

WORK SESSION MEMORANDUM

TO: Mayor and City Commission
FROM: Amy Leon, City Manager / City Attorney Ross DenHerder
RE: Medical Cannabis Ordinance, Personnel Policies Associated with Medical Cannabis
DATE: May 20, 2021

Attached you will find three documents associated with the work our Medical Cannabis Team has been working on.

The first document is Ordinance #1052. This is our medical cannabis licensing ordinance. Following our last work session staff has made a number of adjustments we will review with you. Likewise, staff also chose not to make one of the changes the City Commission suggested (specifically setting dispensary hours via Commission resolution) at our last meeting following further discussion among our team. We would like to talk through this logic with you, and let you reconsider and provide direction regarding how we approached the hours of operation.

This ordinance is on the agenda for first reading this evening and scheduled for second reading on June 14, 2021.

Also attached is resolution pertaining to the fees associated with licensing. Resolution #21-47 sets forth a \$1,500.00 non-refundable upfront application fee and a \$3,000.00 annual renewal fee.

This is planned to be placed on your agenda for consideration on June 14, 2021. Tonight, staff would like you to let us know if you would like to make changes to this resolution or to the fees established within.

Lastly, is our first draft of the changes to our drug policy within our Personnel Manual in preparation for medical marijuana. The language we are currently considering sets the following general parameters.

- Possessing medical marijuana or being under the influence of medical marijuana while working for the City of Yankton is prohibited.
- Ingestion of medical marijuana on the job or in City facilities is prohibited.
- Use of medical marijuana by medical marijuana card-holding employees while off-duty is permissible, however, the employee risks being subjected to random drug screening and potentially being impacted if there is reasonable suspicion that the employee is under the influence.
- Medical marijuana use by persons that hold positions deemed as “safety sensitive” such as public safety officials, CDL holders, or individuals who hold positions that require a high level of cognitive function (civil engineers/drafters, building officials, finance staff, etc.) is prohibited regardless of card-holder status.

- Mandatory and discretionary drug testing and training to identify “reasonable suspicion” for employees under the influence of drugs or alcohol.
- Identifying employee and employer responsibilities relating to legal and illegal drug use and intoxication and whether/when to involve law enforcement.

We will provide you with an overview of the policy and discuss our reasoning with you regarding the parameters of the policy. The direction we need from you this evening is if we are on the right track with our language or if the Commission believes it should be entirely prohibited all together from any City employee at any time (i.e. a zero tolerance policy).

An Ordinance establishing licensing regulations for Medical Cannabis Dispensary businesses. Be it ordained that:

A new Division numbered Division 7 of Chapter 13, Article III, of the City of Yankton Code of Ordinances shall be titled as follows:

Division 7. Medical Cannabis Dispensaries

The following Sections of Division 7 of Chapter 13, Article III shall be enacted to read as follows:

Sec. 13-132. *Definitions*

The following words and phrases, when used in this section, shall have the meanings ascribed to them. In addition to the definitions contained in this section, other terms used in this section shall have the meaning ascribed to them in South Dakota Codified Law Article 34, Chapter 20G, Section 1, and SDCL § 22-42-1, and such definitions are hereby incorporated into this section by this reference.

Applicant shall mean any person or entity who has submitted an application for a license or renewal of a license issued pursuant to this Division. If the applicant is an entity and not a natural person, applicant shall include all persons who are the members, managers, officers, directors and shareholders of such entity.

Cannabis products shall mean any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof, and are intended for use or consumption by humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures.

Cardholder shall mean any person who has been issued and possesses a valid registry identification card pursuant SDCL Chapter 34-20G.

Disqualifying felony offense shall mean a crime that was classified as a felony in the jurisdiction where the person was convicted.

Initial application shall mean the first application filed for a dispensary.

Licensed premises shall mean the building within which the dispensary operates.

Licensee shall mean any person or business entity that has been issued and holds a valid, current license pursuant to this Division. If the licensee is an entity and not a natural person,

licensee shall include all persons who are the members, managers, officers, directors and shareholders of such entity.

Medical cannabis or *cannabis* shall mean marijuana as defined in SDCL § 22-42-1.

Medical cannabis dispensary or *dispensary* shall mean the entity registered with the South Dakota Department of Health pursuant to SDCL Chapter 34-20G and licensed by the City pursuant to this Ordinance that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials to cardholders. *Medical cannabis dispensary* does not include a cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a recreational cannabis dispensary.

Medical cannabis establishment shall mean a cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary as those terms are defined in SDCL § 34-20G-1.

