

RESOLUTION 2016-005

A RESOLUTION AMENDING THE CITY OF PAOLA PERSONNEL MANUAL, EFFECTIVE APRIL 20, 2016

WHEREAS, Section 105.270 of the Code of the City of Paola, Kansas provides for the preparation, revision, and amendment of a Personnel Manual; and,

WHEREAS, the City Manager has submitted a proposed and revised Personnel Manual to the Governing Body as follows:

Section 2.2 of the Personnel Manual is hereby amended to read as follows:

2.2 Tobacco Use Policy. The purpose of this policy is to promote wellness, ensure a healthy work environment and provide guidelines for tobacco use on the City of Paola grounds or facilities. It applies to all tobacco products. For the purpose of this policy “smoking” is defined as the smoking of tobacco via cigarettes, cigars or pipes or the use of devices or products that may be used to smoke or mimic smoking (including bongs, hookahs, vaporizers, e-cigarettes, etc).

In order to maintain a safe and comfortable working environment protecting employees from effects of secondary smoke, and to ensure compliance with applicable laws, smoking in all City facilities and other designated areas is prohibited. Smoking on City property is discouraged but allowed. Smoking is allowed in outdoor areas beyond a 25 foot radius outside any doorway, open window or air intake into any City owned building or facility. All tobacco use is prohibited in all City owned or leased vehicles.

Because the City recognizes the hazards to the exposure to tobacco smoke, as well as the life threatening diseases linked to all forms of tobacco the City provides a Tobacco Cessation Program for employees. Information on this program is available through the Human Resource Department.

Section 13.6 of the Personnel Manual is hereby amended to read as follows:

13.6 Testing Conditions. The following conditions establish who may be screened and under what circumstances the drug and alcohol screening may occur:

(a) **Applicant or Re-Assignment Testing.** An individual offered employment in a safety sensitive position or re-assigned to a safety sensitive position shall be required to take and pass a drug test as a condition of employment or continued employment. An exemption exists for the applicant or employee who has participated in an appropriate drug and alcohol testing program, that meets the requirements of 49 C.F.R. Part 382, within the previous thirty (30) days if:

1. While participating in that program, the employee was tested for controlled substances in the six (6) months previous to the date of application with the City; or participated in a random controlled drug or alcohol testing program for the twelve (12) months previous to the date of application with the City; and
2. The employer ensures, within his/her knowledge, that no prior employer has records of a violation of the “controlled substance use” rule of the City or of another DOT agency within the previous six (6) months.

Written verification of prior drug and alcohol testing participation should be obtained for City files.

Applicants for safety-sensitive positions will be advised of the City's per-employment testing requirements in writing following an offer to hire and prior to referral for a physical and/or drug and/or alcohol testing. Applicants for safety-sensitive positions will be asked to sign the Applicant Drug Testing Consent Agreement.

All applicants for safety-sensitive positions who are considered final candidates and who have received a conditional offer for a position will be tested for the presence of illegal drugs and/or alcohol. An applicant who receives a confirmed positive drug screen result, or the equivalent, shall have the offer of employment withdrawn and shall be subject to disqualification from employment.

(b) **Post-Accident Testing.** The City may conduct drug or alcohol testing in investigating accidents in the workplace which (1) resulted in an injury to a person for which, if suffered by an employee, would require the City to record or report the injury to a third party under federal or state occupational safety and health laws or regulations, and the injury requires professional medical care in the opinion of the employee or his or her supervisor; or (2) the accident resulted in the driver receiving a citation under State or local law for a moving traffic violation, arising from the accident.

Following an accident:

1. Post-accident tests must be performed as soon as possible. Tests for controlled substances must be performed within thirty-two (32) hours following the accident. Alcohol tests must be performed within 8 hours of the accident
2. If an alcohol test is not administered within two (2) hours following the accident, the employer shall prepare and maintain a record stating the reasons the test was not promptly administered.
3. If an alcohol test is not administered within eight (8) hours or a controlled substances test is not administered within thirty-two (32) hours following the accident, the employer shall cease attempts to administer the test and shall prepare a record stating the reasons the test was not promptly administered.
4. Drivers subject to post-accident testing shall remain readily available for such testing. Failure to remain available can be interpreted as a positive test result.
5. Drivers subject to post-accident testing must refrain from using alcohol for eight (8) hours following the accident or until completing a post-accident alcohol test, whichever comes first.
6. The requirement to test for alcohol and controlled substances following an accident should in no way delay necessary medical attention for injured people or prohibit a driver from leaving the scene of an accident to obtain assistance in responding to an accident or to obtain necessary emergency medical care.
7. Results of an alcohol breath test or a controlled substance urine test conducted by Federal, State, or local officials having independent authority for the test shall be considered to meet the requirements of this section, provided such tests conform to applicable Federal, State, or local requirements, and that the results are obtained by the City.
8. A negative test result is not a guarantee of continued employment. There

may be alternative grounds or reasons, depending on the nature of the accident, sufficient to subject the employee to discipline or termination.

