

APPENDIX

1

*Town of Monterey*

***PERSONNEL RULES AND  
REGULATIONS***

***DEVELOPED WITH THE ASSISTANCE OF  
MUNICIPAL TECHNICAL ADVISORY SERVICE  
INSTITUTE FOR PUBLIC SERVICE THE  
UNIVERSITY OF TENNESSEE***

**TOWN OF MONTEREY**

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## **TOWN OF MONTEREY**

### **SECTION I - PERSONNEL POLICIES**

#### **A. PURPOSE AND OBJECTIVES**

The main purpose of these policies is to establish a high degree of understanding, cooperation, efficiency, and unity among municipal government employees fostered by a systematic application of good procedures in personnel administration. Another purpose is to provide uniform policies for all employees with all the benefits such a program ensures, without regard to race, gender, age, national origin, creed, ancestry, and disability.

The fundamental objectives of these personnel administration policies are to:

1. promote and increase efficiency and economy among employees of the Town of Monterey;
2. provide fair and equal opportunity to all qualified citizens on the basis of demonstrated merit and fitness as ascertained through fair and practical methods of selection;
3. develop a program of recruitment, advancement, and tenure that will make employment with the town attractive as a career and encourage each employee to render the best service;
4. establish and maintain a uniform plan of evaluation and compensation; and
5. establish and promote high morale among the employees by providing good working relationships, a uniform personnel policy, opportunity for advancement, and consideration for employee needs and desires.

#### **B. PERSONNEL POLICY STATEMENT**

It is the policy of the town of Monterey to apply and foster a sound program of personnel management. The policies of the municipal government are established to:

1. **EMPLOYMENT AND PLACEMENT**

- a. fill all positions without undue delay in accordance with job qualifications and requirements without discrimination as to race, color, gender, creed, national origin, ancestry, disability, or political affiliation; and
- b. establish programs for the promotion, transfer, demotion, dismissal, and reassignment of personnel.

2. **POSITION CLASSIFICATION AND PAY ADMINISTRATION**

- a. establish and maintain job descriptions for every position with the descriptions maintained on file with the personnel committee and department head;
- b. review position descriptions periodically and systematically with the employee to ensure currency and accuracy;
- c. establish appropriate position standards and to group positions in classes with similar standards; and
- d. conduct area wage and salary surveys periodically to provide competitive wage and salary scales.

3. **EMPLOYEE RELATIONS AND SERVICES**

- a. develop a system of job performance standards and evaluation and inform each employee periodically and systematically of the status of his/her job performance;
- b. establish rules and standards governing employee conduct both on and off the job;
- c. administer a uniform leave program;
- d. provide employee grievance procedures;
- e. develop a handbook to inform employees of their responsibilities, rights, and privileges; and
- f. provide and maintain a safe and healthful work environment.

4. **EMPLOYEE DEVELOPMENT AND TRAINING**

- a. establish training standards and requirements for all positions; and
- b. motivate and stimulate employees to achieve their highest potential usefulness.

5. **RECORDS**

- a. establish and maintain comprehensive and uniform personnel records.

C. **COVERAGE**

These rules and regulations shall cover all employees in the town service unless specifically exempt by this document, the town charter, and/or the ordinances of the municipality without regard to race, religion, national origin, political affiliation, sex, age, or disability.

All municipal government offices and positions are divided into the classified service and the exempt service. The classified service shall include all regular full-time and regular part-time positions in the town's service unless specifically placed in the exempt service. All offices and positions of the municipal government placed in the exempt service are:

- 1. all elected officials;
- 2. members of appointed boards and commissions;
- 3. consultants, advisers, and legal counsel rendering temporary professional service;
- 4. the city attorney;
- 5. independent contractors;
- 6. people employed by the municipality for not more than six months during a fiscal year;
- 7. part-time employees paid by the hour or the day who are not considered regular;
- 8. volunteer personnel appointed without compensation;



9. the city judge;

#### D. ADMINISTRATION

These rules shall be administered by the mayor or a personnel officer he or she may designate, in conformity with the ordinance establishing a personnel system.

Amendments to the rules and regulations shall be made in accordance with the procedure herein. Nothing in the personnel rules and regulations document shall be deemed to give employees any more property rights in their jobs than may already be given by the town charter. The town reserves the right to alter or change any or all of these rules without prior notice to employees.

### SECTION II - DEFINITIONS

For this manual's purpose, the following words and phrases shall have the meanings respectively ascribed to them by this chapter:

**Actual Service** - The time engaged in performing the duties of a position or positions, including absences with pay and authorized leave without pay.

**Alcohol** - The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol.

**Alcohol Concentration** - The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test.

**Alcohol Use** - The consumption of any beverage, mixture, or preparation, including any medication containing alcohol.

**Allocation** - Assigning a position to its appropriate class in relation to the duties performed.

**Anniversary Date** - (Also known as "review date," "increment date," or "service date.") The date on which a regular employee is evaluated or is eligible to receive an in-grade pay increase, normally 12 months after being hired. This date may be changed only by securing a new position within the organization, which requires a new probationary period.

**Annual Leave/Vacation Leave** - Paid leave that is granted to each eligible employee for vacation or other personal uses.

**Appeal** - An application for review of a disciplinary action submitted or instituted by an employee to a higher authority.

**Applicant** - An individual who has completed and submitted an application for employment with the town; any person who has on file an application for employment or any person who is otherwise being considered for employment or transfer to the police department, fire department, or to a position requiring a commercial driver's license (CDL) being processed for employment. For the purposes of the drug testing policy, an applicant may also be: a uniformed employee who has applied for and is offered a promotion or who has been selected for a special assignment; a non-uniformed employee who is offered a position as a uniformed employee; or an employee transferring to or applying for a position requiring a CDL.

**Appointing Authority** - The Mayor shall be responsible for appointing qualified applicants to regular full-time, regular part-time, temporary, or emergency positions in the city/town. The Mayor shall be the appointing authority for all department heads and certain other positions as specified in the code and charter for the town.

**Appointment** - The offer to and acceptance by a person of a position either on a regular or temporary basis.

**Break-in-service** - Any separation from the service of the municipal government, whether by resignation, layoff, dismissal, unsatisfactory service, disability, retirement, or unauthorized absences of three days or more without leave. Authorized leaves and authorized leaves of absence without pay shall not be considered as constituting a "break-in-service."

**Breath Alcohol Technician (BAT)** - An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).

**CDL** - A commercial driver's license (CDL) required of anyone who drives a vehicle in excess of 26,000 pounds or who carries 16 or more passengers or any size vehicle used in the transportation of hazardous materials.

**Certification** - Endorsement as meeting the required minimum standards for a vacant position.

**Chain-of-custody** - Refers to proving that the sample that tested positive for drugs or alcohol is actually the sample from the employee who is accused; the method of tracking each urine specimen to maintain control from initial

collection to final disposition for such samples and accountability at each stage of handling, testing, storing, and reporting.

**Chief Administrative Officer (CAO)** - Administrative personnel engaged in the day-to-day administration of the municipality. May include town administrator, town recorder, or other town department heads.

**Chief Executive Officer (CEO)** - Executive personnel engaged in policy development for the municipality. May include the commission, mayor, other town department heads, or the utility board and/or utility manager.

**Class** - A group of positions that are sufficiently alike in general duties and responsibilities to warrant the use of the same title, specifications, and pay range.

**Class Code** - An identifying number assigned to each job title in the classification plan.

**Class Series** - A number of classes of positions that are substantially similar in the types of work involved and differ only in rank. This is determined by the importance of duties, the degree of responsibility, and the amount of training and experience required. Such classes constitute a series.

**Class Specification** - A written description of a class. This consists of class title, a general statement of the work level and its distinguishing features, examples of duties, and desirable qualifications for the class.

**Classification** - The act of grouping positions into classes regarding: (1) duties and responsibilities; (2) educational requirements, knowledge, experience, and ability; (3) test of fitness; and (4) pay ranges.

**Classification Plan** - The official or approved system of grouping positions into appropriate classes consisting of: (1) an index to the class specification; (2) the class specification; and (3) rules for administering the classification plan.

**Classified Service** - The classified service shall include all positions in the town service except those listed under exempt service.

**CMV** - Commercial Motor Vehicle; Any vehicle or combination of vehicles meeting the following criteria: weighing more than 26,000 pounds; designed to transport more than 15 passengers; transporting hazardous materials required by law to be placarded, regardless of weight; and/or classified as a school bus.

**Collection Site** - A place where applicants or employees present themselves to provide a urine specimen sample that will be analyzed for the presence of drugs; may also include a place for the administration of a breath analysis test.

**Collection Site Personnel** - A person who instructs donors at the collection site.

**Compensation** - The standard pay rates that have been established for the prospective classes of work as set forth in the compensation plan.

**Compensation Plan** - The official schedule of pay approved by the governing body, assigning one or more pay rates to each class title.

**Confirmation Tests** - For alcohol testing, a confirmation test means a second test following a screen test with a result of 0.02 or greater that provides quantitative data of alcohol concentration. For controlled substances, a confirmation test means a second analytical procedure that is independent of the screen test and that uses a different technique and chemical principle from that of the screen test to ensure reliability and accuracy with identifying the presence of a specific drug or metabolite. **(Note - Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)**

**Confirmed Positive Result** - The presence of an illicit substance in the pure form or its metabolites at or above the cutoff level specified by the National Institute of Drug Abuse identified in two consecutive tests that utilize different test methods and that was not determined by the appropriate medical, scientific, professional testing, or forensic authority to have been caused by an alternate medical explanation or technically insufficient data. An EBT result equal to or greater than 0.02 is considered a positive result.

**Consortium** - Refers to an entity, including a group or association of employers or contractors, that provides alcohol or controlled substance testing and that acts on behalf of the employer.

**Continuous Service** - Employment without interruption except for absences on approved leaves or absences to serve in the U.S. armed forces.

**Daughter or Son/Child** - A stepchild; biological, adopted, or foster child; legal ward; or child of a person standing in loco parentis who is under the age of 18. A child who is 18 years old or older qualifies, if he/she is incapable of self-care because of mental or physical disability.

**Demotion** - Assigning an employee from one class to another that has a lower maximum pay rate and/or rank.

**Department** - The primary organizational unit under the immediate charge of a department head who reports directly to the Mayor.

**Department Head** - The director or chief of a town department.

**DHHS** - The Department of Health and Human Services.

**Disability Leave** - Paid leave that may be granted to an eligible employee who is unable to pursue the duties of his/her position because of physical or mental impairment.

**Disciplinary Action** - A method of reprimanding employees for violations of the rules, policies, or procedures and/or for unsatisfactory performance.

**Dismissal** - A type of disciplinary action resulting in the separation from employment from the municipal government for cause. **(Note - At-will employers do not have to dismiss employees for "cause" as long as it is not a violation of state or federal laws.)**

**DOT** - The Department of Transportation.

**Driver** - Refers to any person who operates a 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. For pre-employment/pre-duty testing only, the term "driver" includes a person applying to an employer to drive a commercial motor vehicle.

**EAP** - Employee Assistance Program.

**EBT** - Evidential Breath Testing used to detect alcohol usage; an instrument approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices."

**Eligible Applicant** - A person who has successfully met requirements for a particular employment class.

**Eligible Employee** - Eligible employees are those who have been employed for at least 12 months, who have provided at least 1,250 hours of service during the 12 months before Family and Medical Leave is requested, and who work at a work site where at least 50 employees are on the payroll (either at that site or within a 75-mile radius).

**Eligible List** - A list of names of qualified applicants for appointment or promotion to municipal government positions.

**Emergency Appointment** - An appointment made when an emergency arises and time will not permit compliance with the personnel appointment procedures.

**Employee** (synonymous with "incumbent") - The person selected to perform the work of a position. An employee is an individual who is legally employed by the municipal government and is compensated through the municipal government payroll for services. Individuals or groups compensated on a fee basis are not employees.

**Employee Development** - Providing the training programs and opportunities for employees to meet the skills and knowledge requirements needed to carry out their responsibilities.

**Employee Evaluation** - The system of assessing the quality and quantity of an employee's performance.

**Examination** - The process of testing, evaluating, or investigating the fitness and qualifications of applicants and employees.

**Exempt Service** - The elected positions and those individuals who serve at the pleasure of the elected officials who appointed them to their positions; board and commission members; people employed as consultants or counsel rendering temporary professional services; and positions involving seasonal, temporary, emergency, or voluntary employment or appointments to whom the rules and regulations are not applicable.

**Fair Labor Standards Act (FLSA)** - Federal legislation mandating time-and-a-half overtime compensation for all hours worked by an employee over 40 in a workweek.

**Family and Medical Leave** - The excused absence with or without pay, after using sick and annual/vacation leave, for a period of time not to exceed 12 weeks for family and/or medical leave.

**FHWA** - The Federal Highway Administration.

**Governing Body** - The elected positions of the town Board of Aldermen.

**Grievance** - An employee's feeling of dissatisfaction, and any differences, disagreements, or disputes arising between an employee and his/her supervisor and/or other employees regarding some aspect of employment, application or interpretation of regulations and policies, or some management decision affecting the employee. A grievance can be something real, alleged, or a misunderstanding concerning the rules and regulations or administrative order involving the employee's health, safety, physical facilities, equipment or material used, employee evaluation, promotion, transfer, layoff, recall, and any other related item.

**Immediate Family** - Includes spouse, mother or stepmother (but not both), father or stepfather (but not both), children, sister, brother, grandparents, current mother-in-law or current father-in-law, step-grandparents, grandparents-in-law, and grandchildren. Proof of these relationships may be required.

**Initial Test** - In drug testing, an immunoassay test to eliminate negative urine specimens from further analysis. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.

**Job Description** - A written explanation of one position or several very similar positions that includes a title, a definition of responsibilities and essential functions, examples of duties, and the minimum required qualifications.

**Layoff** - The involuntary, non-disciplinary separation of an employee from a position due to a shortage of funds or work, abolishing a position, other material changes in the duties or organization, or for related reasons that are outside the employee's control and that do not discredit the service of the employee.

**Leave** - An authorized absence during regularly scheduled work hours that has been approved by proper authority. Leave may be authorized with or without pay as provided for by these rules.

**Maternity Leave** - Leave granted female employees of the municipality for the purpose of pregnancy, childbirth, and nursing the infant.

**Military Leave** - Leave granted employees who enter the U.S. armed forces or who are members of the reserves who are required to attend the annual two (2) week training period.

**MRO** - A medical review officer; a licensed physician with knowledge of substance abuse disorders used to evaluate the results of substance abuse tests.

**Negative Result** - The absence of an illicit substance in the pure form or its metabolites in sufficient quantities to be identified by either an initial test or confirmation test.

**NHTSA** - The National Highway and Traffic Safety Administration.

**Occupational Disability or Injury Leave** - An excused absence from duty because of an injury or illness sustained in the course of employment and determined to be compensable under the provisions of the Workers' Compensation Law.

**Out-of-rank Pay** - Compensation paid to an employee for work performed in a higher classification.

**Overtime** - Authorized time worked by an employee in excess of normal working hours or work period. Generally, overtime is paid for all hours worked over 40 during the workweek. Public safety employees are allowed to work additional hours before overtime pay is required.

**Overtime Pay** - Compensation paid to an employee for overtime work performed in accordance with the FLSA.

**Parent** - Mother or father of an employee, or an adult who had day-to-day responsibility for caring for the employee during his/her childhood in place of the natural parents.

**Pay Plan** - A written plan/chart that places every job description in a pay grade according to knowledge, skills, and abilities.

**Pay Range** - One or more (but commonly seven) specific pay rates having a percentage relationship to one another assigned to a class of positions as the compensation for that class.