Registry identification card shall mean a document issued by South Dakota Department of Health that identifies a person as a registered qualifying patient or registered designated caregiver, or documentation that is deemed a registry identification card pursuant to §§ 34-20G-29 to 34-20G-42, inclusive.

Sec. 13-133. *Purpose and Intent*

The purpose of this section is to provide for licensing of medical cannabis dispensaries within the jurisdictional limits of the City of Yankton in the interest of public health, safety, and general welfare. Nothing in this section is intended to promote or condone the sale, distribution, possession, or use of marijuana in violation of any applicable law.

Sec. 13-134. *Other Laws*

If the state adopts any stricter regulation governing a medical cannabis dispensary than that set forth in this Division, the stricter regulation shall control the establishment or operation of any medical cannabis dispensary in the City. A licensee shall be required to demonstrate, upon demand by the City, or by law enforcement officers, that the source and quantity of any cannabis found upon the licensed premises are in full compliance with applicable state regulation. If the state prohibits the sale or other distribution of medical cannabis, any license issued under this Section shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress by the licensee. The issuance of any license pursuant to this section shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, distribution, or use of marijuana.

Sec. 13-135. *Authority*

The City Manager or the City Manager's designee shall have authority pursuant to the SDCL Chapter 34-20G and this Division to grant or deny licenses and to inspect the premises and business of a dispensary to confirm compliance with all licensure requirements.

Sec. 13-136. *Medical Cannabis Dispensary License Required*

No person or business entity shall operate a medical cannabis dispensary within the jurisdictional limits of the City unless that person or business entity has first obtained a medical cannabis dispensary license from the City. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this Section.

Sec. 13-137. *Limitation on the Number of Medical Cannabis Establishments*

Under the authority granted by SDCL 34-20G-56, there shall be no more than two (2) active medical cannabis dispensaries that may be registered by the State of South Dakota to operate within the jurisdictional limits of the City of Yankton at any given time. The City of Yankton hereby directs the State to give registration preference only to those applicants that have received a medical cannabis dispensary license certificate issued by the City of Yankton pursuant to this Division. No other medical cannabis establishment shall be permitted to operate within the jurisdictional limits of the City of Yankton.

Sec. 13-138. *Term of License*

Each license issued under this Division shall be effective upon issuance and shall terminate on the last day of December of the year issued.

Sec. 13-139. *License Not Transferrable*

Licenses issued under this division shall not be transferable to any other person, business entity, or location and shall lapse automatically upon a change of ownership or location. A license issued under this Division is not a property right.

Sec. 13-140. *Dispensary Requirements*

A medical cannabis dispensary licensee is subject to the following requirements:

- (a) No owner, LLC member or manager, shareholder, principal officer, or board member of a licensee may have served as an owner, LLC member or manager, shareholder, principal officer, or board member for a medical cannabis dispensary that has had its state registration certificate or any local, municipal, or county license revoked;
- (b) No owner, LLC member or manager, shareholder, principal officer, or board member may be under twenty-one years of age;

- (c) A licensee shall be prohibited from employing any employee convicted of a disqualifying felony offense;
- (d) A licensee shall be prohibited from employing any employee under twenty-one (21) years of age;
- (e) A medical cannabis dispensary shall not share office space with or refer a patient to a practitioner. *See* SDCL § 34-20G-67.
- (f) A medical cannabis dispensary shall not permit any person to consume cannabis upon the property of the licensed premises. *See* SDCL § 34-20G-68.
- (g) At least one of the owners, LLC members, or shareholders shall be a resident of this state;
- (h) The licensed premises shall be located only within a B-2 Highway Business District, B-3 Central Business District, or Industrial District;
- (i) The licensed premises shall be located no less than five hundred (500) feet from the nearest property line of any school, church, licensed childcare facility, correctional facility, mental health facility, or substance abuse facility, unless the dispensary is located in a B-3 Central Business District or the area east of Broadway Avenue and south of 4th Street. No separation is required for a dispensary located in a B-3 Central Business District or the area east of Broadway Avenue and south of 4th Street;
- (j) The licensed premises shall not be located within any building containing a dwelling unit, a pediatrician's office, hotel, motel, boarding house, or lodging facility except that a dispensary that is located in a B-3 Central Business District may be located in a building containing a dwelling unit or dwelling units;
- (k) The licensed premises shall be located no less than four hundred (400) feet from the nearest property line of another dispensary;
- (l) The licensed premises shall not be located within a single development project that contains another marijuana establishment of any kind. With regard to this subsection and to subsection (k) above, in the event that applications for licensure of more than one medical cannabis dispensary or other marijuana business are pending at the same time and one proposed location is within 400 feet of another proposed location, the City Manager or his or her designee shall consider and act first upon the application determined by the City Manager or his or her designee to have first been a complete application without regard to the proposed location that is set forth in any application determined to have been complete later in time;
- (m) The licensed premises shall not be located within the City's Extraterritorial Zoning Jurisdiction; and
- (n) The licensed premises shall remain in compliance with applicable federal, state, and local laws and building codes (including, but not limited to, the prevailing building, plumbing, electrical, mechanical, fuel gas and fire codes adopted by the City of Yankton at the time of licensure).