(c) **Random Testing.** The City shall conduct random drug and/or alcohol testing of its safety sensitive positions as follows:

1. Annually, at least fifty (50) percent of the average number of non-DOT safety sensitive positions and twenty-five (25) percent of DOT safety sensitive positions will be randomly tested under the drug testing requirements.
2. Annually, at least ten (10) percent of the average number of safety sensitive positions will be randomly tested under the alcohol testing requirements.
3. Random selection will be made through a computerized program provided by the consortium contractor, The Mental Health Consortium.
4. By the fifteenth of each month the City will make available to the Mental Health Consortium the names and SSN of all employees to be covered in the random program for the next month.
5. The list of persons to be tested for the next month will be created through the Mental Health Consortium's computerized random number generator program.
6. The name of the person identified to be tested will be relayed to the contact person of the City by the afternoon prior to the test date. In the case of a drug collection, the employee will be informed to report to the collection site not more than 30 minutes plus travel time prior to the scheduled test time. In the case of an alcohol test, the individual shall be tested fifteen (15) minutes prior to, during, or fifteen (15) minutes after performing a safety sensitive function.

(d) **Reasonable Suspicion Testing.** The City may conduct drug or alcohol testing upon reasonable, individualized suspicion of drug or alcohol use in violation of this policy. All supervisory employees are required to notify the City Manager or his/her designee when reasonable suspicion exists. (Refer to Protocol #3)

Reasonable suspicion exists upon evidence than an employee is using or has used alcohol or other drugs in violation of this written Policy drawn from specific articulable facts and reasonable inferences drawn from those facts in light of experience. For purposes of this paragraph, facts and inferences may be based upon, but not limited to, any of the following:

1. Observable phenomena while at work such as direct observation of alcohol or drug use or abuse or of the physical symptoms or manifestations of being impaired due to alcohol or other drug use.
2. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
3. A report of alcohol or other illegal drug use provided by a reliable and credible source.
4. Evidence that an individual has tampered with any drug or alcohol test during the individual's employment with the City.
5. Evidence that an employee has caused an accident while at work which resulted in an injury to a person for which, if suffered by an employee, would require the City to record or report the injury to a third party under federal or state occupational safety and health laws or regulations, and the injury requires professional medical care in the opinion of the employee or his or her supervisor; or which resulted in damage to City property.

6. Evidence that an employee has manufactured, sold, distributed, solicited, possessed, used, or transferred illegal drugs while working or while on City premises or while operating City vehicles, machinery, or equipment.

If an alcohol test is not administered within two (2) hours of a reasonable suspicion determination, a record should be prepared stating the reasons for not administering the test. Attempts to test should cease at eight (8) hours and the individual should be removed from the safety sensitive function until they test less than .02 or 24 hours has passed. A written record should be made of the observations.

- (e) **Return to Duty Testing.** An employee who refuses to take or fails a drug or alcohol test may not return to duty until the employee passes a drug or alcohol test administered under this Chapter and the MRO or SAP have determined that the employee may return to duty.
- (f) **Follow-up Testing.** Following an employee's return to duty in a safety sensitive position, the employee shall be subject to a minimum of six (6) unannounced drug/alcohol tests in the first twelve (12) months. The MRO or SAP will determine the schedule of unannounced testing and may terminate the requirement for follow-up testing at any time after the first six (6) tests have been administered, if the MRO or SAP determines that such testing is no longer necessary. Follow-up testing shall not exceed sixty (60) months from the date of the employee's return to duty.

NOW THEREFORE BE IT RESOLVED by the governing Body of the City of Paola, Kansas that said Sections of the Personnel Manual be hereby amended and adopted as the official policy of the City of Paola, Kansas effective on April 20, 2016.

BE IT FURTHER RESOLVED that this Amended Personnel Manual is intended to and shall replace all previous versions, and that copies of said manual shall be available in the office of the City Clerk.

PASSED, APPROVED AND ADOPTED this 12th day of April, 2016.

Artie Stuterville, Mayor

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ATTEST:

Daniel G. Droste, City Clerk