**Pay Rate** - A specific dollar amount, expressed as either an annual rate, monthly rate, or hourly rate.

**Position** - A group of duties and responsibilities assigned to one employee. A position can be vacant or occupied.



**Probationary Period** - The designated period of time after an applicant is appointed or an employee is promoted in which the employee is required to demonstrate fitness for the position by actual performance.

**Promotion** - Assigning an employee from one class to another that has a higher pay rate and/or rank.

**Provisional Employee:** An employee filling a position in the classified service without competition pending the establishment of eligibles.

**Qualifications** - The minimum educational, experience, and personal requirements that must be fulfilled by a person prior to an appointment or promotion.

**Reclassification** - The process of reviewing the duties and responsibilities of an existing position(s) in order to revise the job description to which the position(s) is assigned, or moving a job description from one pay grade to another pay grade.

**Refusal to Submit** - (to an alcohol or controlled substances test) means that an employee (1) failed to provide adequate breath for testing without a valid medical explanation; (2) failed to provide adequate urine for controlled substance testing without a valid medical explanation; or (3) engages in conduct that clearly obstructs the testing process.

**Regular Appointment** - An appointment without time limitation, or special restriction as to continued employment, to a permanent position authorized to be filled and made as a result of a certification as prescribed by these rules.

**Regular Full-time Employee** - An individual who works the equivalent of 40 hours or more per week.

**Regular Part-time Employee** - An employee appointed to fill a vacancy or a newly created position who works a minimum of 20 hours each workweek. The employee is not entitled to benefits.

**Regular Service** - The regular service shall include all positions in the town service except those listed under exempt service.

**Removal** - Separation of an employee on probation or for failure to meet legal requirements for employment.

**Reprimand** - A type of oral or written disciplinary action denoting a violation of personnel or departmental regulations that becomes part of the employee's personnel record.

**Safety-sensitive Drivers** - An employee in the aviation, motor carrier, railroad, and mass transit industries.

**Seniority** - The length of service with the town as a regular employee in the classified service.

**Separation** - The removal of an individual from a position either through resignation, dismissal, layoff, disability, retirement, or death.

**Serious Health Condition** - An illness, injury, impairment, or physical or mental condition involving in-patient care or continuing treatment by a health care provider. Examples of serious health conditions include, but are not limited to: heart attacks and conditions requiring bypass or valve operations, most cancers, back conditions requiring extensive therapy or surgical procedures, strokes, severe respiratory conditions, spinal injuries, severe arthritis, etc.

**Sick Leave** - An absence approved by the appointing authority or supervisor due to a non-occupational illness or injury.

**Skill Levels** - A grouping of positions based on similar skills, knowledge, and ability requirements.

**Split Specimen** - Urine drug test sample will be divided into two parts. One part will be tested initially, the other will remain sealed in case a retest is required or requested.

**Substance Abuse Professional** - A licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

**Supervisor** - An individual charged with the responsibility of a small unit of the municipal government.

**Suspension** - An enforced leave of absence for disciplinary purposes or pending an investigation of charges made against an employee.

**Temporary Employee** - Temporary employees are individuals who work for the town for no more than six (6) months during one calendar year.

**Transfer** - Assigning an employee from one position to another position. Transfers can take place within a department, between departments, between positions of the same pay range, between positions of the same class, or between positions of different classes of equal rank and pay.

**Vacancy** - An employment position without an incumbent.

**Workday** - The scheduled number of hours an employee is required to work per day.

**Workweek** - Seven (7) consecutive 24-hour periods as designated by the municipality.

### **SECTION III - CLASSIFICATION PLAN (reserved)**

### **SECTION IV - COMPENSATION PLAN**

#### **A. PURPOSE**

The pay plan is intended to provide fair compensation for all classes in the classification plan in consideration of pay ranges for other classes, general pay rates for similar employment in private establishments and other public jurisdictions in the area, cost of living data, the financial condition of the municipality, and other factors.

#### **B. COMPOSITION**

The pay plan shall consist of minimum and maximum pay rates with intermediate steps for each existing pay grade (position classification) as adopted by the board.

#### **C. MAINTENANCE OF THE PAY PLAN**

The personnel committee will, from time to time, make comparative studies of all factors affecting the level of salary ranges and will recommend to the Mayor such changes in the salary ranges as appear to be in order. Such adjustments will be made by increasing or decreasing the salary ranges the appropriate number of steps as provided in the basic salary schedule. The pay rate for each

employee will be adjusted an appropriate number of steps in conformity with adjusting the salary range for that class as approved by the town board.

#### **D. USE OF SALARY RANGES**

Salary ranges are intended to furnish administrative flexibility in recognizing individual differences among positions allocated to the same class and in providing employee incentives, and in rewarding employees for meritorious service.

The minimum rate established for a class is the normal hiring rate except in those cases where unusual circumstances (such as inability to fill the position at the hiring rate or exceptional qualifications of an applicant) appear to warrant employing an individual at a higher rate in the pay range. Any department head desiring to appoint an applicant to start at a salary above the minimum must submit a written justification through the personnel committee to the Mayor for approval. Such appointments shall be made only in exceptional cases as decided by the Mayor.

#### **E. HOURLY RATES**

Employees paid on an hourly rate basis are paid for all time actually worked. The Town Board of Aldermen shall set by ordinance all salaries paid by the town. Due consideration shall be given to duties performed, responsibilities, technical knowledge and skills required to perform the work satisfactorily, the labor market, and availability of people having the desired qualifications.

#### **F. MINIMUM WAGES**

In accordance with the FLSA, no employee, whether full time, part time, or probationary, shall be paid less than the federal minimum wage unless they are expressly exempt from the minimum wage requirement by FLSA regulations.

#### **G. OVERTIME PAY**

Overtime will not be authorized except by prior approval of the department head of Mayor except in the case of an emergency. Hourly employees may be compensated at their normal rate of pay, plus one-half (1/2) for all hours worked over forty (40) hours per week. (NOTE: Police officers will be paid at their normal rate of pay, plus one-half (1/2) for all hours worked over forty-three (43) hours per week.)

#### **H. PAYCHECKS**

All employees shall be paid on a bi-weekly basis. If you have questions about your work time, salary, or paycheck, call it to the attention of the department head within the pay period in question or immediately thereafter.

If you are absent on payday and wish to have someone else obtain your check for you, you may send your identification and a signed note authorizing the company to give your check to the bearer.

Final Paycheck - The final paycheck for a dismissed or resigning employee will be made available on his/her regular payday. In unusual circumstances, a department head may make arrangements for earlier payment.

Lost Paychecks - Employees are responsible for their paychecks after they have been issued. Checks lost or otherwise missing should be reported immediately to the payroll department so that a stop-payment order may be initiated. The Mayor will determine if and when a new check should be issued to replace a lost or missing check.

Unclaimed Paychecks - Paychecks not claimed by employees within three (3) days of the date issued must be returned by the supervisor to the personnel committee.

## I. PAYROLL DEDUCTIONS

By law the town is required to deduct, where applicable, federal withholding taxes, Social Security taxes, and garnishments from an employee's pay. The following deductions will be made when authorized by an employee:

1. **Federal Income Tax**: Federal taxes are withheld from employees' paychecks based on the number of dependents claimed by each individual. Employees are required to keep on file with the municipal government a copy of the W-4 form. In the event of changes in the employee exemption status, a revised W-4 must be filed before payroll deduction adjustments will be made.
2. **Social Security**: Social Security payments and deductions will be made according to the Social Security Act. The office manager, shall keep such records and make such reports as may be required by applicable state and federal laws or regulations.
3. **Others**: Other town-authorized deductions may be made from an employee's pay only with the employee's signed consent.

- a. **hospitalization (medical service premiums),**
- b. **deferred compensation payments,**
- c. **credit union payments,**
- d. **pension plan, and**
- e. **equipment**

## SECTION V - EMPLOYMENT

### A. APPLICATIONS

The Town of Monterey shall make every effort to attract qualified applicants for various types of positions. In so doing, the appointing authority shall notify all current employees and shall contact the unemployment office for qualified applicants each time a vacancy occurs. If no qualified current employee or qualified applicants are not available through the unemployment office, the appointing authority shall prepare and publish in an officially designated newspaper a public notice of vacancies when they occur, and place notices at an officially designate site in the Town Hall and such other sites as may be designated by the Mayor. The Mayor shall also provide notice of vacancies in alternate media, including taped messages, radio announcements, or other methods to ensure effective communication to someone with disabilities.

All employment applications are received at Town Hall by the personal committee and given thorough consideration by the appropriate department head. The department head shall give his recommendation in writing to the appropriate committee for review. The committee will then bring its recommendation to the board of mayor and aldermen for consideration. Applications are accepted for any position at any time (provided position(s) is available and public notice has been given) and will remain on file for six (6) months after being received by the town. The Town of Monterey exercises a policy of fairness to every person who applies for work and, in cooperation with the supervisor involved, is responsible for properly selecting and placing people in various town applicants with disabilities making a request for such accommodations.

An applicant may be removed from consideration if he/she:

1. declines an appointment when offered;
2. cannot be located by the postal authorities — it shall be deemed impossible to so locate an applicant when a communication mailed at the last known address is returned unclaimed;
3. fails to return at least two (2) telephone calls over 72 consecutive hours.
4. moves out of the area;
5. is currently using narcotics, or his/her excessive use of intoxicating liquors will pose a direct threat to the health and safety of others;

6. is found to have been convicted of a felony or a misdemeanor involving moral turpitude as the term is defined by law;
7. has made a false statement of material fact on the application;
8. does not file the application within the period specified in the application announcement or does not use the prescribed form or uses a different format than allowed as a reasonable accommodation; and/or
9. does not possess the minimum qualifications as indicated by the classification plan.

## **B. RECRUITMENT BY EXAMINATION**

All appointments in the municipal government service shall be made according to merit and fitness and may be subject to competitive examination. All such examinations shall fairly and impartially test those matters relevant to the capacity and fitness of the applicant to efficiently discharge the duties of the position to be filled.

## **C. TYPES OF EXAMINATIONS (reserved)**

## **D. TESTING (reserved)**

## **E. OPEN ELIGIBILITY**

Individuals shall be recruited from a geographic area as wide as necessary to assure obtaining well-qualified applicants for the various types of employment positions. Recruitment, therefore, shall not be limited to residents of the town or county. In cases where residents and non-residents are equally qualified for positions presently vacant, the residents shall receive first consideration in filling such vacancies.

## **F. MEDICAL EXAMINATIONS AND GENERAL PHYSICALS**

### **Pre-employment**

Following a conditional offer of employment, every prospective employee, when required, may be examined by a licensed medical physician designated by the municipal government. This exam will determine whether prospective employees can perform the essential functions of the position offered and will serve as a general physical overview. The cost of this medical examination shall be borne by the town. Prospective employees who are unable to successfully



perform the essential functions tested for in the medical examination shall have their offer of employment by the town withdrawn only if they:

1. cannot perform the essential functions due to a disability that cannot reasonably be accommodated;
2. pose a direct threat to themselves and/or others; or
3. are unable to perform the essential functions due to a temporary condition or disability not protected by the ADA.

### **Post-employment**

All employees of the town may, during their employment, be required by their department head, with the approval of the Mayor, to undergo periodic examinations to determine their physical and mental fitness to continue to perform the work of their positions. This periodic examination shall be at no expense to the employee. Determination of physical or mental fitness will be made by a physician designated by the Mayor.

When a town employee is reported by the examining physician to be physically or mentally unfit to perform work in the position for which he/she is employed, the employee may, within ten (10) days from the date of his/her notification of such determination, indicate in writing to the Mayor, his/her intention to submit the question of his/her physical or mental unfitness to a physician of his/her own choice.

In the event there is a difference of opinion between the examining physician and the physician chosen by the employee, a physician shall be mutually agreed upon and designated by both physicians. The third physician's decision shall be final and binding as to the physical or mental fitness of the employee. The municipal government shall pay its physician, the employee shall pay his/her physician, and the third physician shall be paid by the town.

Employees determined to be physically or mentally unfit to continue in their positions may be demoted according to these rules, or they may be separated from the municipal government service only after it has been determined that they:

1. cannot perform the essential functions due to a disability that cannot reasonably be accommodated;
2. pose a direct threat to themselves and/or others;

3. are unable to perform the essential functions due to a temporary condition or disability not protected by the ADA.

#### G. MINIMUM AGE

The FLSA requires that employees of state and local governments be at least 16 years old for most non-farm jobs and at least 18 years old for non-farm jobs declared hazardous by the secretary of labor. Minors 14 and 15 years old may work outside school hours under certain conditions.

#### H. TYPES OF EMPLOYEES

1. **Regular Full-time Employee** - A regular full-time employee is an employee who works a minimum of forty hours per week or one shift every three (3) days in the case of firefighters, is paid an hourly rate, is subject to all conditions of employment, and receives all benefits offered by the town unless specifically excluded by the town charter, code, or ordinance. Regular full-time employees serve a six (6) month probationary period (except for uniformed police and fire employees who have a twelve (12) months probationary period), during which time they may be dismissed without recourse.
2. **Regular Part-time Employee** - A regular part-time employee is an employee who works part-time hours on a regular basis who may not work on a daily basis and whose hours cannot exceed 72 hours per two week pay period unless approved by the Mayor. Regular part-time employees **are not** eligible for the city's health insurance.
3. **Temporary Full-time Employee** - A temporary full-time employee is an employee who works fewer than 72 hours per two week pay period. Part-time employees receive no benefits.
4. **Volunteer Firefighters** - Volunteer firefighters are appointed by the fire chief when necessary. Volunteer firefighters are compensated per fire-call with no other benefits except coverage under the Volunteer Firefighters' Insurance Coverage Policy. The town also provides workers' compensation benefits.

#### I. APPOINTMENTS, PROMOTIONS, DEMOTIONS, AND TRANSFERS

Pursuant to the town charter, the board of mayor and aldermen has the authority to appoint, promote, demote, transfer, suspend, and remove all officers and employees of the Town of Monterey, except for vacancies occurring in offices

which may be filled by the mayor. All vacancies in the municipal government service shall be filled by original appointment, re-employment, promotional appointment, provisional appointment, transfer, or demotion.

Whenever a department head wishes to fill a vacancy, a request for appointment must be submitted to the Mayor on the forms prescribed.

1. **Appointments** - Appointments to positions with the municipal government fall into four categories. They are:
  - a. **Original Appointments** - When a non-employee passes all the tests of employability and is offered conditional employment.
  - b. **Provisional Appointments** - When the municipality is unable to fill a vacancy because of an insufficient number of applicants or lack of qualified applicants, the Mayor may authorize the department head to fill the vacancy by a provisional appointment. Provisional appointments require the prior approval of the Mayor and no payment shall be made for services rendered by the appointee prior to the appointment.
  - c. **Emergency Appointments** - The Mayor may authorize the appointment of any qualified person to a position to prevent a halt in public business or loss or serious inconvenience to the public. Emergency appointments shall be limited to a period not to exceed sixty (60) days in any 12-month period, unless approved by majority vote of the board.
2. **Promotions** - A promotion is assigning an employee from one position to another that has a higher maximum pay rate, rank, and responsibility. **(Vacancies in positions above the lowest rank in any category in the classified service shall be filled as far as practical by promoting employees.)** Promotions in every case must involve a definite increase in duties and responsibilities and shall not be made merely for the purpose of effecting an increase in compensation.

When an employee in one classification is promoted to a position in another classification and the employee's current pay rate is less than the minimum rate for the new position, the employee's salary shall be raised to that minimum rate.

When the employee's salary falls above the new minimum rate, a percentage increase as determined by the Mayor shall be given, if approved by the board.