For purposes of this section, a “*single development project*” shall mean and include any area in which the property proposed for use as a medical cannabis dispensary shares a common interest in common property, such as parking areas or sidewalk areas, or is a member of a

property owners' association with another marijuana business. The distances set forth in this section shall be computed by direct measurement in a straight line from the nearest property line of the land used for the purposes stated above, respectively, to the nearest portion of the building in which the medical cannabis dispensary is located. The locational criteria contained in this section shall apply to all proposed changes in the location of an existing license.

Sec. 13-141. *Application for Medical Cannabis Dispensary License*

To obtain a medical cannabis dispensary license, or to renew a license previously issued under this Division, the applicant shall file in the office of the finance officer an application on a form furnished by the finance officer or the finance officer's designee, which shall comply with Yankton Ordinance Sec. 13-17 and provide the following additional information:

- (a) The name, address, and date of birth of each owner, shareholder, LLC member and manager, principal officer, and board member of the proposed medical cannabis dispensary, as well as the name address and date of birth of any current employees at the time such application is filed;
- (b) A copy of the deed reflecting the applicant's ownership of, or a lease reflecting the right of the applicant to possess, the proposed licensed premises for the proposed use;
- (c) A "to scale" sketch of the floor plan of the proposed licensed premises reflecting compliance with the City's cannabis dispensary design requirements;
- (d) A "to scale" site plan reflecting all structures and boundaries of the proposed licensed premises reflecting compliance with the City's cannabis dispensary design requirements;
- (e) An elevation drawing or rendering of the exterior of the proposed licensed premises;
- (f) A description of safety and security measures reflecting compliance with the City's dispensary design and operational requirements; and
- (g) Any other additional information as the City Manager or his or her designee may deem necessary for an investigator to evaluate the character and business responsibility of the applicant.

Sec. 13-142. *Application Fee*

At the time an applicant files an application according to Sec. 13-141, applicant shall pay a non-refundable fee to the City in an amount established by resolution of the Board of City Commissioners to defray the costs incurred by the City for background investigations, review of the application, inspection of the proposed premises, and any other costs and labor associated with processing the application.

Sec. 13-143. *Annual License Fee*

Within thirty (30) days of receiving a cannabis dispensary registration from the State of South Dakota pursuant to SDCL Chap. 34-20G, and at the time an applicant files a renewal application, the licensee shall tender to the City an annual license fee in an amount established by resolution of the Board of City Commissioners. The annual license fee is in addition to the initial application fee required pursuant to Sec. 13-142. The annual license fee shall be paid on the basis of a full calendar year regardless of the date of issuance, and no proration or discount shall be given.

Sec. 13-144. *Additional permits and licenses*

A license issued pursuant to this Ordinance is in addition to and does not eliminate the need for the licensee to obtain other required permits or licenses related to the operation of the medical cannabis dispensary including, without limitation, the registration issued by the State of South Dakota pursuant to SDCL Chap. 34-20G, and any zoning related permits, plat approvals, or building or construction-related permits required by the Yankton Code of Municipal Ordinances or South Dakota law.

Sec. 13-145. *Background Checks, Inspections and Facility Standards*

During review of the application and at all reasonable times after a license is issued, the City Manager or the City Manager's designee may make any reasonable inquiry into the criminal history of any owner, principal officer, board member, and employee. It shall be a violation of this Chapter and grounds for revocation of any license issued hereunder for a licensee to allow any new principal officer, board member, or employee to begin work before supplementing the information required under section Sec. 13-141(a) for each prospective new principal officer, board member, or employee. In addition, the City Manager or his or her designee may enter and inspect the premises designated in the application or license to determine if the premises meets or continues to meet the requirements of all city ordinances and state statutes, and is being maintained in accordance with the following facility standards:

- (a) The facility shall have an entry-only breezeway area securely locked and partitioned from the dispensary sales floor wherein each customer must remain until the customer's identity, legal age, and registry identification card can be verified before each customer is admitted entry into the dispensary sales area. The facility must utilize a separate one-directional exit for customers, which exit does not permit entry from the outside without a key.
- (b) The facility shall have locked display cases only accessible to staff during business hours. The facility shall have a locked vault or Drug Enforcement Agency storage cage in which all cannabis, cannabis products, and undeposited funds shall be stored outside business hours.
- (c) The facility shall conform to the prevailing building, plumbing, electrical, mechanical, fuel gas and fire codes adopted by the City of Yankton at the time of licensure. This includes, but is not limited to, codes regarding accessibility, egress and life safety.

- (d) All exterior entrances and exits, all parking areas, and all sidewalks adjacent to the dispensary facility shall be lighted at all times after dark.
- (e) High-definition cameras of sufficient quantity and quality shall be mounted in a manner to fully capture the facial features of all people entering the facility at each point of entry or exit, and to capture the facial features and actions of all people in all locations inside the facility, excepting only the restrooms. The camera system shall securely store high-definition camera footage for no less than thirty (30) days.
- (f) The facility shall have a functional commercial alarm system triggered by the press of a button, by the breaking of glass, and by forcing open a locked door.

Sec. 13-146. *Approval Process*

- (a) Upon receipt of a complete application, the City Manager or the City Manager's designee shall circulate the application to all affected service areas and departments of the City to determine whether the application is in full compliance with all applicable laws, rules, and regulations. No license shall be approved until after the City Manager or the City Manager's designee has caused the proposed premises to be inspected to determine compliance of the premises with all applicable requirements of this Division and the Code of Municipal Ordinances, and with the plans and descriptions submitted as part of the application. The City Manager or the City Manager's designee shall deny any application that does not meet the requirements or limitations of this Ordinance. The City Manager or the City Manager's designee shall deny any application that contains any false, misleading, or incomplete information.
- (b) If the City Manager or the City Manager's designee has determined that all requirements for a dispensary license are met and upon payment of the application fee in advance by the applicant, the City Manager or City Manager's designee may, in his or her discretion, approve the issuance of a license if the City Manager or City Manager's designee believes the issuance to be in the public's best interest. When the City Manager or the City Manager's designee considers a dispensary application, he or she may consider all contents and proposals within the application, the observations and results of any inspection undertaken pursuant to section 13-145, the impact to the public that may result, whether the proposed dispensary is located in a zone that permits its operation, the manner in which the applicant previously operated a dispensary or other business licensed by the City of Yankton, history of compliance with city ordinances and state law.
- (c) Within thirty (30) days after the completion of the investigation of the application, the City Manager or City Manager's designee shall issue a written decision approving or denying the application for licensure, which decision shall state the reason(s) for the decision and be sent via first class mail and via certified mail to the applicant at the address shown in the application.

- (d) If approved, the City Manager or City Manager's designee shall issue to the applicant a cannabis license certificate specifying the date of issuance, the period of licensure, the name of the licensee, the physical address of the licensed premises, and a sworn statement certifying that the licensed establishment as proposed does not violate the City's enacted zoning restrictions as required under SDCL 34-20G-55(1)(d). The City Manager or City Manager's designee shall also promptly transmit a copy of the license certificate to the South Dakota Department of Health to satisfy SDCL 34-20G-55(1)(e).

Sec. 13-147. *Issuance or Denial of Application*

If a license is denied by the City Manager or his or her designee, an applicant shall have thirty (30) days to request in writing that the denied application be submitted to the Board of City Commissioners for reconsideration at a regularly scheduled meeting using the same criteria governing the issuance of a license by the City Manager. The Board of City Commissioners shall consider the application on its merits and take action on the appeal at properly noticed public meeting no later than sixty (60) days following the City's receipt of a timely written request for appeal. Notwithstanding anything to the contrary no medical cannabis dispensary license shall be issued until the applicant has demonstrated compliance with this Ordinance and the City zoning ordinance.

Sec. 13-148. *Preliminary Approval and Issuance of License*

If approved, the City's issuance of a license following an initial application shall be provisional and subject to automatic termination if:

- (a) The licensee does not receive or fails to qualify for the state registration certificate required under SDCL Chapter 34-20G within 120 days of issuance of the license; or
- (b) At least two (2) other holders of an active and unrevoked medical cannabis license have previously received a state registration certificate required under SDCL Chapter 34-20G; or
- (c) The licensee fails to pay the annual license fee to the City within thirty (30) days of the issuance of the state registration certificate in accordance with Sec. 13-143; or
- (d) The licensee fails to obtain a certificate of occupancy from the City of Yankton in accordance with Sec. 13-149 within one hundred eighty (180) days of issuance of the state registration certificate issued under SDCL Chapter 34-20G.

