.

This employer may disclose drug and alcohol information pertaining to a driver to the decision maker in a lawsuit, grievance or other proceeding initiated by or on behalf of the driver, and arising from the results of a drug and alcohol test administered according to this policy or from this employer's determination that the driver engaged in conduct prohibited in **Section 22-12-3** ("Use Prohibited") (including, but not limited to worker's compensation, unemployment compensation or other proceeding relating to a benefit sought by the driver). In addition, the employer may disclose information in criminal or civil actions resulting from the driver's performance of safety-sensitive functions, in which a court of competent jurisdiction determines that the drug and alcohol test information sought is relevant to the case and issues an order directing the employer to produce the information. The employer may release the information to the decision-maker in the proceeding only with a binding stipulation that the decision-maker to whom it was released will make it available only to parties in the proceeding. The employer must notify the driver in writing of any information released to the decision-maker in the criminal or civil proceeding.

This employer shall only release information regarding a driver's record as directed by the specific written consent of the driver to an identified person. Release of that information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

Records shall be accessible, and copies shall be made available in all of this employer's facilities to the U.S. Secretary of Transportation, and DOT agency, or any state or local officials with regulatory authority over the employer or any of the employer's drivers.

Information related to the employer's administration of a post-accident alcohol and/or drug test administered following an accident under investigation by the National Transportation Safety Board (NTSB) shall be made available when requested by the NTSB.

In the event this employer chooses to rehabilitate a driver with a positive alcohol result of .04 or greater, or a refusal to test, we shall release the alcohol result and/or documentation to the Illinois Municipal League, who shall forward the result and/or documentation to the Consortium, who shall forward the result and/or documentation to the MRO to assist with the return-to-duty and follow-up testing as required under 49 CFR Part 40.

22-12-8 EMPLOYEE ASSISTANCE PROGRAM. Each driver will receive a copy of this drug and alcohol abuse policy, which includes all requirements under 49 CFR Part 382.601. Some of those requirements include: the name(s) of the person or people that can answer drivers' questions about the drug and alcohol program and testing; what period of the workday the driver is required to be in compliance; what drivers are required to comply with the federal regulations and this policy; what conduct is prohibited under the drug and alcohol program; what procedures are used to test for drugs and alcohol; and educational information concerning the effects and consequences of drug and alcohol use on the driver's personal health, safety and work environment, including signs and symptoms of a drug and alcohol problem.

Each driver will be required to sign a Drug and Alcohol Policy Receipt Certificate (**See Attachment G**) certifying that they received a copy of the drug and alcohol abuse policy which includes the required content as stated above. This employer will provide a copy of the Drug and Alcohol Policy Receipt Certificate to each driver and keep the original.

Federal regulations require that the drivers be made aware of the effects of drug and alcohol use on the driver's health, work and personal life. It is the driver's responsibility to report to work fit for duty and remain fit throughout the workday in order to perform in a safe, efficient and productive manner. The driver will also be made aware of the signs and symptoms of a drug and/or alcohol problem (his/her or a co-worker's) and shall be made aware of ways to intervene when a drug and/or alcohol problem is suspected, including referral to management, referral to an employee assistance program (if available through the employer), and referral to drug and/or alcohol abuse hotlines and helplines, as provided below.

When a driver suspects a co-worker is under the influence of drugs and/or alcohol, the driver should refer the co-worker's name to management, who shall respond accordingly.