3. **Transfers** - When an employee desires to transfer from one department to another, it must be agreeable to both department heads involved and/or approved by the Mayor. Transferring an employee from one position to another without significant change in the responsibility level may be effective:
  - a. when the employee meets the qualification requirements for the new position;
  - b. if it is in the best interest of the municipal government;
  - c. if it meets the personal needs of the employee as consistent with the other requirements of this rule; and/or
  - d. as a reasonable accommodation when an employee is unable, due to a disability, to continue to perform the essential functions of the job.

An employee who transfers from one municipal government department to another will retain and carry forward all benefits earned, accrued, or both as of the date of transfer. As a general rule, lateral transfers require no increase in compensation.

4. **Demotions** - A demotion is assigning an employee from one position to another that has a lower maximum pay rate, rank, and responsibility. An employee may be demoted for any of the following reasons:
  - a. because his/her position is being abolished and he/she would otherwise be laid off;
  - b. because his/her position is being reclassified to a higher grade, and the employee lacks the necessary skills to successfully perform the job;
  - c. because there is a lack of work;
  - d. because there is a lack of funds

- e. because another employee, returning from authorized leave granted in accordance with the rules on leave, will occupy the position to which the employee is currently assigned;
- f. because the employee does not possess the necessary qualifications to render satisfactory service to the position he/she holds;
- g. because the employee voluntarily requests such a demotion, and it is available;
- h. as a reasonable accommodation when an employee, due to a disability, becomes unable to perform the essential functions of the job; and/or
- i. as a form of disciplinary action.

When an employee in one classification is demoted to a position in a lower classification and the employee pay rate is higher than the minimum rate for the new position, the employee's salary shall be reduced to the classification rate.

#### **J. CITIZENSHIP AND IMMIGRATION STATUS VERIFICATION**

The town will not discriminate on the basis of a person's national origin or citizenship status with regard to recruitment, hiring, or discharge. However, the town will not knowingly employ any person who is or becomes an unauthorized immigrant. In compliance with the Immigration Reform and Control Act, all employees hired after Nov. 6, 1986, regardless of national origin, ancestry, or citizenship, must provide suitable documentation to verify identity and employability. The documentation must be provided within three days of employment or the individual will be terminated.

#### **K. PROBATIONARY PERIOD**

The probationary, or working test period, is an integral part of the examination process and shall be used for:

1. closely observing the employee's work;
2. securing the most effective adjustment of a new or promoted employee to his/her position; and

3. rejecting any employee whose performance does not meet work standards.

The probationary period for all regular appointments shall be for a period of six (6) months. This excludes police and firefighters, who shall serve a 12-months period or who are on probation until certification. Department heads may request an extension of any employee's probationary period with the prior approval of the Mayor. In no event may a probationary period be extended beyond 15 months for policemen and firefighters, 9 months for all other employees.

During the probationary period, the Mayor shall require the department head to report the observations of the employee's work and his/her judgment of the employee's willingness and ability to perform the duties assigned. During the probationary period, the supervisor will inform the employee when his/her performance is unsatisfactory and not meeting the probationary test requirements.

A performance evaluation/appraisal shall be completed at least one month prior to the expiration of an employee's probationary period. At this time, the department head shall notify the Mayor if the employee's service has been satisfactory and whether he/she will continue to employ the individual.

#### **L. FIRST DAY OF EMPLOYMENT**

After an applicant has been chosen to fill a job vacancy by the department head and has been approved by the board of mayor and aldermen, the new employee shall be required to complete or provide the following documents and forms before beginning work:

1. W-4 form;
2. Immigration Control and Reform Act form (I-9);
3. A copy of educational certification, professional license, or certificate required per the job description;
4. Emergency telephone numbers;
5. A copy of driver's license (if the position requires driving a town vehicle), and
6. Signed acknowledgment form from the employee handbook/personnel manual;

7. A pre-employment physical including a drug screening.

#### **M. MOONLIGHTING/OUTSIDE EMPLOYMENT**

With the approval of one's Mayor, "moonlighting" is permissible, provided that there is no conflict of interest or impairment of work performance for the Town of Monterey. Before outside employment begins, employees must present a written request describing the work to be performed.

Employees missing work because of sickness or injury that can be attributed to a second job will not receive pay or other normal benefits for time lost from their municipal government job. Approval of a second job may be withdrawn for any of the above reasons.

#### **N. WORKDAY/WORKWEEK**

Pursuant to the FLSA, a workweek is a regular recurring period of 168 hours consisting of seven consecutive 24-hour periods. For law enforcement personnel the work period shall be a fourteen (14) day work period as allowed under the FLSA, Section 7(k) which work period may in the future be changed by a resolution of the board of mayor and aldermen. Except as is provided in special employment contracts (i.e., firefighters), five days per week constitute a workweek for regular employment. As necessary, schedules will vary in departments for the smooth operation of the city/town. A standard workweek is scheduled between 12:01 a.m. Sunday through 12:01 a.m. the following Sunday.

#### **O. ATTENDANCE**

Punctual and regular attendance is necessary for the town to operate efficiently. Employees unavoidably late or absent from work due to illness or other causes must notify their supervisor within the two (2) hours after the beginning of the scheduled work day, unless unusual circumstances prevent the employee from making proper notification. Employees must explain the reason for the absence and, if possible, the anticipated time and date they will return to work. Failure to notify one's supervisor of absences may result in disciplinary action. Employees found cheating on their time sheets will be subject to immediate dismissal. Excessive tardiness is regarded as sufficient reason for termination. (as amended by Ord. #376, July 1999, and Ord. #399, March 2002)

### **SECTION VI - BENEFITS**

#### **A. LEGAL HOLIDAYS**

All offices and shops of the Town of Monterey, except emergency and necessary operations, will be closed and employees excused on the following legal holidays :

New Year's Day	Jan. 1
President's Day	February
Good Friday	Friday preceding Easter Sunday
Memorial Day	Last Monday in May
Standing Stone Day	Friday before (October)
Independence Day	July 4
Labor Day	First Monday in September
Thanksgiving Day	November (Fourth Thursday)
Friday after Thanksgiving	Fourth Friday in November
Christmas Eve	Dec. 24
Christmas	Dec. 25

When a legal holiday falls on Saturday or Sunday, it shall be observed the following Monday with the exception of Christmas Eve or as designated by the town commission or utility board.

To receive compensation for a holiday, employees eligible for holiday benefits must be in a pay status (not away on leave without pay or on workers' compensation) on their last regular shift scheduled before a holiday and their first regularly scheduled shift after a holiday. It shall be the department head's responsibility to report to payroll the names, hours, and dates of employees who work holidays. This reporting shall be done as soon as possible, but in no case later than three workdays after the holiday.

## **B. HOLIDAY PAY**

Public safety officers (police and fire department employees) shall receive holiday pay in the form of an additional eight (8) hours pay for each of the above holidays whether on duty or not. Employees eligible for holiday pay must be in



a pay status their last regular shift before a holiday and their first regularly scheduled shift after a holiday in order to receive compensation for the holiday.

**C. VACATION LEAVE**

Vacation leave will be granted to regular employees who have been continuously employed by the town. Vacation leave is to be taken following the period of time in which it is earned. Total leave days in excess of ten (10) days for a particular year of employment must be taken before an employee’s anniversary date, either as days off with pay or the employee shall be compensated with pay for the period in excess of ten (10) days. For vacation purposes, time is earned beginning with the date of regular employment to the anniversary date each year. Employees who plan to use two consecutive annual leave days must have the approval of their department head two weeks prior to time off, except in the case of emergency. **No earned annual leave with pay may be taken until an employee has been employed for three (3) months.**

Vacation time will be calculated according to the following schedule: (Part-time employees will receive one-half (1/2) of following schedule)

<b>Years of Service</b>	<b>Days Earned per Years of Service</b>	<b>Hours Earned per Pay Period</b>
<b>1</b>	5 days	1.54 hours
<b>2</b>	10 days	3.08 hours
<b>3-10</b>	15 days	4.62 hours
<b>11 &amp; over</b>	20 days	6.15 hours

Vacation leave may be taken as earned subject to the approval of the department head who shall schedule vacations so as to meet the operational requirements of the department. Head of Department has first priority in selecting vacation days. Subsequent vacation days will be awarded on seniority basis.

An employee who is separated from city employment shall be paid for his/her unused vacation leave on pay period immediately following the separation of employment . The termination date shall coincide with last date of pay.

Legal holidays falling within a vacation period are not to be counted as vacation days. There shall be no pay in lieu of vacation. When an employee is on “leave without pay” for 15 days during any calendar month, no annual leave

accumulates. Employees may not borrow against future annual vacation or transfer earned leave to another employee.

Service in the Tennessee National Guard, state militia, or military reserves may be charged as annual vacation at the option of the employee. Employees electing to coincide vacation time with military leave shall receive full pay for the amount of specified vacation leave.

#### D. SICK LEAVE

Each regular employee will accrue sick leave at the rate of four (4) hours per pay period for full-time employees and two (2) hours per pay period for part-time employees. **(Employees may accumulate an unlimited amount of sick leave.)** Sick leave benefits will commence on the first day of such absence and shall continue for as long as sick leave credit remains. Employees are not paid for unused sick leave at the time of separation.

Generally, employees become eligible to use sick leave in the situations outlined below.

1. Employees are incapacitated by sickness or a non-job-related injury, or they are seeking medical, dental, or optical diagnosis and treatment.
2. Necessary care and attendance of a member of the employee's immediate family is approved by a jurisdictional official. Immediate family members are :

#### IMMEDIATE FAMILY

Husband	Wife
Father	Mother
Brother	Sister
Son	Daughter
Father-in-law	Mother-in-law
Brother-in-law	Sister-in-law
Son-in-law	Daughter-in-law
Grandfather	Grandmother
Uncle	Aunt
Legal foster parents and children	
Any step relatives (stepchildren, etc.)	

3. Employees may jeopardize the health of others because they have been exposed to a contagious disease requiring notice from a qualified doctor.

In order to be granted sick leave with pay an employee must notify his/her immediate supervisor not later than two (2) hours before the beginning of the scheduled work day of the reason for absence or within lesser time if required by the department head.

To prevent abuse of the sick leave privilege, department heads are required to satisfy themselves that the employee is genuinely ill before paying sick leave. Any absence may require a doctor's certificate, and any absence in excess of three workdays may also require a doctor's certificate to return to work (if, in the opinion of the immediate supervisor, such action is deemed appropriate).

Each day deducted from an employee's sick leave accumulation shall be for a regular workday and shall not include holidays and scheduled days off. Employees claiming sick leave while on annual leave must support their claim by a doctor's statement. When an employee is on "leave without pay" for 15 days during any calendar month, no sick leave accumulates.

An absence from work while sick will constitute a charge for that absent period of time as sick leave for the respective employee.

After employees have exhausted their accrued sick leave, leave without pay may be granted at the discretion of the Mayor as a reasonable accommodation to disabled people. Also, employees may be placed on special leave without pay, or they may be terminated if unable to perform their job or another job with or without a reasonable accommodation. Should employees later be able to return to work, upon presentation of certification by a doctor, they shall be given preference for employment in a position for that they are qualified, with the approval of a jurisdictional elected official or a department head.

Employees may not borrow against future sick leave or transfer earned sick leave to another employee. An employee, upon exhausting all earned sick leave, may use earned annual leave or take leave without pay.

**1. Sick Leave Incentive Program:** Effective for fiscal year 2004-2005, and each year thereafter, Town employees with at least 120 hours of accumulated sick leave for permanent full-time employees and 60 hours of accumulated sick leave for permanent part-time employees shall be eligible, subject to eligibility standards and budgetary constraints, for a one time annual sick leave incentive payment.

On September 1 of each year, a determination will be made as to the eligibility of each employee. Town employees who meet the eligibility standards outlined below shall be issued a lump-sum payment equal to thirty percent (30%) of their hourly rate for each hour of unused sick leave accrued, up to a maximum of 80 hours for full-time employees or 40 hours for part-time employees. This payment is subject to the determination of the Board of Mayor and Aldermen that the Town budget can and should fund such payment. Said one-time annual payment shall be issued by the Town on or before December 1 of each year, subject to Town budget constraints.

Eligibility Standards: to be eligible on September 1 of a given year for the lump-sum sick leave incentive payment, full-time employees must have accumulated a minimum of 120 hours and part-time employees must have accumulated a minimum of 60 hours of sick leave by that date. Further, employees must have been actively employed by the Town from July 1 through June 30 of the preceding fiscal year and must be actively employed on September 1 of the year in which payment is made. Full time employees who have taken more than 48 hours of sick leave and part-time employees who have taken more than 24 hours of sick leave during the preceding period of July 1 through June 30 shall not be deemed eligible on September 1 for the December 1 incentive payment. Employees who accept such payment will forfeit those hours of sick leave for which a lump-sum payment has been made.

**2. Sick Leave Incentive Upon Retirement:** Upon retirement, any employee of the Town shall receive compensation for accumulated, unused sick leave at the rate of \$5.00 per hour for each hour of accrued, unused sick leave accumulated by the employee's date of retirement, up to a maximum of 500 hours. Retirement shall be defined as: Voluntary separation from employment by an individual who has worked for 20 consecutive years as a permanent full or part-time employee of the Town, or has attained the age of 60 years. (as amended by Ord. #424, Feb. 2005)

#### **E. BEREAVEMENT LEAVE**

Leave with pay not to exceed three (3) working days may be authorized in case of a death within the employee's immediate family. In the event the death in the employee's immediate family requires an out-of-town trip, the Mayor may authorize up to an additional three (3) days leave. This leave with pay shall be charged to accrued sick leave credits.

## F. FAMILY AND MEDICAL LEAVE

### Purpose

The purpose of this policy is to provide a family and medical leave policy in compliance with Public Law 103-3, title Family and Medical Leave Act (FMLA) of 1993.

### Definitions

1. Eligible Employee: Eligible employees are those who have been employed for at least 12 months, who have provided at least 1,250 hours of service during the 12 months before leave is requested.
2. Parent: Mother or Father of an employee, or an adult who had day to day responsibility for caring for the employee during his or her childhood years in place of the natural parents.
3. Son or Daughter/Child: Biological, adopted, or foster child, a step child, legal ward, or child of a person standing in loco parentis, who are under the age of 18 years. Children who are 18 years or older qualify, if he or she is incapable of self-care because of mental or physical disability.
4. Serious Health Condition: An illness, injury, impairment, or physical or mental condition involving either inpatient care or continuing treatment by a health care provider. Examples of serious health conditions include but are not limited to heart attacks, heart conditions requiring heart bypass or valve operations, most cancers, back conditions requiring extensive therapy or surgical procedures, strokes, severe respiratory conditions, spinal injuries, severe arthritis, etc.

### Leave Provisions

1. An eligible employee may take up to 12 weeks of FMLA leave including accrued paid leave and unpaid leave in a 12 month period for the birth of a child or the placement of a child for adoption or foster care. Under the Tennessee Maternity Leave Act a female employee may take an additional 4 weeks of unpaid leave if the 3 months advance notice has been complied with. Leave may also be taken to care for a child, spouse, or a parent who has a serious health condition.