No licensee may engage in the sale of cannabis products under a provisional license.

Sec. 13-149. *Certificate of Occupancy*

Licensee shall not begin operation or open its doors to the public until it receives from the City a certificate of occupancy. The City shall not issue a certificate of occupancy until the City Manager or the City Manager's designee has fully inspected the licensed premises and determined that the establishment satisfies all requirements of licensure as set forth in this ordinance, all applicable zoning requirements, and all other applicable federal, state, and local laws and building codes, and that the licensed establishment is ready for occupancy with such equipment and security measures in place as may be necessary to comply with the applicable provisions of this Ordinance and state law. The City shall not issue a certificate of occupancy until the licensee provides written evidence that the licensee has paid the Annual License Fee under Sec. 13-143, and all registration application fees due to the state in connection with the South Dakota Department of Health's review of the application.

Sec. 13-150. *Annual license fee refundable*

If a provisional license is automatically terminated by operation of Sec. 13-148, the annual license fee paid pursuant to Sec. 13-143 shall be refunded to applicant. The initial application fee paid pursuant Sec. 13-142 shall not be refunded. If a license is revoked pursuant to Sec. 13-152 and/or Sec. 13-24, the annual license fee shall not be refunded.

Sec. 13-151. *Medical Cannabis Dispensary License Rules of Operation*

Each dispensary shall be operated only in accordance with the following rules:

- (a) Each licensee shall display the license issued by the City in a prominent location within the licensed premises;
- (b) The hours of operation of each dispensary shall be confined between the hours of 9:00 am to 9:00 pm Monday through Sunday.
- (c) Each dispensary shall be owned, operated, kept, and maintained in accordance with the dispensary requirements set forth in Sec. 13-140 and facility standards set forth in Sec. 13-145; and
- (d) Each dispensary shall operate in accordance with all applicable local and state laws concerning medical cannabis.

Sec. 13-152. *License Revocation and Penalties*

- (a) Any medical cannabis dispensary license may be cancelled or suspended in accordance with section 13-24.
- (b) Any person operating a dispensary without a license is subject to a civil fine of up to two hundred dollars (\$200.00). Each day a dispensary is operated without a license shall be a separate offence.

- (c) Operating a dispensary without a license shall be deemed a public nuisance and subject to the provisions of Chapter 15 of the Yankton Code of Municipal Ordinances. Such nuisance may be abated in any manner permitted by Ordinance or other applicable law, including, but not limited to, an action for injunctive relief.
- (d) Automatic suspension if a licensee or any of its employees or agents has been convicted of selling a cannabis product to any person under the age of twenty-one (21). In order to reinstate a license to active status, the applicant must tender a reinstatement fee of ten thousand dollars (\$10,000.00) for the first suspension under this Section, or fifteen thousand dollars (\$15,000.00) for the second offense. Upon conviction for the third such offense, the license shall automatically terminate and may not be reinstated or renewed.

Sec. 13-153. No City Liability; Indemnification; No Defense

- (a) By accepting a license issued pursuant to this Division, the licensee waives any claim concerning, and releases the City, its officers, elected officials, employees, attorneys and agents from, any liability for injuries or damages of any kind that result from any arrest or prosecution of business owners, operators, employees, clients or customers of the licensee for a violation of state or federal laws, rules or regulations.
- (b) By accepting a license issued pursuant to this Division, all licensees, jointly and severally if more than one, agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the medical cannabis dispensary that is the subject of the license.
- (c) The issuance of a license pursuant to this section shall not be deemed to create an exception, defense or immunity for any person in regard to any potential criminal liability the person may have under state or federal law for the cultivation, possession, sale, distribution, or use of marijuana.

Secs. 13-154 thru 13-200. - Reserved.