These hotline and help-line numbers are made available as a reference only:

Focus on Recovery Help-Line for Alcohol and Drug Abuse (800) 234-0286, (800) 234-0246, (800) 234-0420

The Center for Substance Abuse Treatments Drug Information, Treatment, and Referral Hotline (800) 662-HELP (4357)

Under this employer's independent authority, any driver who feels he/she may have a drug and/or alcohol use problem may come forward for assistance as long as it is before the driver's notification of an impending drug and/or alcohol test and before the driver performs a safety-sensitive function. The employer shall provide the driver with referrals of where the driver can go for assistance. The driver will be removed from any safety sensitive function, and if not, other position is available, will be put on unpaid leave of absence until such time the driver has completed all evaluations and education, or treatment program required by the SAP. The employer will not take any adverse action against the driver and will allow him/her sufficient opportunity to seek an evaluation and education or treatment to establish control over his/her drug and/or alcohol problem. A letter must be written by the SAP and

received by the employer stating the driver has successfully completed the educational or treatment program. The employer will require the driver to complete a return to duty test for drugs and/or alcohol. If the result(s) is negative, the driver may return to performing safety-sensitive functions for the employer. The driver will then be subject to follow-up drug and/or alcohol tests as prescribed by the SAP after returning to duty. All costs associated with the evaluations and the education or treatment program will be the responsibility of the driver. The return to duty testing and follow-up testing will be pre-paid by the employer, to be immediately reimbursed by the driver.

22-12-9 INFORMATION CONCERNING THE EFFECTS OF ALCOHOL AND CONTROLLED SUBSTANCES USE ON AN INDIVIDUAL'S HEALTH, WORK AND PERSONAL LIFE.

Employees who abuse drugs and/or alcohol cause more absenteeism, loss in work productivity, more accidents and more medical claims. This results in a loss of \$140 billion to American businesses each year.

Compared with the average employee, a typical drug-using employee in the workplace is:
2.5 times more likely to be absent **eight (8) days** or more each year,
3 times more likely to be late for work,
3.6 times more likely to be involved in workplace accidents,
5 times more likely to file a workers' compensation claim; and,
incur 300% higher medical claims.

Marijuana. The common name for the drug made from chopped leaves, stems and flowering tops of a cannabis plant. Some common street names for marijuana are "dope", "grass", "joint", "pot", "reefer". Marijuana can be smoked or eaten.

Marijuana is a depressant and mind-altering drug. It works on the brain and causes hallucinations. A person operating a CMV while using marijuana is more than likely to experience slowed reaction time, reduced concentration, distorted vision and depth perception, is slower in making decisions, often drives slower than the speed limit, is unable to correctly measure distance and time, and has impaired short-term memory.

Some of the symptoms and signs of marijuana use are:

- short-term memory loss
- slowed thinking
- moodiness
- dilated pupils
- reddened eyes
- loss of memory
- increased heart rate
- increased appetite

Some visible signs noted for the presence of marijuana are:

- roach clips
- cigarette rolling papers
- "one hitters" (usually metal – slim tubular device)
- small pipes
- bongs

The active ingredient in marijuana (THC) is stored in the body fat and could be retained for days or weeks, depending on the quality of the drug, the tolerance of the user and the dosage or amount taken. Marijuana and alcohol together will magnify the effects of both many times. Chronic marijuana smoking could cause severe irritation of the lungs, heart problems, reduced immune system and possible brain damage.

Phencyclidine (PCP). PCP was developed originally as an anesthetic but was taken off the market because it sometimes caused hallucinations. The most common street names for PCP are "angel dust",

"crystal", "tea" and "THC". PCP is sold in various forms, mainly as a white, off-white or brown crystal-like powder, tablet or capsule. It can be ingested by mouth, snorted or injected intravenously. It can also be smoked when combined with marijuana or tobacco.

A person operating a CMV while using PCP is more than likely to experience impaired coordination and dulled senses, a sense of power, drowsiness, aggressive behavior, hallucinations and blurred or double vision. In some cases, a person could even experience convulsions, coma, ruptured blood vessels in the brain, heart and lung failure, or even death.