2. The right to take FMLA leave applies equally to male and female employees who are eligible.
3. FMLA Leave for the purposes of care for a newborn child or a newly placed adopted or foster care child must be taken before the end of the first 12 months following the date of birth or placement.
4. An expectant mother may take FMLA medical leave upon the birth of a child, or prior to the birth of her child for necessary medical care and if her condition renders her unable to work. Similarly for adoption or foster care, leave may be taken by employee (husband or wife) upon the placement of the child or leave may begin prior to the placement if absence from work is required for the placement to proceed.
5. An employee may take FMLA leave to care for a parent or spouse of any age who, because of a serious mental or physical condition, is in the hospital or other health care facility. An employee may also take leave to care for a spouse or partner of any age who is unable to care for his or her own basic hygiene, nutritional needs, or safety. Examples include a parent or spouse whose daily living activities are impaired by such conditions as Alzheimer's disease, stroke or who is recovering from major surgery, or who is in the final stage of a terminal illness.
6. Eligible employees, who are unable to perform the functions of the position held because of serious health condition, may request up to 12 weeks FMLA leave. The term "serious health condition" is intended to cover conditions or illnesses that affect an employee's health to the extent that he or she must be absent from work on a recurring basis or for more than a few days for treatment or recovery.
7. Employees requesting FMLA leave must use any balance of sick leave, annual leave, and disability leave prior to unpaid leave beginning. The combination sick leave, annual leave, disability leave and unpaid leave may not exceed 12 weeks for FMLA purposes.
8. During periods of FMLA leave, an employee will not accrue any additional seniority or similar employment benefits during the leave period.

9. If spouses are employed by the same employer and wish to take FMLA leave for the care of a new child or a sick parent, their aggregate leave is limited to 12 weeks. For example, if the father takes 8 weeks of leave to care for a child, the mother would be entitled to 4 weeks leave, for a total of 12 weeks of leave.

### **Notification and Scheduling**

1. An eligible employee must provide the employer at least 30 days advance notice of the need for FMLA leave for birth, adoption or planned medical treatment, when the need for leave is foreseeable. This 30-day notice is not required in cases of medical emergency or other unforeseen events, such as premature birth, or sudden changes in a patient's condition that require a change in scheduled medical treatment.
2. Parents who are awaiting the adoption of a child and are given little notice of the availability of the child may also be exempt from this 30-day notice.

### **Certification**

1. The employer reserves the right to verify an employee's request for family/medical leave.
2. If an employee requests FMLA leave because of a serious health condition or to care for a family member with a serious health condition, the employer requires that the request be supported by certification issued by the health care provider of the eligible employee or the family member as appropriate. If the employer has reason to question the original certification, the employer may, at the employer's expense, require a second opinion from a different health care provider chosen by the employer. That health care provider may not be employed by the employer on a regular basis. If a resolution of the conflict cannot be obtained by a second opinion, a third opinion may be obtained from another provider and that opinion will be final and binding.
3. This certification must contain the date on which the serious health condition began, its probable duration, and appropriate medical facts with the knowledge of the health care provider regarding the condition. The certification must also state the employee's need to care for the son, daughter, spouse, or parent

and must include an estimate of the amount of time that the employee is needed to care for the family member.

4. Medical certifications given will be treated as confidential and privileged information.
5. An employee will be required to report periodically to the employer the status and the intention of the employee to return to work.
6. Employees who have taken FMLA leave under this policy must furnish the employer with a medical certification from the employee's health care provider that the employee is able to resume work before return is granted.

### **Maintenance of Health and COBRA Benefits During FMLA Leave**

1. The employer will maintain health insurance benefits, paid by the employer for the employee, during periods of FMLA, without interruption. Any payment for family coverage's premiums, or other payroll deductible insurance policies, must be paid by the employee or the benefits may not be continued.
2. The employer has the right to recover from the employee all health insurance premiums paid during the FMLA leave period if the employee fails to return to work after leave. Employees who fail to return to work because they are unable to perform the functions of their job because they are unable to perform the functions of their job because of their own serious health condition or because of the continued necessity of caring for a seriously ill family member may be exempt from the recapture provision.
3. Leave taken under this policy does not constitute a qualifying event that entitles an employee to COBRA insurance coverage. However, the qualifying event triggering COBRA coverage may occur when it becomes clearly known that an employee will not be returning to work, and therefore ceases to be entitled to leave under this policy.

### **Reduced and Intermittent Leave**

1. Leave taken under this policy can be taken intermittently or on a reduced leave schedule when medically necessary as certified by the health care provider. Intermittent or reduced leave schedules for routine care of a new child can be taken only with the approval



of the employer. The schedule must be mutually agreed upon by the employee and the employer.

2. Employees on intermittent or reduced leave schedules may be temporarily transferred by the employer to an equivalent alternate position that may better accommodate the intermittent or reduced leave schedule.
3. Intermittent or reduced leave may be spread over a period of time longer than 12 weeks, but will not exceed the equivalent of 12 workweeks total leave in a one 12-month period.

### **Restoration**

1. Employees who are granted leave under this policy will be reinstated to an equivalent or the same position held prior to the commencement of their leave.
2. Certain highly compensated key employees, who are salaried and among the 10% highest paid employees, may be denied restoration. Restoration may be denied if (A) the employer shows that such denial is necessary to prevent substantial and grievous economic injury to the employer's operations, (B) the employer notifies the employee that it intends to deny restoration on such basis at the time the employer determines that such injury would occur, and (C) in any case in which the leave has commenced, the employee elects not to return to work within a reasonable period of time after receiving such notice.

### **The 12-Month FMLA Period**

The 12-month period during which an employee is entitled to 12 workweeks of FMLA leave starts the first day of leave taken by the employee. An employee is entitled to 12 weeks of FMLA leave during this 12 month period.

Any employee who desires to request leave under the FMLA should notify his supervisor. The supervisor should contact the Mayor for the necessary forms and procedures.

### **G. MILITARY LEAVE**

Any regular employee who has completed six months of satisfactory employment and who enters the U.S. armed forces will be placed on military leave. The official shall approve military leave without pay when the employee presents

his/her official orders. The employee must apply for reinstatement within 90 days after release from active military duty.

The employee will be reinstated to a position in the current classification plan at least equivalent to his/her former position. His/her salary will be the salary provided under the position classification and compensation plan prevailing at the time of reinstatement or re-employment. If no position is available at the time of the employee's return, he/she will be reinstated into the first available position. No current full-time employee will be terminated or laid off to allow for the reinstatement.

Any regular full-time employee who is a member of the U.S. Army Reserve, Navy Reserve, Air Force Reserve, Marine Reserve, or any of the armed forces will be granted military leave for any field training or active duty required (excluding extended active duty). Such leave will be granted when the employee presents the official order to his/her jurisdictional official. Compensation for such leave will be paid pursuant to T.C.A. 8-33-109. It will be the employee's responsibility to arrange with the department supervisor to attend monthly meetings on regular off-time, with pay applied to the annual two-week training period. Employees entering extended active duty will be given fifteen (15) days pay when placed on military leave.

#### **H. JURY SERVICE LEAVE**

Leave with pay may be authorized in order that regular employees may serve required jury duty, provided that such leave is reported in advance to the personnel committee. In order to receive pay for such leave, the employee must deposit the money which he/she receives for jury duty with the personnel committee, to be forwarded to the director of finance and/or office manager in charge of finance.

#### **I. CAREER DEVELOPMENT AND TRAINING**

Employees are encouraged to take advantage of education and training benefits to improve their job skills and qualify for promotions. These benefits are limited to training and education relevant to the employee's current position or "reasonable" transfer and/or promotional opportunities. "Reasonable" is defined as attaining the minimum qualifications for promotion or transfer with no more than two years of additional training or education.

These benefits will be available to all employees on a first-come, first-serve basis, subject to the availability of budgeted funds.

Requests for education and training may be initiated by either the employee or department head. Final decisions on requests for education and training will be made by the mayor.

The mayor may authorize or require employee attendance at conferences, seminars, workshops, or other functions of a similar nature that are intended to improve or upgrade the employee's job skills.

Requests to attend training sessions should be made at least 15 days prior to the deadline for registration. The Mayor, based on the department head's recommendation, will determine who will attend conferences based on the availability of resources.

When a request for training is approved, the employee's cost for registration, tuition and publications, transportation, lodging, and other reasonable expenses will be covered by the city.

#### **J. PERSONAL EDUCATION AND TRAINING**

Employees are encouraged to improve themselves through education or training, even if it is not related to their city/town work. The town will be unable to provide financial assistance for this type of education. Employees may be granted, upon written request, permission to take time away from their jobs for training when such time is taken without pay as compensatory time or vacation time. This applies only so long as their absences will not cause hardship for their departments.

#### **K. DEATH OF AN EMPLOYEE**

Upon the death of a full-time regular employee, his/her beneficiary shall receive his/her next due payroll check, and pay for accrued vacation time. Further, his/her beneficiary shall be given complete assistance by the Mayor in settling pension, life, and hospital insurance benefits.

#### **L. WORKERS' COMPENSATION**

Employees on occupational disability will only be compensated in accordance with the provisions of the Tennessee Workers' Compensation Law (T.C.A. 50-6-101 through 50-6-623). No compensation shall be allowed for the first seven days of disability resulting from the injury, excluding the day of injury, except for medical attendance and hospitalization. However, if disability extends beyond that period, compensation shall commence with the eighth day after the injury. In the event, however, the disability from the injury exists for a period

as long as 14 days, then compensation shall be allowed beginning with the first day after the injury (T.C.A. 50-6-205).

Employees injured in an on-the-job accident may be compensated according to the following schedule of compensation:

1. Temporary Total Disability - For an injury producing temporary total disability,  $66\frac{2}{3}$  percent of the average weekly wages shall be allowed.
2. Temporary Partial Disability - In all cases of temporary partial disability, the compensation shall be  $66\frac{2}{3}$  percent of the difference between the wage of the worker at the time of the injury and the wage such worker is able to earn in the worker's partially disabled condition. This compensation shall be paid during the period of such disability, but not beyond 400 weeks.
3. Permanent Partial Disability - In all cases of disabilities that are partial in character but adjudged to be permanent, the injured employee shall be paid, in addition to any medical benefits,  $66\frac{2}{3}$  percent of the employee's average weekly wages for the period of time during which he/she suffers temporary total disability. Other benefits may apply for loss of limbs.
4. Permanent Total Disability - For permanent total disability, the injured employee shall receive  $66\frac{2}{3}$  percent of the injured employee's wages at the time of injury. This compensation shall be paid during the period of such permanent total disability until the employee reaches the age of 65. This is providing that, with respect to disabilities resulting from injuries occurring after age 60, regardless of the employee's age, permanent total disability benefits are payable for a period of 260 weeks. Such compensation shall be reduced by the amount of any old-age insurance benefits received under the Social Security Act.
5. Deduction in Case of Death - In the event an employee sustains an injury due to an accident in the course of the employee's job and if he/she dies during the period of disability, all payments previously mentioned shall be payable to the people who are wholly dependents (as defined by workers' compensation laws). (as amended by Ord. #400, March 2002)

## SECTION VII - DRUG AND ALCOHOL ABUSE POLICY

### A. PURPOSE

The Town of Monterey (“Monterey”) is committed to providing a safe working environment by making adequate provisions for the safety and health of our employees at their place of employment. Monterey is also dedicated to operating in a responsible and efficient manner for the benefit of our citizens and the general public. A result of the societal problem concerning drug and alcohol misuse, to which Monterey is not immune, Monterey has implemented a comprehensive drug and alcohol prevention and testing program designed to combat substance abuse.

Monterey is further committed to complying with all applicable laws and regulations including, but not limited to, the Drug Free Workplace Act of 1988 and Department of Transportation (“DOT”) regulations. The catalyst for this anti-drug and alcohol abuse policy is the DOT Federal Highway Administration Controlled Substances and Alcohol Use and testing Regulations, 49 CFR Part 382 (hereinafter “FHWA regulations” or “Part 382”), which requires Monterey to conduct substance abuse testing of its employees who are required to maintain commercial drivers licenses (“CDLs”). The FHWA regulations also require Monterey to follow DOT’s drug and alcohol testing procedures, 49 CFR Part 40 (hereinafter “Part 40”), which specifies the procedures to be followed in conducting the DOT drug and alcohol testing.

The overall purpose of this policy is to prevent accidents that result from the abuse of drugs or alcohol, thereby reducing fatalities, injuries and property damage. **This policy is intended solely to implement FHWA drug and alcohol testing regulations.**

**In an effort to achieve the health, safety, and efficiency goals outlined above, Monterey has also developed a comprehensive substance abuse policy which is applicable to all Monterey employees and applicants. This “General Drug and Alcohol Abuse Policy” is not required by DOT but rather is expressly and solely the policy of Monterey. However, disciplinary actions for violating any of Monterey drug and alcohol policies are ultimately controlled by the General Drug and Alcohol Abuse Policy.**

### B. DEFINITIONS

For the purposes of this drug and alcohol abuse policy, the following definitions apply:

1. “Accident” means an accident as defined in FHWA regulations, which means any reportable accident involving a Monterey commercial motor vehicle where the driver receives a citation for a moving traffic violation or where there is a fatality even if the driver is not cited for a moving traffic violation.
2. “Breath alcohol technician (BAT)” means an individual who instructs and assists individuals in the alcohol testing process and who operates an evidential breath test.
3. “Chain of custody” means procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an appropriate drug testing custody form from a Department of Health and Human Services (“DHHS”) certified laboratory be used from time of collection to receipt by the laboratory.
4. “Commercial driver’s license (CDL)” means a driver’s license required to operate Monterey commercial motor vehicles.
5. “Commercial motor vehicle” means a motor vehicle or combination of motor vehicle and towed vehicle used in commerce to transport passengers or property when the vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 or more pounds, including a towed unit with the gross vehicle weighing more than 10,000 pounds, or a gross vehicle weight rating of 26,001 or more pounds or is designed to transport 16 or more passengers.
6. “Confirmation test” means a second analytical procedure to identify the presence of a specific drug or metabolite or alcohol which is independent of the initial test. In drug testing, a confirmation test employs the techniques and principles of gas chromatography/mass spectrometry (“GS/MS”), which uses a different technique and chemical principle from that of the initial test to ensure reliability and accuracy. In alcohol testing, a confirmation test means a second test, following an initial or screening test with a result of 0.02 or greater, which provides quantitative data of alcohol concentration.
7. “Covered employee” means any Monterey employee who is required to maintain a CDL to operate Monterey commercial motor vehicles. This includes all Monterey employees who regularly,

intermittently, or occasionally are required to operate Monterey commercial vehicles.

8. “Covered CDL function (safety-sensitive function)” means any on-duty functions by a covered employee set forth 49 CFR & 395.2 including: (a) waiting to drive a Monterey commercial motor vehicle; (b) inspecting, servicing, or otherwise conditioning any Monterey commercial motor vehicle; (c) driving a Monterey commercial motor vehicle; (d) being in or upon the Monterey commercial motor vehicle; (e) loading or unloading a Monterey commercial motor vehicle or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, or remaining in readiness to operate the vehicle; (f) performing driver requirements related to accidents; or (g) repairing, obtaining assistance, or remaining in attendance of a disable commercial motor vehicle.
9. “Fail a test” or “test positive” means that the test shows positive for a prohibited drug or alcohol in a person’s system.
10. “Refusal to submit to a test” means refusal by an individual, who after receiving notice of the requirement to be tested in accordance with this policy and without a valid medical explanation, refuses to provide adequate breath for an alcohol test or refuses to provide a urine sample for a drug test, or otherwise engages in conduct that clearly obstructs the testing process.
11. “Prohibited drug” means amphetamines, cocaine, marijuana, opiates and phencyclidine (“PCP”).
12. “Substance abuse professional” means a licensed physician (i.e., a medical doctor), a license or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders.

(For other definitions, see DOT regulations and Monterey’s Drug and Alcohol Testing Procedures.)