Adopted:
1st Reading:
2nd Reading:
Publication Date:

Effective Date:

Stephanie Moser, Mayor

Attest:

Al Viereck, Finance Officer

DRAFT

RESOLUTION #21-47

**A RESOLUTION TO SET FEES FOR
MEDICAL MARIJUANA DISPENSARY LICENSES**

WHEREAS with respect to the initial application process for licensure of a medical cannabis dispensary, Ordinance Sec. 13-142 allows the City Commission to establish by resolution a non-refundable fee to defray the costs incurred by the City for background investigations, review of the application, inspection of the proposed premises, and any other costs and labor associated with processing the application; and

WHEREAS Ordinance Sec. 13-143 allows the City Commission to establish by resolution an annual fee for licensure of a medical cannabis dispensary; and

WHEREAS the City Commission has not yet established the fees applicable to Ordinance Sections 13-142 and 13-143 and has determined that such fees must be set.

NOW, THEREFORE, BE IT RESOLVED by the Yankton Board of City Commissioners that the non-refundable application fee for licensure of a medical cannabis dispensary pursuant to Ordinance Sec. 13-142 shall be \$1,500.00; and

IT IS ALSO HEREBY FURTHER RESOLVED by the Yankton Board of City Commissioners that the annual fee for licensure of a medical cannabis dispensary pursuant to Ordinance Sec. 13-143 shall be \$3,000.00.

Dated this _____ day of June, 2021.

CITY OF YANKTON

BY: _____
Stephanie Moser, Mayor

ATTEST:

FINANCE OFFICER

YANKTON PROPOSED UPDATED DRUG AND ALCOHOL POLICY

901 City's Commitment to Drug and Alcohol-Free Workplace

- A. The City has a strong commitment to its employees to provide a safe, healthy and productive work environment and to promote high standards of employee health. Consistent with the spirit and intent of this objective, the City will act to eliminate any substance abuse which could impair an employee's ability to safely and effectively perform a job and which increases the potential for accidents, absenteeism, substandard performance, and tends to undermine public confidence in the City's work force.
- B. The City's goals are to establish and maintain a work environment that is free from the effects of alcohol and drug abuse and to maintain the reputation and integrity of the City by preventing unacceptable behavior by its employees that discredits the City and its employees.
- C. While the City has no intention of unreasonably intruding into the private lives of its employees, the City does expect employees to report for work in a condition to perform their duties, make the work environment safe for other employees, and represent a proper image to the citizens. It is clear that employee off-the-job, as well as on-the-job, involvement with drugs and alcohol can have an impact on the City's goals.
- D. Any restriction upon any employee under these policies shall also apply to a volunteer serving the City during any period the volunteer is upon City property or providing service for the City.

902 Drug and Alcohol Abuse

- A. The unlawful manufacture, distribution, dispensing, possession or use of controlled drugs or substances or the use of alcohol while on duty, on or off property owned or leased by the City is proper cause for disciplinary action.
- B. Any illegal controlled drug or substance possessed or ingested while on duty by employees will be turned over to the appropriate criminal justice agencies and may result in criminal prosecution. This does not apply to public safety officers who are in possession of an illegal controlled drug or substance while acting in the line of duty.
- C. It is not permitted for an employee to be under the influence of controlled or prescription drugs or substances or alcohol on the job, except that the legal use of controlled or prescription drugs or substances prescribed by a licensed physician is not prohibited (excepting marijuana or any substance containing a THC Metabolite, which is always prohibited on the job), but employees in safety-sensitive positions or positions where side effects of the prescribed medication or substance could affect performance and safety on the job are required to make such use known to their Department Head. Employees in positions designated as safety-sensitive are never permitted to have THC Metabolite in their system at any time on- or off-duty.
- D. The illegal use, sale, and possession of controlled substances or prescription drugs while off duty and off municipal premises which results in a criminal conviction is unacceptable. Off-duty, alcohol-related criminal convictions are also unacceptable. They may affect the job performance and the confidence of the public in the City's ability to meet its responsibilities. Such off-the-job conduct may be proper cause for disciplinary action.

- E. It is not permitted for an employee to intentionally ingest, inhale, or otherwise take into the body any substance other than alcoholic beverages for the purpose of being intoxicated, unless such substance is prescribed by a licensed physician (excepting marijuana or any substance containing a THC Metabolite, which is always prohibited on the job).

903 Testing for Drugs or Alcohol

A. Discretionary Substance Testing:

The City may require drug and alcohol testing in the following instances:

1. Pre-Employment – as a condition of hiring
2. Random – periodically throughout employment
3. Post-Accident or Injury – following a workplace accident or injury that causes personal injury or property damage
4. Reasonable Suspicion – when cause exists to believe someone has violated this drug-free policy or is under the influence of drugs or alcohol during working hours
5. When Prescribed by Law – such as Department of Transportation (DOT) requirements for individuals with a Commercial Driver’s License (CDL).