Some of the symptoms and signs of PCP use are:

- confusion
- drowsiness
- increased heart rate, sweating, aggressive behavior
- disorientation
- increased blood pressure
- anxiety
- dizziness
- hallucinations
- panic

Some of the signs for the presence of PCP are:

- needles
- syringes
- plastic packets with a powdery substance
- tablets
- capsules

PCP is water soluble but still could be retained in the body's system for days, depending on the quality of the drug, the tolerance of the user and the dosage or amount taken. PCP and alcohol together is dangerous and could cause an overdose. Chronic PCP use could cause hallucinations, psychosis, convulsions, coma or possible death.

Cocaine. Cocaine comes from the leaves of coca plants. Some common street names for cocaine are "coke", "crack", "rock", "snort", "toot", "blow" and "snow". Cocaine can be snorted, injected intravenously, smoked or free-based (heating the cocaine and inhaling the vapors).

Cocaine stimulates the body's central nervous system. Psychological dependence on the drug can be high with repeated use.

A person operating a CMV while using cocaine is more than likely to experience impatience, anger, overstimulated reflexes, distorted vision and depth perception, slow reaction time and false sense of security and alertness. In some cases, a person could even experience seizures, heart attacks, convulsions, hallucinations, and death.

Some of the symptoms and signs of cocaine use are:

- dilated pupils
- paranoia
- runny nose
- increased blood pressure
- restlessness
- anxiety
- depressions
- nervousness
- weight loss
- talkativeness
- needle marks
- irritability
- nose bleeds
- hallucinations

Some of the signs for the presence of cocaine are:

- small spoons
- needles
- syringes
- razor blades
- mirrors
- small plastic bags or vials
- small drinking straws
- rolled paper currency
- small butane torch

Cocaine is water soluble but still could be retained in the body's system for several days, depending on the quality of the drug, the tolerance of the user and the dosage or amount taken. Cocaine causes the most mental dependency of any known drug. Cocaine and depressants, taken together, can be very dangerous or even fatal. Intravenous users have a high risk of contracting liver disease, tetanus, serum hepatitis and AIDS from the use of needles. Chronic cocaine use could cause seizures, heart attacks, strokes, convulsions, depression or death.

Amphetamines. Amphetamines are manufactured central nervous system stimulants used most often by drivers to stay awake. Psychological dependence on the drug can be high with repeated use. Some common street names for amphetamines are "speed", "crank", "meth", "crystal", "diet pills", "bennies" and "uppers".

In pure form, amphetamines are yellowish crystals in which some are made into tablets, pills or capsules. Amphetamines can be ingested in tablet, pill or capsule form, snorted, or injected intravenously if in powder or liquid form.

A person operating a CMV while using amphetamines is more than likely to experience delayed reaction time, overstimulated reflexes, anxiety, irritability, distorted vision and depth perception, and a false sense of security and alertness.

Some of the symptoms and signs of amphetamine use are:

- loss of appetite
- weight loss
- dilated pupils
- dry mouth
- sleeplessness
- needle marks
- hallucinations
- anxiety
- depression
- nervousness
- talkativeness
- increased blood pressure
- sweating
- paranoia

Some of the signs for the presence of amphetamines are:

- pills
- tablets
- capsules
- small plastic bags or vials
- needles
- syringes
- razor blades
- small drinking straws
- rolled paper currency
- small butane torch

Amphetamines are water soluble, but still could be retained in the body's system for several days depending on the quality of the drug, the tolerance of the user and the dosage or amount taken. Chronic amphetamine use could cause physical collapse, delusions, hallucinations, brain damage, heart damage, toxic psychosis or death.

Opiates. Some opiates come from the seed pod of the Asian poppy. Other opiates are synthesized or manufactured. Psychological dependence can be high with repeated use. Some common street names are "horse", "junk", "smack", "downers", "M", "yellow jackets", "blues" and "ludes".

Opiates are in many different compounds and forms. The most common are the pills, tablets or capsules. Other compounds and forms are in liquid or powder form. Opiates can be injected, smoked or injected intravenously.