## C. POLICY

Pursuant to FHWA regulations, this policy covers any applicant or employee required to maintain a CDL. Attached to this section as Attachment I are the positions/job titles of all employee classifications at Monterey which are covered by the FHWA regulations, i.e., the classifications requiring a CDL. Jobs may be added or deleted from Attachment I at the discretion of Monterey or as mandated by law or regulations, with or without republishing this policy. If new jobs are added to Attachment I, Monterey will inform incumbents in the classification of their coverage under this policy and will provide the same training to the incumbents as it would provide for new employees.

Employees covered by this policy are those employees performing safety-sensitive functions (CDL functions) when they are actually performing, ready to perform, or immediately available to perform such functions. Consequently, covered employees are required to be in compliance with this policy at any time they report to work, are actually working, or have immediately completed work in a covered classification.

This policy is communicated to each covered employee by furnishing a summary of this policy (and informing the employee that a copy of this policy is available from the Mayor) to the individual and verbally discussing the policy in training sessions. These sessions will be repeated as needed to ensure that Monterey employees are informed and aware of this policy (and will be informed that a copy of this policy is available from the Mayor) when hired, and they will also be included in the next available training session. In addition, any employee handbook which is issued from this date forward will contain information regarding Monterey's drug and alcohol abuse policies and will specifically include, for employees who are subject to this policy, a condensed version of this policy.

Before administering an alcohol or drug test under this policy, Monterey will inform the covered employee that the test is required by this policy and applicable FHWA regulations. Should an employee governed by this policy fail an alcohol test, the employee will be removed immediately from the covered position. Should a covered employee fail a drug test under this policy, the employee will be removed immediately from the covered position upon notification to Monterey by the Medical Review Officer ("MRO") of the positive test results of the drug test. Refusal of an employee to submit to an alcohol or drug test in accordance with this policy for any purpose required under FHWA regulations will require that the employee be immediately removed from his or her covered position.



**Violation of this policy is automatically a violation of Monterey's General Drug and Alcohol Abuse Policy and will lead to disciplinary action up to and including termination under the General Policy. Every employee who violates this policy shall be advised by Monterey of the resources available to the employee in evaluating and resolving problems associated with the misuse of alcohol and the use of controlled substances. An employee who is not terminated will be mandatorily referred to a substance abuse professional and may be referred to rehabilitation as described in Section VI of this policy.**

**1. Drug Policy**

No covered employee shall unlawfully manufacture, distribute, dispense, possess, or use a prohibited drug while on Monterey properties, while on duty for regularly scheduled or emergency work, while operating Monterey vehicles or equipment, or off the job so as to affect the employee's job performance or integrity on the job as a representative of Monterey. An amount of a prohibited drug in an individual's body equal to or higher than the cut-off levels detected by a drug test, for the purposes of this policy, is considered to be the use of drugs by the individual.

**2. Alcohol Policy**

No covered employee shall report to work under the influence of alcohol or use or be under the influence of alcohol while on Monterey properties, while on duty for regularly-scheduled or emergency work or while operating Monterey vehicles or equipment. No covered employee shall report for duty or remain on duty in a covered position while having an alcohol concentration of 0.04 or greater. No employee may use alcohol while performing functions in a covered position.

Moreover, covered employees are prohibited from using alcohol within four (4) hours prior to reporting to duty. If a covered employee is called to duty to respond to an emergency, the employee is prohibited from using alcohol after the employee has been notified to report for duty. A covered employee being paid to be on call for a period of time is prohibited from consuming alcohol during that period.

A covered employee involved in an accident in which his or her performance has not been discounted as a factor contributing to the accident shall not use alcohol for eight (8) hours following the accident, unless he or she has been given a post-accident alcohol test or Monterey has advised the employee that it has determined that his or her performance could not have contributed to the accident.

**Monterey will not knowingly allow an employee to perform covered functions where the employee has violated any of the foregoing provisions.**

#### **D. RESPONSIBILITY**

The Mayor has overall responsibility for this program and for handling disciplinary actions that occur as a result of a refusal to be tested or as a result of a positive test. The personnel coordinator of the Monterey Utilities Board has the functional responsibility for the administration of the program established by this policy, coordinating with the medical review officer and the laboratory selected to do the testing, keeping records relative to drug and alcohol testing, and for coordinating and initiating testing of employees under Return-to-Work agreements.

#### **E. EMPLOYEE AWARENESS AND NOTIFICATION**

Monterey has developed a drug and alcohol awareness program to inform covered employees about the dangers of drug and alcohol abuse, the availability of counseling and treatment for employees who voluntarily seek such assistance, and the sanctions that Monterey will impose for violations of its drug and alcohol policies. This program will be monitored on an on-going basis and revised as new materials and information become available.

Monterey has held training sessions for its managers and supervisors on drug and alcohol awareness, identification of drug and alcohol misuse, and the proper procedures to be followed for drug and alcohol testing. Monterey will ensure that managers and supervisors designated to determine whether reasonable suspicion exists to require a covered employee to undergo drug or alcohol testing will receive training on the physical, behavioral, speech, and performance indicators of probable drug and alcohol misuse. In accordance with FHWA regulations, these training sessions will entail at least 60 minutes of training on indicators of probable alcohol misuse, and at least an additional 60 minutes of training concerning the indicators of probable drug use.

In addition to the supervisory training sessions, training sessions have been held with all covered employees to explain Monterey's drug and alcohol testing policies and procedures, provide training and information on the dangers of drug use or alcohol misuse, identification of drugs, the administration of Monterey's policies concerning drug and alcohol's, and the methods of gaining assistance through Monterey's Employee Assistance Program or other substance abuse counseling. In these sessions, Monterey also urges its employees who might have a problem, or know of an employee with a problem, to seek help or to encourage that individual to seek help.

Monterey will comply with the employee notification requirements of FHWA drug and alcohol programs. Specifically, Monterey will provide covered employees with educational materials (and conduct employee training) that explains the requirements of the FHWA regulations and Monterey's drug and alcohol testing policies and procedures which are intended to meet those requirements. The materials, which will be distributed to all employees covered by this policy prior to the implementation of drug and alcohol testing under this policy, will include a detailed discussion of the terms and provisions of this policy including, but not limited to, those provisions required by FHWA regulations (49 C.F.R. & 382.601), such as: (1) sufficient information about the safety-sensitive functions performed by the covered employees to make it clear what period of the work day the employee is required to be in compliance with this policy; (2) specific information on what conduct is prohibited by this policy; (3) the circumstances under which covered employees will be tested for alcohol or drugs under this policy; (4) the testing procedures that will be used for drug and alcohol tests; (5) the requirement that employees must submit to drug or alcohol tests required by FHWA; (6) an explanation of what constitutes refusal to submit to a drug or alcohol test and the consequences of refusing to submit, as well as the consequences for covered employees found to have violated this policy; and (7) information concerning the effects of alcohol misuse and drug abuse, signs, and symptoms of alcohol or drug misuse, intervention methods, substance abuse counseling and methods of referral.

#### **F. SUBSTANCE ABUSE COUNSELING (Employee Assistance Program)**

Monterey has implemented an Employee Assistance Program ("EAP"). The EAP has been designed to assist employees in addressing and resolving many types of problems or crises, including drug and alcohol-related problems. An important part of Monterey's EAP is its community service "Hot-Line" telephone number 615-839-2323, which is available to employees on a twenty-four hour basis.

Further information concerning Monterey's EAP and other approved substance abuse counseling has been included in the training sessions conducted with manager, supervisors, and employees, and can be found on posters located on bulletin boards throughout city hall. Brochures are also available from the personnel director on a continuing basis that describe the various counseling programs and services available to employees in the local area, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs approved by Monterey. Employees may receive confidential counseling assistance by directly contacting any of these resources, or an employee may place a confidential call to the personnel director for assistance in getting an appointment or for additional information.

Monterey strongly encourages employees using illegal drugs or misusing alcohol to voluntarily refer themselves to a counseling and/or rehabilitation program. Costs of counseling or rehabilitation may be covered under Monterey's group health insurance plan, subject to the eligibility requirements, limitations, and conditions of the plan. **All costs of counseling and rehabilitation, whether incurred as a result of a voluntary or mandatory referral (as defined below), that are not paid or covered by Monterey's group health insurance plan will be the responsibility of the employee.**

1. **Voluntary Referral:** A voluntary referral is defined as an employee who seeks substance abuse counseling that is not disciplinary in nature. All information is confidential without the written consent of the employee. Employees are not subject to disciplinary action for voluntary referral to a substance abuse professional, even though the reason may involve alcohol or drug dependency, as long as the employee has not otherwise been found in violation of this policy.

**Covered employees who voluntarily refer themselves to substance abuse counseling and who are, in turn, referred for alcohol or drug rehabilitation treatment, and who release or otherwise disclose that information to Monterey, will be monitored by the Mayor. The purpose of this monitoring is to help ensure that the employee continues to follow the treatment recommendations of the substance abuse professionals. Where the employee fails to follow treatment requirements, Monterey reserves the right to mandatorily refer such an employee to a substance abuse professional where the employee's position and condition raise safety concerns.**

1. **Mandatory Referral:** mandatory referral is defined as a directive from Monterey to an employee to seek substance abuse counseling when work performance or the ability to safely perform in a covered position has been affected by alcohol or prohibited drugs or the employee has otherwise violated this policy. An employee who fails either an alcohol or drug test, and who is not terminated, will be mandatorily referred to a substance abuse professional. In the case of a mandatory referral, substance abuse counseling is not confidential, and the employee will be required to sign a release authorizing the substance abuse professional to furnish Monterey with appropriate information.

If a covered employee is assessed by a substance abuse professional to need drug or alcohol abuse rehabilitation, the referral to rehabilitation will not be confidential. The employee must report to the Mayor for approval of entry into

the appropriate rehabilitation facility. Release of information will be requested by the facility enabling an information exchange between Monterey and the treatment center regarding the employee's diagnosis, recommended program, cooperation, progress, etc.

Disciplinary action related to the actions necessitating the mandatory referral to a substance abuse professional may occur prior to, during, or following the mandatory referral. Employees returning to work following a mandatory referral to a substance abuse professional and/or rehabilitation will be subject to a Return-to-Work agreement to help ensure the employee continues to follow the treatment recommendations of the substance abuse professional. Failure of the employee to comply with and complete the recommended treatment plan outlined by the rehabilitation facility or substance abuse professional will lead to disciplinary action up to and including termination.

An employee who is approved to enter a rehabilitation program, whether on a voluntary or mandatory referral basis, will be allowed to use any sick leave, vacation, or personal holidays to that employee's credit which the employee had accrued at the time of entering the program. If no paid days are available, the employee will be approved for absence without pay, as long as the employee is continuing in the rehabilitation program. The time spent in the rehabilitation program will count towards the employee's entitlement under the Family Medical Leave Act ("FMLA").

3. **Referral, Evaluation and Treatment:** Any covered employee who has engaged in conduct prohibited by this policy will be advised of the resources available to him or her for evaluating and resolving problems associated with the misuse of drugs or alcohol, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs approved by Monterey.

Where the employee is not terminated for violating this policy, Monterey will mandatorily refer the employee to an approved substance abuse professional who will determine what assistance, if any, the employee needs in resolving problems associated with the misuse of drugs or alcohol. (See Mandatory Referral, above). Before an employee will be returned to a covered position, the substance abuse professional must certify that the employee has properly followed any rehabilitation program prescribed by that professional.

**Nothing contained herein should be construed as restricting Monterey's right to terminate a covered employee for violating Monterey's General Drug and Alcohol Abuse Policy.**

## G. TESTING PROCEDURES AND METHODOLOGY

Monterey will conduct drug and alcohol testing under this policy in accordance with the procedures set forth in Part 40, Subpart C. Monterey has implemented the Part 40 procedures in a separate document entitled, “Monterey’s Drug and Alcohol Testing Procedures” (hereinafter sometimes called the “Procedures”), which is hereby referenced and made a part of this policy the same as if it had been fully rewritten herein. A copy of the Procedures is available to any employee (or applicant) upon request directed to the Mayor. A summary of the procedures is as follows:

1. **Drug Testing Procedures:** Drug testing under this policy will involve the screening of urine samples for the prohibited drugs. The initial test performed on the urine sample will be an enzyme-multiplied-immunoassay technique (“EMIT”) screen which will be used to eliminate negative urine specimens from further consideration. All specimens identified as positive through the EMIT screen will be confirmed by using gas chromatography/mass spectrometry (“GC/MS”) techniques at the Cutoff levels set forth in the Procedures.

The collection of urine samples for drug testing under this policy will occur at city hall, which is designated as the primary drug testing site, or at other collection sites designated by the Mayor at his or her discretion. A designated collection site will be any suitable location where a urine specimen can be collected under conditions set forth in the Procedures, including properly equipped mobile facilities.

Personnel trained in the process of collecting the urine samples and seeing that correct chain of custody procedures are followed will be available at the collection site. Monterey, or any subsequent contractor performing Monterey’s urine specimen collection, shall have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping of urine specimens to a certified drug testing laboratory designated by Monterey. These personnel shall follow Monterey’s Drug and Alcohol Testing Procedures to ensure that the drug test results of the urine samples are attributable to the correct employee and to preserve the integrity of the testing process and validity of the test results.

National Psychopharmacology Laboratory, Inc. (“NPL”), 9320 Park West Boulevard, Knoxville, Tennessee, a DHHS-certified

laboratory, has been selected by Monterey to perform the testing of urine samples collected under this policy. The laboratory shall provide services in accordance with Part 40, 199 and 382. In the event that a need arises for a confirmation of a positive result by another laboratory, or for the purpose of analyzing split sample specimens, another DHHS-certified laboratory will be selected from the published list of DHHS-approved laboratories in the Federal Registry or latest DOT publication.

The results of the drug test performed by the laboratory will be forwarded to Monterey's designated medical review officer ("MRO") who, among other things, is responsible for reviewing the results of the drug test before they are reported to Monterey. Verified results of the drug test will be communicated by the MRO to the Mayor. A verified positive test result communicated to Monterey will result in the employee being immediately removed from performing any covered functions. Disciplinary action will be imposed pursuant to and in accordance with Monterey's General Drug and Alcohol Abuse Policy and will involve discipline up to and including termination. Further details concerning the MRO's responsibilities, the communication of the results of drug tests to Monterey, and the ability of an employee to request that a retest of the split specimen by a different laboratory be conducted, are set forth in this policy and Monterey's Drug and Alcohol Testing Procedures.

2. **Alcohol Testing Procedures:** Alcohol testing will be conducted using evidential breath testing ("EBT") devices which have been approved by the National Highway Traffic Safety Administration ("NHTSA"), and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices." Alcohol testing may be conducted by either Monterey or its authorized agents, who will use an EBT device capable of printing out the results, date and time, sequential test number, and the name and serial number of the EBT to ensure reliability of the results. The locations for testing will afford sufficient privacy to the individual being tested to prevent unauthorized persons from seeing or hearing test results. Monterey (or its agents) may utilize mobile collection facilities which meet the DOT privacy requirements.

An initial or screening test will be performed by a qualified BAT utilizing an EBT. Any screening test result with an alcohol concentration less than 0.02 is considered a negative test result, and no further action will be taken. However, if the alcohol

concentration in the screening test is 0.02 or greater, a second or confirmation test will be conducted after a 15-minute waiting period.

The confirmation test may be conducted on the same EBT or different EBT by the BAT, but it must be performed no sooner than 15 minutes and no later than 30 minutes after the screening test. The confirmation test result is deemed to be the final result upon which any action will be taken under this policy. The employee and BAT will complete and sign the alcohol testing form in accordance with Monterey's Drug and Alcohol Testing Procedures, and the BAT will report the test results to the Mayor.