B. Mandatory Substance Testing:

Any employee whose order, action or failure to act is determined to be, or cannot be ruled out as, a causative factor in the events leading up to or causing an incident or accident shall be tested for alcohol and drugs when the following incidents occur on duty unless a supervisor, Department Head, or the City Manager determines that the employee’s actions were not a causative or contributing factor:

1. An employee shoots a person;
2. An employee accidentally discharges a firearm;
3. An employee is involved in an incident in which a human fatality occurs;
4. An employee whose performance could have contributed to an incident or accident in which a person is injured and requires immediate treatment away from the scene of the incident or accident, or a motor vehicle or equipment is damaged to the extent that it must be towed from the scene or is rendered inoperable and requires more than simple repairs. Such damage does not include tire disablement without other damage.

C. Circumstances which constitute a basis for determining reasonable suspicion may include, but are not limited to:

1. Abnormal or erratic behavior that is so unusual that it warrants summoning an immediate supervisor, Department Head or other individual for assistance
2. Information provided by a reliable and credible source with personal knowledge
3. Direct observation of drug or alcohol use
4. Presence of the physical symptoms of drug or alcohol use (i.e. glossy or blood-shot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes)

5. Possession of substances in violation of the City's drug and alcohol policy.
- D. The employee, when testing is required, may be asked to submit to urine and/or breath alcohol testing by qualified medical personnel at the City's expense. Prior to testing, the proper authority shall secure a signed release from the employee to have the clinic/medical provider release medical information to the City.
- E. An employee who refuses to consent to a required drug and/or alcohol test, or who refuses to sign an authorization releasing test results to the City, will be subject to disciplinary action, up to and including termination. A positive result from a drug and/or alcohol test will result in disciplinary action up to and including termination.
- F. When testing is required because of reasonable suspicion the proper authority is required to detail in writing the specific facts, symptoms, or observations that led to the reasonable suspicion. This documentation, which includes the results of the drug or alcohol test as confirmation of the use of drugs or alcohol on the job, shall be given to the City Manager and placed in the employees personnel file only if confirmed by the drug and/or alcohol test.
- G. Drug and/or alcohol test results are confidential, and only those with a need to know are to be informed of the results. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee.

904 Drugs Selected for Testing

- A. Drug and/or alcohol testing will be performed by a clinic/medical provider selected by the City.
- B. Drugs selected for testing will be drugs or drug groups that are classified as "controlled substances under state or Federal law, and which adversely affect physical and/or mental performance. Drug testing may include, but is not limited to, testing for the controlled substance listed here:
 1. Alcohol, ethyl
 2. Amphetamines/Methamphetamines (i.e. speed)
 3. Cocaine, Cocaine Metabolites
 4. Opiates (i.e. to include but not limited to Codeine, Heroin, Morphine, Hydromorphone, Hydrocodone)
 5. Phencyclidine (PCP)
 6. THC (Marijuana) Metabolite

905 Employee Responsibilities

- A. An employee must not report to work while his/her ability to perform his/her job duties is impaired due to on-duty or off-duty alcohol or drug use. Employees called in for emergency duty to work outside their regular work schedule must not report to work impaired by off- duty alcohol or drug use.
- B. An employee must not possess or use alcohol or illegal drugs or prescription drugs without a prescription during working hours or while subject to duty (such as when scheduled to be on-call), on breaks, or during meal periods, except that use of or intoxication by Marijuana or

any other product containing THC metabolite (regardless of prescription or status as a medical marijuana cardholder) shall be unequivocally prohibited during work hours or while subject to duty. Employees in positions designated as safety-sensitive are never permitted to have THC Metabolite in their system at any time on- or off-duty.

- C. An employee must notify his/her immediate supervisor, before beginning work, when taking any medication or drugs, prescription or nonprescription, which may interfere with the safe and effective performance of duties or operation of municipal equipment.
- D. An employee must notify his/her immediate supervisor of any drug or alcohol related criminal conviction for a violation occurring in the workplace or off-duty no later than five (5) days after such conviction.
- E. Any violations of the above stated policies may result in immediate disciplinary action, up to and including termination.
- F. Reporting Drug and Alcohol Use: The employee should immediately notify his/her immediate supervisor if an employee has knowledge that another employee, while on duty, is under the influence of alcohol or a controlled substance or is in possession of or is using a controlled substance on duty or at City facilities or work sites (unless such possession is in the scope of a law enforcement or other lawful duty).
- G. No Work After Violation of Substance Abuse Policy:

An employee shall not be on duty, report for duty or perform a safety-sensitive function after:

1. A reasonable suspicion test for drugs; unless or until a negative test result is received.
2. A reasonable suspicion test for alcohol, unless the test was negative;
3. Receiving any positive test for alcohol or drugs (except a positive test for a medication prescribed by a physician without an accompanying reasonable suspicion of being under the influence as defined by these policies); or,
4. Any other prohibited conduct until a negative result is received, and/or the employee's division manager has approved his/her return to duty, after consult with the Human Resources Director, City Manager, or City Manager's Designee.