A person operating a CMV while using opiates is more than likely to experience distorted sense of time and distance, slowed reflexes, difficulty focusing, drowsiness and little or no concentration.

Some of the symptoms and signs of opiate use are:

- nausea
- loss of appetite
- drowsiness
- depression
- reduced pain
- constricted pupils
- diarrhea
- vomiting
- sweating
- memory loss
- short attention span
- cold or moist skin
- confusion
- needle marks

Some of the signs for the presence of opiates are:

- pills
- tablets
- capsules
- needles
- syringes
- small spoons
- eye droppers
- small packets
- bottle caps

Opiates are water soluble, but still could be retained in the body's system for one to several days, depending on the quality of the drug, the tolerance of the user and the dosage or amount taken. Opiates taken with alcohol and other depressant drugs magnify the effects of the opiates and could lead to overdoses. Intravenous users have a high risk of contracting liver disease, tetanus, serum hepatitis and AIDS from the use of needles. Chronic opiate use could cause loss of consciousness, convulsions, coma or death.

Alcohol. Some common street names for alcohol are "booze", "juice", "brew", "sauce", and "hooch".

As a rule, a drink or two will create a feeling of well-being. What determines the rate of metabolism in the body and how fast it dissipates the alcohol depends on the altitude, the driver's body weight, metabolism, stomach content, gender, and whether the driver is sick or healthy, rested or tired. After the first drink or two, impairment begins, depending on the factors stated above. When the driver consumes alcohol that produces physical or mood-altering effects, it becomes a substance of abuse.

A person operating a CMV while using alcohol is more than likely to experience blurred or distorted vision, impaired reaction time, impaired judgment, anger, nausea, drowsiness and aggressions.

Some of the symptoms and signs of alcohol use are:

- slurred speech
- odor on breath
- flushed skin
- glazed eyes
- blackouts
- drowsiness
- incoherence
- memory loss
- unsteadiness
- loss of concentration
- insomnia
- hostility

Chronic alcohol use could cause brain damage, neurological damage, liver damage, pancreas and kidney damage, heart problems, strokes, cancer, coma, toxic psychosis and possible death.

22-12-10 **DISCIPLINARY ACTION OPTIONS.** (The option circled will apply to this government entity, since federal law required that all CDL drivers within a government entity must be treated uniformly)

Option #1

A violation of this policy will result in termination.

This employer will advise the driver who violated this policy of the resources available in evaluating and resolving problems associated with the misuse of drugs and/or alcohol, even though the driver is terminated.

If this employer so chooses, prior to being eligible for rehire, a driver who has previously violated this policy shall go to a SAP for a face-to-face clinical assessment and evaluation to determine what assistance is needed for the driver. The SAP must provide a letter to the employer stating the specific recommendations of assistance the driver must follow. When the driver has successfully complied with the SAP's recommendations, the driver shall go to the SAP for a face-to-face follow-up evaluation. The SAP shall confer with or obtain documentation from the appropriate education and/or treatment program the driver was referred to and determine if the driver has demonstrated successful compliance with his/her initial evaluation recommendations. If the driver has shown successful compliance with the SAP's recommendations, the SAP will provide a letter to the employer stating such and shall include the follow-up testing plan for the driver. If the driver has not shown successful compliance with the SAP's recommendations, the SAP will provide a letter to the employer stating such and the driver will not be considered for rehire until the driver has shown successful compliance with the SAP's recommendations.

All costs associated with the evaluations, rehabilitation, pre-employment testing and follow-up testing will be the responsibility of the driver. The pre-employment and follow-up testing costs shall be prepaid by this employer, to be immediately reimbursed by the driver.