A confirmation test result with an alcohol concentration of 0.04 is considered a positive test, and the employee will be immediately removed from performing any covered functions. Where a covered employee is found to have an alcohol concentration of 0.02 or greater, but less than 0.04, the employee will not be allowed to perform or continue to perform covered functions until the start of the next regularly-scheduled shift, but in any event not less than 24 hours following the administration of the confirmation test. Any disciplinary action taken for a violation of this policy will be imposed pursuant to and in accordance with Monterey's General Drug and Alcohol Abuse Policy and not DOT regulations or this policy. Disciplinary action in accordance with Monterey's General Drug and Alcohol Abuse Policy may involve discipline up to and including termination.

## **H. PRE-EMPLOYMENT DRUG TESTING**

In accordance with FHWA regulations, a pre-employment drug test is required before an applicant is employed in a covered position or an employee transfers or is promoted from a non-covered to a covered position. Urine specimens will be screened for the prohibited drugs as defined in this policy. Procedures for taking urine samples and handling of the specimens will be in accordance with Monterey's Drug and Alcohol Testing Procedures.

Applicants for a covered position (or employees transferred/promoted to a covered position) will be given a summary of this policy and will be advised where the entire policy and testing procedures can be reviewed if they so request. Individuals subject to pre-employment drug testing under this policy will acknowledge having read or had this policy explained to them and should understand that they are subject to its contents as a condition of employment.



A negative test result is required before employment or transfer/promotion into the covered position. Applicants who test positive on the drug test or who refuse to take the test will not be hired and will not be eligible to be considered for employment at Monterey until the applicant shows proof of successful completion of a drug rehabilitation program. **Employees transferring or being promoted to a covered position who test positive in the drug test will be in violation of Monterey's General Drug and Alcohol Abuse Policy and will be subject to disciplinary action up to and including termination.**

In addition to pre-employment testing, covered employees who have a CDL at the time of employment will be required to sign consent forms authorizing previous employers to release to Monterey information within the proceeding two years concerning (I) any positive alcohol test (0.04 or above) for the employee; (ii) any positive drug test for the employee; and (iii) any refusals by the employee to be tested. If it is not feasible for Monterey to obtain and review this information prior to the time the employee begins to perform safety-sensitive functions, such information must be obtained and reviewed by Monterey within 14 calendar days after the employee first performs safety-sensitive functions. Monterey will not permit a CDL employee to perform safety-sensitive functions after 14 days without first obtaining and reviewing the required information.

The above information may be obtained by Monterey from previous employers either orally or in writing. Monterey will maintain a written, confidential report with respect to each employer contacted and will ensure the confidentiality of the information provided by the previous employers. Monterey will not permit a CDL employee to perform safety-sensitive functions who has either previously tested positive for alcohol, tested positive for drugs, or refused to be tested, unless and until Monterey obtains (i) information that the employee has subsequently tested negative on a return-to-duty test; and (ii) records pertaining to a subsequent determination by a substance abuse professional concerning the employee's need for assistance and compliance with recommendations of the substance abuse professional. If Monterey is unable to obtain the required information on such an employee, the employee may be terminated.

## **I. RANDOM DRUG AND ALCOHOL TESTING**

In accordance with FHWA regulations, all covered employees will be subject to random drug and alcohol testing. Beginning upon the effective date of this policy, covered employees will be tested for prohibited drugs at a rate equal to 50% of those employees employed as of the first day of the calendar year. Covered employees will also be tested for alcohol misuse as specified in this policy at a rate equal to 25% of the covered employees employed as of the first day of the calendar year. These testing rates are subject to change at the

beginning of each calendar year pursuant to FHWA regulations. Monterey will advise covered employees of any change in the random rate before such change is implemented.

The frequency of testing dates will vary, and testing will be reasonably spread throughout the year. The process will be unannounced as well as random, and employees will be notified that they have been selected for testing only after they have reported for duty on the day of testing.

The testing will be done using a random selection of dates coupled with a random number table or computer-based random number generator that is matched with an employee's social security number or other appropriate identification number. Monterey reserves the right to create multiple pools of covered employees provided that it will ensure that all covered employees are subject to the appropriate alcohol testing rate of 25% and drug testing rate of 50%. All testing will be conducted in accordance with Monterey's Drug and Alcohol Testing Procedures.

Since covered employees are subject to both random drug and alcohol testing, Monterey reserves the right to conduct random drug and alcohol testing simultaneously, provided that the covered employees, who are tested simultaneously for drug and alcohol misuse, are selected at the appropriate annual rate for drugs and alcohol, respectively. For example, where the annual drug testing rate is 50% and the annual alcohol testing rate is 25%, Monterey reserves the right to create a pool of covered employees and will randomly select one-half of the employees identified for both drug and alcohol testing, while the remaining one-half will be drug tested only.

An employee who refuses to take a random alcohol or drug test will be in violation of this policy and will be immediately removed from his or her covered position. Refusal to take the test is a violation of Monterey's General Drug and Alcohol Abuse Policy and will subject the employee to immediate termination under that policy. Any covered employee who fails an alcohol or drug test will be immediately removed from a covered position and will be in violation of Monterey's General Drug and Alcohol Abuse Policy which provides that failing an alcohol and/or drug test will result in disciplinary action up to and including termination. If the employee is not terminated, the employee is subject to the provisions of Section VI, Substance Abuse Counseling, and the provisions of Section XII, Return-to-Duty and Follow-Up Testing.

## **J. REASONABLE SUSPICION TESTING**

FHWA regulations require testing of covered employees upon reasonable cause or suspicion that the employee is using prohibited drugs or misusing alcohol.

Whenever Monterey reasonably suspects that a covered employee has violated the provisions of this policy, Monterey will require the employee to submit to either an alcohol or drug test or both. Test administered based on reasonable suspicion will be conducted in accordance with this policy and Monterey's Drug and Alcohol Testing Procedures.

Monterey's determination that reasonable suspicion exists will be based on specific and contemporaneous observations concerning the appearance, behavior, speech, or body odors of the employee, indicating that the employee is in violation of this policy. Reasonable cause sufficient to justify either or both an alcohol or drug test may be based on, but is not limited to, direct observation by a supervisor of symptoms of alcohol or drug use such as slurred speech, unsteady walk, impaired coordination, displays of violent behavior, argumentative, improperly talkative, loud or uncontrolled laughter; information provided by reliable and credible sources; job performance; behaviors over a period of time; or similar conduct or appearance indicative of alcohol or drug use. In determining reasonable suspicion, a supervisor can consider job performance over a period of time or continued deterioration of job performance if that has resulted in a pattern of events identifiable with alcohol or drug misuse, or information provided by a reliable or credible source, but the decision to test must be grounded in the supervisor's contemporaneous observations. In addition, the occurrence of a serious or potentially serious incident or accident that may have been caused by human error, or flagrant violations of established safety, security, or other operational procedures can constitute grounds for testing under this section.

The determination to administer either or both a drug or alcohol test based on reasonable suspicion must be made by a least two supervisors, one of whom is trained in the detection of possible symptoms of drug or alcohol use. Both supervisors must substantiate and concur in the decision to test. The observations giving rise to the decision to administer a drug and/or alcohol test must be made during, just preceding, or just following the period of the workday that the covered employee is required to be in compliance with this policy.

(NOTE: If the alcohol test is not administered within two hours following the reasonable suspicion determination, Monterey will prepare a written record stating the reasons why the test was not promptly administered. If the test is not administered within eight hours following the reasonable suspicion determination, Monterey will cease attempts to administer the test and will record, in writing, the reasons for not administering the test. If the reasonable suspicion test is not administered, Monterey will, nevertheless, not permit a covered employee to remain on duty in a covered position while the employee is under the influence of alcohol as shown by behavioral, speech, or performance indicators and will not allow an employee to perform in a covered position until

an alcohol test is administered and the employee's alcohol concentration measures less than 0.02 on the start of the employee's next shift but, in any event, not less than twenty-four hours following the reasonable suspicion determination.)

The concurrence of the two supervisors may be by telephone, by discussions a few hours later, or by having another supervisor travel to the job site, and within 24 hours of the reasonable suspicion determination, the supervisors will document the covered employee's conduct, in writing, which led to their determination to conduct a reasonable suspicion drug test. The requirement of having two supervisors observe the conduct can be reduced to one supervisor when it is not feasible for two supervisors to witness the conduct. In that event, the supervisor witnessing the conduct must have received training in the identification of actions, appearance, or conduct of an employee indicative of the use of a prohibited drug or alcohol. Once it is determined that an employee should be subjected to a reasonable suspicion test, one of the verifying supervisors shall contact the Mayor to coordinate the testing and to obtain any necessary instructions.

Any covered employee who refuses to take a reasonable suspicion drug or alcohol test will be in violation of this policy and will be immediately removed from his or her safety-sensitive position. Refusal to take a test is a violation of Monterey's General Drug and Alcohol Abuse Policy and will subject the employee to immediate termination under that policy. An employee who agrees to be tested will be transported to and from the collection test site. Where a reasonable suspicion drug test is administered or administered in addition to a reasonable suspicion alcohol test, the employee will be removed from covered activities pending receipt of the drug test results even if the employee passes the alcohol test.

If an employee is subjected to a reasonable suspicion drug test, or fails a reasonable suspicion alcohol test, the employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the reasonable belief that he or she may be under the influence or a prohibited drug or due to the positive alcohol test result. If an employee who has failed a reasonable suspicion alcohol test insists on driving, the proper local enforcement authorities should be notified that an employee whom Monterey believes to be under the influence of alcohol is leaving Monterey premises driving a motor vehicle.

An employee who tests positive on a reasonable suspicion test will be in violation of this policy and Monterey's General Drug and Alcohol Abuse Policy. Violation Monterey's General Drug and Alcohol Abuse Policy subjects the employee to disciplinary action, up to and including termination. If the

employee is not terminated, the employee is subject to the provisions of Section VI, Substance Abuse Counseling, and the provisions of Section XII, Return-to-Duty and Follow-Up Testing.

## **K. POST-ACCIDENT DRUG AND ALCOHOL TESTING**

Monterey will conduct post-accident drug and alcohol testing under this policy only for those accidents where a CDL employee driving a Monterey commercial motor vehicle is involved in an accident where there is the loss of human life or where the employee receives a citation for a moving traffic violation arising from the accident. Post-accident drug and alcohol tests will be conducted in accordance with Monterey's Drug and Alcohol Testing Procedures. **Accidents which do not meet the definition of this policy, but which involve Monterey employees, may require post-accident drug and alcohol testing under Monterey's General Drug and Alcohol Abuse Policy. Covered employees will be advised whether they are being tested under this policy or under Monterey's General Drug and Alcohol Abuse Policy.**

A covered employee may not consume any alcohol for eight (8) hours following the accident or until an alcohol test has been conducted. A covered employee subject to post-accident testing under this policy who fails to remain readily available for testing may be deemed by Monterey to have refused to submit to the required testing. But, nothing herein is intended to require the delay of necessary medical attention for injured people or prohibit a covered employee from leaving the scene of the accident for the period necessary to obtain assistance or necessary emergency medical care.

If an alcohol test is not administered within two (2) hours following the accident, Monterey will prepare written records stating the reasons why the test was not properly administered. If the test is not administered within eight (8) hours following the accident, Monterey will cease attempts to administer an alcohol test and will prepare a written record for the reasons for not administering the test. If a drug test is not administered within thirty-two (32) hours following the accident, Monterey will cease attempts to administer the test and will prepare a written record for the reasons for not administering the test.

If a covered employee refuses to submit to post-accident testing, the employee will be immediately removed from the covered position. Under Monterey's General Drug and Alcohol Abuse Policy, the employee will be charged with insubordination and subject to immediate termination. If an employee agrees to be tested, he or she will be transported to and from the collection test site. Any employees selected for post-accident testing under this policy will not be allowed to proceed alone to or form the collection test site. Because a post-accident drug test will be administered in addition to an alcohol test, the

employee, after returning from the collection site, will not be allowed to perform covered functions pending the results of the drug test even if the result of the alcohol test is negative.

If an employee fails the alcohol test, the employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the positive alcohol test. If the employee who has failed the alcohol test insists on driving, the proper local law enforcement authorities should be notified that an employee, whom Monterey believes to be under the influence of alcohol, is leaving Monterey premises driving a motor vehicle.

An employee who tests positive on a post-accident alcohol or drug test will be removed immediately from his or her covered position. The employee will be in violation of Monterey's General Drug and Alcohol Abuse Policy, which provides that failing an alcohol or drug test subjects the employee to disciplinary action, up to and including termination. If the employee is not terminated, the employee is subject to the provisions of Section VI, Substance Abuse Counseling, and the provisions of Section XII, Return-to-Duty and Follow-Up Procedures.

#### **L. RETURN-TO-DUTY AND FOLLOW-UP TESTING**

Any covered employee who has either refused to take or has failed a drug or alcohol test, but who has not been terminated, must pass a return-to-duty drug and/or alcohol test administered under this policy before the employee will be allowed to return to work in a covered position. The alcohol or drug test administered for return-for-duty testing will be conducted in accordance with Monterey's Drug and Alcohol Testing Procedures.

Covered employees, who have engaged in conduct prohibited by this policy concerning alcohol, shall undergo a return-to-duty alcohol test immediately before returning to work, and the covered employee must have a test result indicating an alcohol concentration of less than 0.02 before returning to duty. Covered employees, who have engaged in conduct prohibited by this policy concerning prohibited drugs, shall undergo a return-to-duty drug test with the result indicating a verified negative test result before returning to duty.

In addition, if as a result of a mandatory referral under this policy, a substance abuse professional makes a determination that some form of further evaluation and/or treatment is required, then the covered employee must comply with the recommendations to be considered eligible to return-to-duty. Following a determination by a substance abuse professional approved by Monterey that a covered employee, who has failed a drug or alcohol test, is in need of assistance in resolving problems associated with alcohol or drug abuse, a covered employee returning to duty will be subject to unannounced follow-up alcohol and/or drug testing as recommended by that substance abuse professional.

The follow-up testing may include testing for both drugs and alcohol, as directed and determined by the substance abuse professional. Follow-up testing may be continued for up to 60 months, but it will consist of at least six tests in the first twelve months following the employee's return-to-duty. The duration and extent of the follow-up testing will be determined by Monterey, in consultation with the substance abuse professional or MRO, and will be based on the extent of the employee's substance abuse problem and nature of the employee's position. All follow-up drug and alcohol testing will be conducted in accordance with Monterey's Drug and Alcohol Testing Procedures.

A covered employee will be required to sign a Return-to-Work agreement before returning to work, which will include, among other things, any follow-up testing and other conditions pertinent to that employee's continued employment with Monterey. If a covered employee refuses to submit to return-to-duty or follow-up testing, the employee will not thereafter be used in a position covered by this policy and will be subject to immediate discharge for insubordination as set forth in Monterey's General Drug and Alcohol Abuse Policy. Likewise, any covered employee who has a confirmed positive test result for a return-to-duty or follow-up test will not thereafter be used in a position covered by this policy and will be subject to immediate termination under Monterey's General Drug and Alcohol Abuse Policy.

**Return-to-duty and follow-up testing are not options under this policy if Monterey terminates an employee who has tested positive or has refused to submit to a test.**

#### **M. USE OF PERSONS WHO FAIL A DRUG OR ALCOHOL TEST OR WHO REFUSE TO TEST**

Compliance with this policy and Monterey's General Drug and Alcohol Abuse Policy is a condition of employment. Refusal of a covered employee to take a drug or alcohol test or failing a drug or alcohol test will result in removal from a covered position under this policy. Refusing to take or failing to take a drug or alcohol test are violations of Monterey's General Drug and Alcohol Abuse Policy and subjects the employee to disciplinary action under that policy.