906 Management Responsibilities and Guidelines

- A. Immediate supervisors and Department Heads shall not physically search the persons of employees nor shall they search the personal possessions of employees without the freely given consent of, and in the presence of, the employee.
- B. Immediate supervisors and Department Heads shall notify the appropriate law enforcement agency when they have reasonable suspicion to believe that an employee may have illegal drugs in his or her possession or in an area jointly or fully controlled by the City.
- C. Any immediate supervisor or Department Head encountering an employee who refuses to consent to a required drug and/or alcohol test shall remind the employee of the requirements of the policy and that he or she may be subject to disciplinary action. The reason(s) for the refusal shall be considered in determining the appropriate disciplinary action. Where there is reasonable suspicion that the employee is under the influence of alcohol or drugs, the

Department Head or immediate supervisor should direct the employee to remain at work for a reasonable time until the employee can be safely transported home.

- D. Nothing in this policy shall be interpreted as waiving or limiting the City's responsibility to maintain discipline, the City's right to invoke disciplinary measures, or the employee's right to follow the grievance procedure set forth in Section 700.
- E. Each employee will be given a copy of the City's policy on Drug and Alcohol Substance Abuse, which is included in the City's Personnel Manual. The employee will sign a receipt of a copy of the Personnel Manual, which will be placed in the employee's personnel file.
- F. The City will follow applicable state and/or federal regulations associated with "safety-sensitive positions," which are:
 - 1. All regular full-time employees in positions requiring possession of a commercial driver's license (CDL); or
 - 2. Applicants for hire or promotion to the above-mentioned category who are subject to pre-employment drug testing.
- G. Safety sensitive activities involve any time used for inspecting, conditioning, servicing, driving, testing, loading, riding in, repairing, assisting with any commercial motor vehicle or when the selected employee is not scheduled to perform a safety sensitive function, but may be called upon to do so at any time during the work shift.
- H. Training Requirements Regarding Substance Policy:

Supervisors of employees holding CDLs, shall have at least one (1) hour of training on alcohol abuse and an additional one (1) hour of training on controlled substance use annually based on DOT regulations. Training will cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances. CDL holders will receive annual education on alcohol and controlled substance abuse.

All other City employees, including supervisors, are encouraged to attend training on alcohol and substance abuse.

- I. Designation of Safety-Sensitive Positions:

Many positions in the City hold heavy responsibility for promoting and preserving public safety. Employee and citizen safety often depend on the care and skill of city employees. The City designates these classifications as safety-sensitive where functions require higher sensitivity for safety of employees or the public or a higher level of cognitive function to properly perform. For safety-sensitive positions, random drug and alcohol testing is an integral part of maintaining a safe and healthy work environment. Random testing promotes the safety of emergency response teams, a high level of service to citizens, and the public's confidence. Such testing promotes the credibility of police officers as witnesses in illegal substance hearings, reduces the potential for corruption, and promotes the safe and accurate use of firearms, safe emergency response, and emergency vehicle operation. Employees in positions designated as safety-sensitive are never permitted to have THC Metabolite in their system at any time on- or off-duty.

The Human Resources Department consults on an ongoing basis with City departments to identify positions that may be classified as safety sensitive. The list of these positions is maintained in an Administrative Memorandum issued and updated as needed at least annually

by the City Manager. Positions and essential job functions will be reviewed on a case-by-case basis to determine whether the position is safety-sensitive. Some of the criteria that may be considered in making this determination include, but are not limited to, the following:

1. The employee is required to possess a valid commercial driver's license (CDL), to operate a commercial motor vehicle;
2. The employee is required to operate an emergency vehicle, or to operate potentially dangerous equipment or machinery;
3. The employee exercises law enforcement authority or is required or permitted to carry a firearm while on duty;
4. The employee provides emergency medical services;
5. The employee participates in or handles the financial resources of the City;
6. The employee is responsible for the care or safekeeping of minors; or
7. The employee's actions or inaction has the potential to cause serious injury or death to a citizen or a fellow employee.