(Ord. No. 01-02-04; 05-14-01)

ARTICLE XIII – DRUG/ALCOHOL TESTING POLICY AND PROCEDURE

22-13-1 DRUG AND ALCOHOL-FREE WORKPLACE POLICY. The City is committed to maintaining a drug free workplace pursuant to the federal and state Drug Free Workplace Acts, 41 U.S.C.A. § 701 *et seq.*, **30 ILCS 580/1 et seq.** It is the policy of the City that the public has the reasonable right to expect persons employed by the City to be free from the effects of alcohol and drugs. The City, as the employer, has the right to expect its employees to report for work fit and able for duty. This policy is intended to ensure that City employees are not impaired in their ability to perform assigned duties in a safe, healthy and productive manner and to protect any such employee and the public from the risks associated with the adverse effects of drugs and alcohol. Accordingly, the unlawful manufacture, distribution, possession, or use of a controlled substance, including cannabis and alcohol, is prohibited in the workplace or while acting on behalf of the City. Employees are required to sign a release and consent/authorization form, a copy of which is included with this policy, at the time the policy is distributed to the employee.

22-13-2 DEFINITIONS. For purposes of this policy, the following definitions apply:

(A) **"Abuse of alcohol"** or **"being under the influence of alcohol"** means the consumption of any beverage, mixture or preparation, including any medication containing alcohol, which results in an employee being intoxicated. Intoxicated or a positive test for alcohol shall mean a test result which shows an alcohol concentration of .02 or more for all persons covered by Federal DOT regulations and .08 or more for all persons not covered by Federal DOT regulations.

(B) **"Abuse of any drug"** means the use of any illegal drug, the use of any prescription drug which has not been legally prescribed and dispensed, or the misuse of any legally prescribed drug.

(C) **"Drug"** means any controlled substances listed in the Federal Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, or the Illinois Controlled Substances Act, **720 ILCS 570/100 et seq.**, and cannabis as defined in the state Cannabis Controlled Act, **720 ILCS 550 et seq.**

22-13-3 PROHIBITED ACTIONS. Employees shall be prohibited from:

(A) Manufacture, distribution, dispensation, possession, use, sale, purchase, abuse of alcohol or being under the influence of alcohol at any time during the course of the employee's workday or anywhere on or in any City-owned property, including City buildings and City-owned vehicles.

(B) Manufacture, distribution, dispensation, possession, use, sale, purchase, being under the influence of or abuse of any drug at any time and at any place.

(C) Failure to immediately disclose to his or her Department Head or immediate supervisor any drug or other medication-related work restrictions, or failure to disclose the taking of any drug or medication whose container has warnings that such drug or medication may affect any such employee's ability to perform his or her job, or to drive or operate machinery.

(D) Testing positive for any drug or for the abuse of alcohol or being under the influence of any drug and/or alcohol during working hours.

(E) Failure to comply with this policy.

(F) Refusal to submit to any drug or alcohol test under this policy, which shall also include, but not be limited to, any attempt to tamper with or substitute any sample to be used in connection with any such test.

22-13-4 APPLICABILITY. This Drug/Alcohol Testing Policy and Procedure is not intended to replace the Drug Free Workplace Programs but to define and clarify, who will be tested, when the employees will be tested and where employees will be tested. The following four employee categories define under which category each full time, part time/temporary and volunteer employee will be tested:

(A) Any employee who drives a City vehicle, tractor, tractor mower or similar motor-powered equipment that moves under its own power will be tested under the Federal DOT testing standards.

(B) Testing for employees of the Police Department shall be controlled by the provisions set forth in their union contract.

(C) All other City employees who are not included within the two categories listed above in (A) or (B) will be subject to testing to comply with the requirements necessary to establish a Drug Free Workplace within the City.

(E) Part time/temporary employees and volunteer employees of the City will remain exempt from pre-employment and random testing as defined in this testing program, but they can be included for testing if reasonable suspicion should arise, or an accident should occur during the tenure of their part time/temporary or volunteer employment. After reasonable suspicion of abuse of drugs or alcohol has been established or an accident should occur, the decision to request a drug and alcohol test for the employee must be deemed necessary and reasonable by the Mayor and/or the supervisor of the employee.