Before a covered employee can be returned to duty requiring the performance of covered functions, the employee must pass a return-to-duty test and be evaluated by a substance abuse professional who will certify that the employee has properly followed any rehabilitation program prescribed by that professional. Nothing herein entitles an employee to be returned to duty if the employee is terminated under Monterey's General Drug and Alcohol Abuse Policy.

Any employee who fails or refuses to take a second test required by this policy (i.e., either a return-to-duty or follow-up test after returning to duty) will not thereafter be used in a position covered by this policy and will be subject to immediate termination under Monterey's General Drug and Alcohol Abuse Policy.

#### **N. MEDICAL REVIEW OFFICER ("MRO")**

Monterey has designated Ted Richard Stalling, M.D., ParkMed West, 9330 Park West Boulevard, Suite 102, Knoxville, Tennessee 37923, as its Medical Review Officer.

The MRO will be responsible for reviewing the results of drug tests before the results are reported to Monterey; reviewing and interpreting each confirmed positive test to determine if there is an alternative medical explanation for the positive result; conducting an interview with the individual who has tested positive; reviewing the individual's medical history and all medical records made

available to him by the individual to determine if the positive result occurred from legally-prescribed medication; requiring a retest of the original specimen if the MRO deems it is necessary; verifying that the laboratory report and assessment are correct; determining when an employee who tested positive or refused to test can return-to-duty; determining an appropriate schedule of follow-up unannounced testing in accordance with the follow-up testing provisions; and ensuring that an employee has passed an appropriate return-to-duty drug test conducted in accordance with this policy and Monterey's Drug and Alcohol Testing Procedures before returning to work.

If the MRO determines that there is a legitimate medical explanation for the positive test result other than the use of a prohibited drug, the MRO will conclude that the test is negative and will report the test result to Monterey as negative. If the MRO concludes that a particular drug test is scientifically insufficient, the MRO will conclude that the test is negative for that individual. If the MRO determines that there is no legitimate explanation for the positive test result other than the use of a prohibited drug, the MRO will communicate the result of the verified positive test to the Mayor. It is the employee's responsibility to inform the MRO that prescription drug use may have affected the drug test result.

Because Monterey will utilize the split sample method of collection under this DOT Policy, a covered employee can request that the MRO direct the retest of a split specimen by a different DHHS-certified laboratory, and the MRO will abide by such a request, provided such a request is made within 72 hours of the employee having been notified of the verified positive result. The MRO is



responsible for informing the employee of his or her right to request the retest. If the retest does not confirm the original test, the MRO will cancel the test and report the reasons for the cancellation to the Mayor, DOT, and the employee.

Results of negative tests will be communicated by the MRO to the Mayor, who in turn will advise the appropriate manager as indicated by the employment status of the person tested. Further details concerning the MRO's responsibilities are set forth in Monterey's Drug and Alcohol Testing Procedures.

#### **O. RETENTION OF SAMPLES**

Urine samples that yield positive results and which have been confirmed by the MRO will be retained by the laboratory and properly secured (long term), frozen and stored for at least 365 days. Within this 365-day period, the employee, FHWA or state agencies within their jurisdiction, or Monterey may request in writing that the sample be retained for an additional period. The laboratory may discard the sample if no such request is received within the 365-day period.

#### **P. USE OF PRESCRIPTION DRUGS**

Monterey recognizes that use of prescription drugs under the supervision of appropriate health care professionals is protected under the Americans With Disabilities Act ("ADA"). However, legal use of certain prescription drugs by employees in covered positions may cause impairment and create dangerous situations in the work place. Employees required to take prescription drugs that may cause impairment must do so strictly in conformance with the limits prescribed by a licensed medical practitioner familiar with the employee's medical history and assigned duties. Failure to do so, e.g., by taking impairing drugs without a prescription, or in amounts greater or more frequently than that prescribed or otherwise in violation of the foregoing requirements, is conduct prohibited by Monterey's General Drug and Alcohol Abuse Policy and subjects the employee to disciplinary action, up to and including termination.

It is the responsibility of any employee who tests positive in a drug test to inform the MRO of any prescription or non-prescription drug use that may have affected the results of the drug test. The purpose of this disclosure will assist the MRO to determine whether such prescription or non-prescription drug use is the source of any positive test result.

Records of Monterey employee reports of prescription drugs in the possession of the MRO are recognized to be private and sensitive records. These records will be maintained by the MRO in a secure fashion to ensure confidentiality and will be disclosed to the Mayor only to the extent necessary to address any work-

related safety risks occasioned by the prescription drug use. The Mayor will maintain any such records in a secure fashion to ensure confidentiality.

#### **Q. RECORD RETENTION – CONFIDENTIALITY**

Records of Monterey's drug and alcohol abuse prevention and testing program are recognized to be private and sensitive records and will be maintained separate and apart from personnel records in a secure fashion to ensure confidentiality. These records will be handle on a strict "need to know" basis.

Monterey and the "MRO" will maintain records which comply with the requirements of FHWA regulations. In summary, records shall be maintained in accordance with the following schedule:

- (1) **Five Years** -- The following records shall be maintained for a minimum of five (5) years; (i) alcohol test results indicating an alcohol concentration of 0.02 or greater, or records of verified positive drug test results; (ii) equipment calibration documentation, and (iv) employee evaluation and referrals, and the annual report data.
- (2) **Two years** -- Records related to drug and alcohol testing collection process and training shall be maintained for a minimum of two (2) year.
- (3) **One Year** -- Records of negative and canceled drug and alcohol test results shall be maintained for a minimum of one (1) year.

Any of the records listed above may be maintained for an indefinite period of time beyond the above-specified minimums at Monterey's discretion.

Information regarding an individual's drug or alcohol use, including testing results and rehabilitation or treatment, will not be released by Monterey except upon written authorization by the covered employee or as hereinafter provided. Monterey will make the records available to a subsequent employer upon receipt of written request from the covered employee. Monterey may also disclose, regardless of consent, such information to proper representatives of FHWA and/or other federal or state agencies within their jurisdiction. Information regarding an individual's alcohol or drug use and testing information may also be disclosed regardless of consent to the decision-maker of a judicial or administrative tribunal in the event of a lawsuit, grievance, civil service, unemployment compensation, worker's compensation, or other proceeding brought by or on behalf of the covered employee arising from the results of a test or violation under this policy. Statistical data related to drug testing and rehabilitation -- without identifying the names of the individuals and with all

personal identifies removed -- will be made available to the proper representatives of FHWA and/or the Tennessee Public Service Commission upon request.

**R. REPORTING RESULTS TO FHWA**

As required by FHWA, Monterey will prepare and maintain an Annual Calendar Year Summary of the results of its drug and alcohol testing programs in the form required by FHWA. This Annual Calendar Year Summary will be completed by March 15, for the previous calendar year, and if Monterey is notified by FHWA to report this information, it will do so within the time and in the format requested.

**ATTACHMENT I**

**EMPLOYEE/SUPERVISORY POSITION  
SUBJECT TO DRUG AND ALCOHOL TESTING  
PURSUANT TO FHWA REGULATIONS  
(JOB POSITIONS/TITLES)**

**[NOTE: Positions required to maintain a CDL, e.g., operator of street cleaning equipment, garbage trucks weighing over 26,000 pounds.]**

## SECTION VIII - SEXUAL HARASSMENT

### A. PURPOSE

The municipality may be held liable for the actions of all employees with regard to sexual harassment and will not tolerate sexual harassment of its employees. The town will take immediate, positive steps to stop such harassment when it occurs. The town is responsible for acts of sexual harassment in the workplace when the town (or its agents or supervisory employees) knows or should have known of the conduct, unless it can be shown that the town took immediate and appropriate corrective action. The municipality may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the municipal government (or its agents or supervisory employees) knows or should have known of the conduct and failed to take immediate and appropriate corrective action.

This policy applies to all officers and employees of the town of Monterey including but not limited to full- and part-time employees, elected officials, permanent and temporary employees, employees covered or exempt from the personnel rules or regulations of the municipal government, and employees working under contract for the municipality. The following rules shall be strictly enforced.

### B. DEFINITIONS

The following actions constitute an unlawful employment practice and are absolutely prohibited by the municipal government when they affect employment decisions, create a hostile job environment, cause distractions, or unreasonably interfere with work performance. They are:

1. sexual harassment or unwelcome sexual advances;
2. requests for sexual favors;
3. verbal or physical conduct of a sexual nature in the form of pinching, grabbing, patting, or propositioning;
4. explicit or implied job threats or promises in return for submission to sexual favors;
5. inappropriate sex-oriented comments on appearance;
6. embarrassing sex-oriented stories;

7. displaying sexually explicit or pornographic material, no matter how the material is displayed; and/or
8. sexual assault on the job by supervisors, fellow employees, or, on occasion, non-employees.

Sexual harassment includes conduct directed by men toward women, conduct directed by men toward men, conduct directed by women toward men, and conduct directed by women toward women.

### **C. MAKING SEXUAL HARASSMENT COMPLAINTS**

An employee who feels he/she is subjected to sexual harassment should immediately contact a person (listed below) with whom the employee feels the most comfortable. Complaints may be made orally or in writing to:

1. the employee's immediate supervisor,
2. the employee's department head,
3. the personnel committee,
4. the Mayor,

Employees have the right to circumvent the employee chain-of-command when selecting the person to complain to about sexual harassment. The employee should be prepared to provide the following information:

1. his/her name, department, and position title;
2. the name of the person or people committing the sexual harassment, including their title(s), if known;
3. the specific nature of the sexual harassment, how long it has gone on, any employment action (demotion, failure to promote, dismissal, refusal to hire, transfer, etc.) taken against the employee as a result of the harassment, or any other threats made against the employee as a result of the harassment;
4. witnesses to the harassment; and
5. whether the employee has previously reported the harassment and, if so, when and to whom.

#### D. REPORTING AND INVESTIGATING SEXUAL HARASSMENT COMPLAINTS

##### Against an Employee, Including the Mayor:

The Mayor is the person the municipal government designates as the investigator of sexual harassment complaints against employees. In the event the sexual harassment complaint is against the Mayor, the investigator shall be a member of the city Board of Aldermen.

When an allegation of sexual harassment is made by any employee, the person to whom the complaint is made shall immediately:

- Obtain a written statement from the person complaining of sexual harassment which includes a comprehensive report of the nature of the sexual harassment complained of, and the times, dates, and places where the sexual harassment occurred. The investigator shall verbally question the person complaining of sexual harassment about any information in the written statement which is not clear or needs amplification.
- Obtain written statements from witnesses which include a comprehensive report of the nature of the conduct witnessed, and the times, dates, and places where the conduct occurred, and the conduct of the person complaining of sexual harassment toward the person against whom the complaint of sexual harassment was made. The investigator shall verbally question witnesses about any information in their written statements which is not clear or needs amplification.
- Obtain a written statement from the person against whom the complaint of sexual harassment has been made. The investigator shall verbally question the person against whom the complaint of sexual harassment has been made about any information in the written statement which is not clear or needs amplification.
- Prepare a report of the investigation, which includes the written statement of the person complaining of sexual harassment, the written statement of witnesses, the written statement of the person against whom the complaint of sexual harassment was made, and all the investigator's notes connected to the investigation, and submit the report to the city Board of Aldermen.

### Against an Elected Official

Complaints against an elected official shall be investigated by a city employee appointed by the city Board of Aldermen. The investigator shall investigate a complaint of sexual harassment against an elected official in the same manner as outlined in this policy for the investigation of complaints against city employees. However, upon the completion of the investigation, the investigator shall submit the report of his/her investigation to the city Board of Aldermen.

## **E. ACTION ON COMPLAINTS OF SEXUAL HARASSMENT**

### Against All Employees Except the Mayor

Upon receipt of a report of the investigation of a complaint of sexual harassment, the Mayor shall immediately review the report. If the Mayor determines that the report is not complete in some respect, he/she may question the person complaining of sexual harassment, the person against whom the complaint has been made, witnesses to the conduct in question, or any other person who may have knowledge about the harassment. However, if the Mayor feels the investigation report is adequate, he may make a determination of whether or not sexual harassment occurred, based on the report.

Based upon the report the Mayor shall, within a reasonable time, determine whether the conduct of the person against whom a complaint of sexual harassment has been made constitutes sexual harassment. In making that determination, the Mayor shall look at the record as a whole and at the totality of circumstances, including the nature of the conduct in question, the context in which the conduct, if any, occurred, and the conduct of the person complaining of sexual harassment. The determination of whether sexual harassment occurred will be made on a case-by-case basis.

If the Mayor determines that the harassment complaint is founded, he/she shall take immediate and appropriate disciplinary action against the employee guilty of sexual harassment, consistent with his authority under the municipal charter, ordinances, rules or regulations pertaining to employee discipline.

The disciplinary action shall be consistent with the nature and severity of the offense, the rank of the employee, and any other factors the Mayor believes relate to fair and efficient administration of the town, including but not limited to, the effect of the offense on employee morale, public perception of the offense, and the light in which it casts the town. The disciplinary action may include demotion, suspension, dismissal, warning, or reprimand. A determination of the level of disciplinary action shall also be made on a case-by-case basis.



A written record of disciplinary action taken shall be kept, including verbal reprimands.

In all events, an employee found guilty of sexual harassment shall be warned not to retaliate in any way against the person making the complaint, witnesses, or any other person connected with the investigation of the complaint of sexual harassment.

#### Against the Mayor

Upon receipt of a report on the investigation of a complaint of sexual harassment against the Mayor, the investigator shall present the report to the city Board of Aldermen. If the city Board of Aldermen determines that the complaint of sexual harassment is founded, it may discipline the Mayor consistent with its authority under the municipal charter, ordinances, resolutions or rules governing discipline of the Mayor.

#### Against an Elected Official

The city Board of Aldermen may discipline an elected official in whatever manner it deems appropriate, consistent with its authority under state law, the municipal charter, ordinances, resolutions or other rules governing discipline of elected officials.

#### Sexual Harassment Committed by Non-Employees

In cases of sexual harassment committed by a non-employee against a city employee in the work place, the Mayor shall take all lawful steps to insure that the sexual harassment is brought to an immediate end.

### F. OBLIGATION OF EMPLOYEES

Employees are not only encouraged to report instances of sexual harassment, they are **obligated** to report them. Sexual harassment exposes the city to liability, and a part of each employee's job is to reduce the city's exposure to liability.

Employees are obligated to cooperate in every investigation of sexual harassment, including, but not necessarily limited to, coming forward with evidence, both favorable and unfavorable, to a person accused of sexual harassment, fully and truthfully making a written report or verbally answering questions when required to do so by an investigator during the course of an investigation of sexual harassment.

Employees are also obligated to refrain from filing bad faith complaints of sexual harassment.

Disciplinary action may be taken against employees who fail to report instances of sexual harassment, or who fails or refuses to cooperate in the investigation of a complaint of sexual harassment, or who files a complaint of sexual harassment in bad faith.

## **G. OPEN RECORDS**

The Tennessee Open Records Law of Tennessee Code Annotated, section 10-7-503 through 10-7-506 probably applies to the records in sexual harassment cases, as it does to virtually all other municipal records. In other words, complaints and reports of sexual harassment, including the investigative report, probably cannot be kept confidential, perhaps not even during the investigation. However, the value of written records in sexual harassment cases, as in most other cases where an investigation occurs from which disciplinary action against an employee might arise, requires that a written record of the investigation be kept to help insure justice and efficient municipal administration.