22-13-5 **TESTING PROCEDURE.** In conducting any drug testing under this policy, the City shall:

(A) Use only a clinical laboratory or hospital facility that is licensed pursuant to the Illinois Clinical Laboratory and Blood Bank Act, **210 ILCS 25/101 et seq.**, that has been or is capable of being accredited by the National Institute of Drug Abuse ("NIDA").

(B) Ensure that the laboratory or facility selected conforms to all NIDA standards.

(C) Follow all Federal DOT guidelines for the collection, testing and reporting procedures.

(D) In conducting any alcohol testing under this policy, the City shall use a facility that:

(1) Ensures that all technicians are trained, and equipment is calibrated.

(2) Conducts breath test to detect the presence of alcohol or blood tests if circumstances require.

(E) The fees for drug/alcohol testing shall be paid as follows:

(1) Pre-employment testing will be paid by the City.

(2) Post accident tests shall be paid by the City.

(3) Reasonable suspicion testing will be paid by the City.

(4) Random testing will be paid by the City.

(5) Retesting at the request of the employee after a positive drug or alcohol test shall be at the employee's sole expense.

(6) Drug/Alcohol test for renewal of CDL Driver's License shall be paid by the City.

22-13-6 **SCREENING AND TESTING.**

(A) **Pre-Employment Testing.**

(1) All employee applicants shall be advised of the City Drug/Alcohol testing requirements at the time of interview. After having successfully completed the interview process, the selected prospective full-time employee shall then be required to successfully complete the City's drug screening test, as part of his/her background investigation.

(2) All applicants for full time employment shall sign a release and consent/authorization form for Drug/Alcohol testing.

(3) An applicant will not be employed or considered for employment if:
the test results confirm POSITIVE;
he/she refuses to complete the test;
he/she tampers with, or adulterates the specimen;

he/she fails to cooperate in the testing process (including executing all required documentation).

(B) **Testing Based on Reasonable Suspicion.** If there is a reasonable suspicion that any City employee, paid or volunteer, has violated any of the prohibited actions covered by this policy, such employee may be required to undergo drug and/or alcohol testing. Reasonable suspicion exists if the facts and circumstances warrant a rational inference that an employee has violated any of the acts prohibited by this policy. Reasonable suspicion shall be based upon the following:

- (1) Observable phenomena, such as direct observation of use or the verifiable physical symptoms resulting from the abuse of drugs or being under the influence of alcohol which may include by way of example but is not limited to a pattern of abnormal conduct or erratic behavior, a dramatic decline in work performance, excessive sick leave usage, difficulty in walking, slurred speech, needle marks, glazed stare, and possession of alcohol, or unauthorized banned substance or drug paraphernalia at work.
- (2) Information provided by an identifiable, reliable and credible third party that an employee has committed any of the acts prohibited by this policy.

In the event reasonable suspicion exists, the City shall arrange for a drug and/or alcohol test. When testing is ordered, the employee may be temporarily reassigned or relieved from duty and placed on leave with pay pending the receipt of the test results by the City. The City shall also provide the employee with written notice setting forth the objective facts and reasonable inferences to be drawn from those facts which form the basis of the reasonable suspicion.

The employee will then be escorted to the testing facility or collection facility by a designated supervisor immediately.

After completing the test, the employee will be escorted to his/her residence or at the option of his/her supervisor to another location to await the test results, and the employee shall be off work with pay pending the results of the tests. Under no circumstances shall the employee be allowed to leave the work site or the test site driving his/her own vehicle or a City vehicle.

Employees who test positive for either drugs or alcohol will be subject to disciplinary action, up to and including termination.

(C) **Random Testing.** Random drug testing shall be conducted during working hours. Employees will be selected at random for a drug test by a random drawing/lottery. The testing times and dates are unannounced and are with unpredictable frequency throughout the year.

When testing is ordered, the employee will be directed to the testing facility or collection facility within a reasonable period of time.

After completing the test, the employee will return to work pending the results of the test.

Employees who test positive for drugs will be subject to disciplinary action, up to and including termination.

(D) **Post Accident Testing.** Post-accident drug/alcohol testing is required immediately following any accident involving a City employee, paid or volunteer, who operates City equipment or operates a City vehicle where an injury to a person has occurred or where damage to equipment, or property has occurred and that damage exceeds **One Hundred Dollars (\$100.00)**, based on actual cost or reliable estimates of damage.

When testing is ordered, the employee will be escorted to the testing facility or collection facility by a designated supervisor within a reasonable period of time following the accident.

Employees who test positive for either drugs or alcohol will be subject to disciplinary action, up to and including termination.

(E) **Testing Required for Position Required to Have a CDL.** In addition to the provisions of this policy, any employee who is appointed to a position required to have a commercial driver's license ("CDL") shall be subject to drug and/or alcohol screening following any work-related accident. Mandatory drug screening shall also be required of all applicants chosen to be hired for positions requiring a CDL. Those who fail the pre-employment drug screening shall not be hired for those positions.

22-13-7 **CONFIDENTIALITY OF TEST RESULTS.** Any employee subject to a drug and/or alcohol test under this policy will be provided a copy of all information and reports received by the City in connection with any drug and/or alcohol test and any results thereof under this policy. Any results of drug and alcohol test will be disclosed to any employee tested, the applicable supervisor, City Attorney and those permitted by law.

22-13-8 **CONSEQUENCES OF POSITIVE TEST RESULT OR REFUSAL TO COOPERATE.** Any employee who refuses to cooperate in testing or who fails a test or violates the Drug and Alcohol Policy shall be subject to disciplinary action, up to and including termination.

ADDENDUM "A"

EMPLOYEE ACKNOWLEDGEMENT OF WHISTLEBLOWER PROTECTION POLICY

I confirm that I have received, read, and understand the "Whistleblower Protection Policy" for employees of the City.

I understand that as an employee, it is my responsibility to abide by this Policy. If I have questions about this Policy, I understand it is my responsibility to seek clarification from the proper supervisory department, the Auditing Official.

Print Name: _____

Employee Signature: _____

Date: _____

Policy

As a Federal Grantee, I hereby notify employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in this workplace. As a condition of employment, employees must abide by this policy.

Drug-Free Awareness

Drug abuse in the workplace has major adverse effects on the welfare of all citizens of the United States, and it results in lost productivity each year. Employees who use illegal drugs have three to four times more accidents while at work.

Employees with drug abuse problems should seek help. Employees desiring more information on the dangers of drug abuse in the workplace and those employees needing drug counseling, rehabilitation, or other employee assistance should contact the local municipal drug administrator.

Employees will be referred to the appropriate resource for available counseling, rehabilitation or other assistance.

Notice of Potential Personnel Actions for Illegal Drug Use On-the-Job

Penalties may be imposed upon employees for drug abuse violations occurring in our workplaces:

1. Employees must notify this employer of any criminal drug statute conviction or a violation occurring in the workplace no later than five days after such conviction.
2. Within 30 days of receiving notice of any criminal drug statute conviction or a violation occurring in the workplace, this employer will take appropriate personnel action against such employee, up to and including termination; or
3. Within 30 days of receiving notice of any criminal drug statute conviction or a violation occurring in the workplace, this employer may require such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

Employee Certification

- ✓ I understand the drug-free workplace policy.
- ✓ I agree, as a condition of my employment, to abide by the terms of this program.
- ✓ I agree to notify this employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

Employee Signature

Date

Employer Statement

- ✓ I have explained the policy, drug-free awareness, and potential personnel action statements and have provided the employee's part of this pamphlet to the employee.

Authorized Employer Signature

Date

City of Mt. Sterling, Illinois

Name of Organization