## **SECTION IX - MISCELLANEOUS POLICIES**

### **A. POLITICAL ACTIVITY**

Municipal government employees, with the exception of police officers when they are out of uniform and off duty, are prohibited from participating in the following political activities:

1. **Elections for Municipal and County Offices** - No city employee:
  - a. become a candidate or campaign for an elective municipal government office in Monterey.
  - b. any time off from work, used by the employee for participation in political activities, shall be limited to earned days off, vacation days, or by any other arrangements worked out between the employee and the Monterey Board of Mayor and Aldermen.

### **B. TRAVEL EXPENSE POLICY**

No trips that involve reimbursement and/or municipal government expense shall be undertaken without prior approval of the Mayor. Authorized travelers shall be reimbursed according to the state travel regulation rates. **For details**

**regarding travel, see a copy of the municipal government's travel policy in the City Hall office).**

**C. USE OF CITY VEHICLES AND EQUIPMENT**

All city vehicles and equipment are for official use only. No other person other than a city employee may operate a city vehicle or piece of machinery. Drivers and/or operators must have a valid Tennessee driver's license and be approved by the department head or Mayor.

**D. DRIVING RECORDS**

Any employee who is required as an employment condition to possess and maintain a valid Tennessee driver's or commercial driver's license must **immediately**, before reporting for duty the next workday, inform his/her supervisor should his/her license become denied, expired, restricted, suspended, or revoked any time during employment with the town. Periodic review of employees' driving records will be conducted by the department head to assure adherence to this policy.

**E. FIGHTING, HORSEPLAY, DAMAGING MUNICIPAL GOVERNMENT PROPERTY**

Fighting, horseplay, and intentionally defacing or damaging city property are not permitted. Employees engaging in these activities will be subject disciplinary action, which could include discharge.

**F. ACCEPTING GRATUITIES**

No employee shall accept any money, other considerations, or favors from anyone other than the town for performing an act that he/she would be required or expected to perform in the regular course of his/her duties. No employee shall accept, directly or indirectly, any gift, gratuity, or favor of any kind that might reasonably be interpreted as an attempt to influence his/her actions with respect to the town business.

**G. BUSINESS INTEREST**

No department head or supervisor shall have any financial interest in the profits of any contract, service, or other work performed by the town. No department head or supervisor shall personally profit directly or indirectly from any contract, purchase, sale, or service between the town and any person or company. No department head or supervisor shall personally, or as an agent, provide any surety, bail, or bond required by law or subject to approval by the Mayor.

No town employee shall enter into a contract with the town or perform any work or function under any contract with the town if he/she has a direct or indirect financial interest in the contract, unless:

1. the contract is awarded through a process that complies with the town's purchasing requirements; or
2. the town Board of Aldermen waives this section's requirements after making a formal finding that it is in the best financial interest of the town to do so after full disclosure on the part of the town employee of his/her direct or indirect financial interest in the contract, and the Mayor's finding and waiver and the employee's full financial disclosure are recorded on the minutes of the town Board of Aldermen in open session.

#### **H. PERSONNEL RECORDS**

Personnel records for each employee are kept on file and maintained by the personnel committee and/or office manager. Any change of address, telephone number, marital status, draft status, beneficiaries, number of dependents, or completed education/training should be turned in to the supervisor for transmittal to the personnel section.

The office manager also maintains the life insurance, vacation, pension and retirement, health insurance, and sick leave records for each employee. The personnel section will advise employees through their supervisor of their eligibility so that they may take full advantage of all the benefits available. All medical records shall be kept in a separate confidential file for each employee.

It is the responsibility of each employee to update personnel information in his/her personnel file by notifying the office manager of any information changes. The town shall not be held liable when incorrect withholding, wrong beneficiaries, or loss of employee benefits result from the failure of any employee to keep personnel records current.

#### **I. COLLECTION, RETENTION, AND USE OF PERSONAL INFORMATION**

The town will strictly follow the requirements of equal employment opportunity laws regarding information collection concerning race, color, national origin, gender, religion, age, and disabilities. With these restrictions in mind, the town will gather such information about job applicants or employees as determined by the Mayor.

The following basic principles will be applied in collecting and retaining personal information:

1. Office Manager will maintain a complete (master) file of each employee's records, which will contain necessary information, as determined by the Mayor.
2. Payroll data will be kept separately from the human resources file and the departmental file, although both may include information about an employee's salary history.
4. Supervisors may keep separate files on their subordinates. Only information regarding employee performance may be kept in these files. A supervisor's files should be transferred to the human resources file when an employee leaves the town.
5. Employee information will be collected from employees whenever possible, but the town may use outside sources for other information.

#### **J. DISCLOSURE OF EMPLOYEE RECORDS AND INFORMATION**

Any request for information from an employee's personnel file must be immediately referred to the personnel committee and/or the office manager. Only the personnel committee is authorized to disclose information about employees to outside inquirers. The personnel committee will cooperate with requests from the following outside inquirers:

1. properly identified and duly authorized law enforcement officials when investigating allegations of illegal conduct by employees; and
2. legally issued summonses or judicial orders, including subpoenas and search warrants.

The personnel committee will restrict disclosing personnel information to prospective employers as much as possible. In most cases, such disclosures will be limited to information about the dates of employment, title or position, job location, and salary.

### **SECTION X - SEPARATIONS AND DISCIPLINARY ACTIONS**

#### **A. TYPES OF SEPARATIONS**

All separations of employees from positions with the municipal government shall be designated as one of the following types and shall be accomplished in

the manner indicated: resignation, layoff, disability, death, retirement, and dismissal. At the time of separation and prior to final payment, all records, assets, and other town property in the employee's custody must be transferred to the department. Any amount due because of shortages shall be withheld from the employee's final compensation.

#### **B. RESIGNATION**

In the event an employee decides to leave the municipal government's employ, a two-week notice shall be given to his/her supervisor so that arrangements for a replacement can be made. In such a case, employees will be expected to return any/or all municipal government equipment assigned. An unauthorized absence from work for a period of three consecutive working days may be considered by the department head as a resignation.

If a former employee returns to municipal government employment, his/her status of seniority, pay, leave, etc., will be the same as any new employee beginning work for the first time.

#### **C. LAYOFF**

The department head, upon approval from the town Board of Aldermen, may lay off an employee in municipal government service when he/she deems it necessary by reason of a shortage of funds, abolishing a position, other material changes in the duties or organization of the employee's position, or related reasons that are outside the employer's control and that do not reflect discredit upon the employee's service.

The duties performed by a laid-off employee may be assigned to other town employees who hold positions in the appropriate class. Temporary employees shall be laid off before probationary or regular employees. The layoff shall be in reverse order to total continuous time served upon the date established for the layoff to become effective.

A laid-off employee who is reinstated as a town employee within 90 days from the date he/she was laid off shall be reinstated with full benefits as if he/she had not been laid off.

#### **D. DISABILITY**

An employee may be separated for disability when he/she cannot perform the essential functions of the job because of a physical or mental impairment that cannot be accommodated without undue hardship or that poses a direct threat to the health and safety of others. Reasonable accommodations will include

transfer to a comparable position for which the individual is qualified. Action may be initiated by the employee or the municipality, but in all cases it must be supported by medical evidence acceptable to the Mayor, and the disability must prevent the employee from performing the essential functions of the job. The municipal government may require an examination at its expense to be performed by a licensed physician of its choice.

## **E. RETIREMENT**

### **TENNESSEE CONSOLIDATED RETIREMENT SYSTEM (TCRS) POLICY**

Eligibility of retirement:

1. Group 1 - Any member shall be eligible for service retirement upon reaching age 60 or completing 30 years of creditable service;

### **MANDATORY RETIREMENT**

There shall not be a mandatory age requirement for any member in service as a general employee - provided they can still perform their duties in a satisfactory manner.

### **ORDINARY DISABILITY RETIREMENT**

Any member eligible for a disability retirement may set the effective date within 150 days before or after the member's application is filed. The number of creditable service years that a member shall have completed in order to be eligible for ordinary disability retirement shall be:

1. five years for a member in Group 1.

### **ACCIDENTAL DISABILITY RETIREMENT**

Upon the application of a member in Group 1 or 2, any such member who has been disabled as the natural and proximate result of an accident or as the direct result of physical violence against the member's own person occurring while the member was in the actual performance of duty at some definite time and place, without negligence on the member's part, may be retired by the board.

Any member who is approved for an accidental disability retirement allowance to begin at 50 percent of the member's average final compensation shall be required, as a condition of continued receipt of such, to provide adequate documentation to the retirement system within 30 days that the member has made application for Social Security disability benefits.

## **RE-EMPLOYMENT AFTER RETIREMENT**

Any retired member may return to service in a position covered by the TCRS and continue to draw such person's retirement allowance.

Any person retired under TCRS based upon service as a municipal police officer or municipal firefighter may return to service as a police officer or firefighter with a different municipality and continue to draw retirement benefits that are based entirely upon service with the municipality if the following conditions are met:

1. the population of the municipality from which the person retired is greater than the population of the employing municipality;
2. the annual earnable compensation received from the employing municipality is less than the average final compensation used by the retirement system in calculating such person's retirement benefits;
3. the chief legislative body of the employing municipality certifies in writing to the retirement division that the person has the requisite experience, training, and expertise for the position to be filled and that no other qualified people are available to fill the position.

## **F. DEATH**

Separation shall be effective as of the date of death of an employee. All compensation due in accordance with these rules shall be paid to the estate of the employee, except for such sums as by law must be paid to the surviving spouse.

## **G. DISCIPLINARY ACTION**

Whenever an employee's performance, attitude, work habits, or personal conduct fall below a desirable level, supervisors shall inform employees promptly and specifically of such lapses and shall give them counsel and assistance. If appropriate and justified, a reasonable period of time for improvement may be allowed before initiating disciplinary action. In some instances, a specific incident in and of itself may justify severe initial disciplinary action; however, the action to be taken depends on the seriousness of the incident and patterns of past performance and conduct. The types of disciplinary action are:

1. oral reprimand,



2. written reprimand,
3. suspension, and
4. dismissal.

#### **H. ORAL REPRIMAND**

Whenever an employee's performance, attitude, work habits, or personal conduct fall below a desirable level, the supervisor shall inform the employee promptly and specifically of such lapses and shall give him/her counsel and assistance. If appropriate and justified, a reasonable period of time for improvement may be allowed before initiating disciplinary actions. The supervisor will place a memo in the employee's file stating the date of the oral reprimand, what was said to the employee, and the employee's response.

#### **I. WRITTEN REPRIMAND**

In situations where an oral warning has not resulted in the expected improvement or when more severe initial action is warranted, a written reprimand may be sent to the employee, and a copy shall be placed in the employee's personnel folder. The supervisor administering the reprimand shall advise the employee that the action is a written reprimand and emphasize the seriousness of the problem; cite previous corrective actions and/or informal discussions relating to the offense; identify the problem and/or explain the offense; inform the employee of the consequences of continued undesirable behavior; detail corrective actions and identify dates by which the corrective actions shall be taken.

At the conclusion of a conference with the employee, a copy of the written reprimand shall be placed in the employee's personnel folder. It is recommended that the affected employee sign the written reprimand to indicate that he/she has seen the document and to acknowledge receipt of the employee's copy. Should the employee refuse to sign the written reprimand, the supervisor will obtain a witness to sign and date the form and so indicate the employee's refusal to sign.

#### **J. SUSPENSION**

An employee may be suspended with or without pay by his/her department head with the approval of the board of mayor and aldermen. The suspension will not exceed a total of thirty (30) days in any twelve (12)-month period. Pursuant to the appeals procedures, a written statement of the reason for suspension shall be submitted to the employee affected at least twenty-four (24) hours prior to the effective date of suspension. This is providing that, during the advance notice

period, the employee may be retained in active-duty status, placed on leave, suspended with or without pay at the discretion of the department head, however, no suspension without pay will be enacted prior to a disciplinary hearing. The employee will be granted a hearing before the board of mayor and aldermen upon request, pursuant to the appeals process. An employee determined to be innocent of the charges shall be returned to duty with full pay for the suspension period. All records associated with a suspension shall become a permanent part of the employee's personnel file. Under certain circumstances, an employee may be suspended without 24-hour notice, if in the best interest of the town.

#### K. DISMISSAL

The board of mayor and aldermen may dismiss an employee for just cause that is for the good of the town's service. Reasons for dismissal may include, **BUT SHALL NOT BE LIMITED TO:** misconduct, negligence, incompetence, insubordination, unauthorized absences, falsifying records, or violating any of the charter provisions, ordinances, or these rules. Examples include:

1. incompetency or inefficiency in performing duties;
2. conviction of a criminal offense or of a malfeasance involving moral turpitude;
3. violating any lawful and reasonable regulation, order, or direction made or given by a superior, or insubordination that constitutes a serious breach of discipline;
4. being intoxicated, drinking any intoxicating beverages, or being under the influence of a drug or narcotic while on duty;
5. theft, destruction, carelessness, or negligence of town property;
6. disgraceful personal conduct or language toward the public, fellow officers, or employees;
7. unauthorized absences or abuse of leave privileges;
8. incapacity to perform the essential functions of a job because of a permanent or chronic physical or mental defect that cannot be reasonably accommodated;
9. accepting any valuable consideration that was given with the expectation of influencing the employee in performing his/her duties;

10. falsifying records or using official position for personal advantage;
11. loss of an employee's driver's license and driving privileges by due process of law when the employee's position makes operating a motor vehicle necessary in performing his/her duties; or
12. violating any of the provisions of the city/town charter, personnel ordinance, or these rules.

Pursuant to the appeals procedure, the employee shall be furnished an advance written notice containing the nature of the proposed action, the reasons therefore, and the right to appeal the charges orally or in writing before the board of mayor and aldermen. When possible, the notice shall be furnished at least one (1) calendar week prior to the proposed effective date of the action. During this period, the employee may be retained on duty status, placed on leave, or suspended with or without pay in accordance with subsection J above. If the employee fails to respond to the advanced notice, the proposed action shall be effective on the date specified with no need for further action.

If the employee requests a hearing on the proposed action, the Mayor shall promptly set a date and time for the hearing, call a special meeting of the board of mayor and aldermen, and the board of mayor and aldermen shall carefully consider all evidence presented before making a decision. The decision of the board of mayor and aldermen shall be final.

## L. GRIEVANCE PROCEDURES

A grievance is defined as an employee's feeling of dissatisfaction, and any differences, disagreements, or disputes arising between an employee and his/her supervisor and/or employer regarding some aspect of his/her employment, application or interpretation of regulations and policies, or some management decision affecting him/her. **A grievance can be something real, alleged, or a misunderstanding** concerning rules and regulations or an administrative order involving the employee's health, safety, physical facilities, equipment or material used, employee evaluation, promotion, transfer, layoff, recall, and any other related items. Such misunderstandings, complaints, points of view, and opinions will be considered a grievance, except in cases where they relate to personnel actions arising out of pay, suspension, and dismissal.

It is the town's desire to address grievances informally. Both supervisors and employees are expected to make every effort to resolve problems as they arise. However, it is recognized that there will be occasional grievances that will be resolved only after a formal appeal and review. Employees who have a grievance may discuss it with their immediate supervisor, a higher-level supervisor, and/or the department head.

Every employee may present a complaint or grievance under the provisions of the grievance procedures free from fear, interference, restraint, discrimination, coercion, or reprisal. Steps of the grievance procedure are as follows:

**STEP ONE:** The employee makes an oral or written presentation of the complaint or grievance to the immediate supervisor within 3 working days from the incident that prompted the grievance. It shall be the supervisor's responsibility to promptly investigate the circumstances surrounding the grievance, discuss the matter with the appropriate department head, and take action, if possible. The supervisor shall inform the employee in writing of the decision and any action taken shall be taken within 7 days from the date the grievance was filed, if appropriate. The supervisor shall prepare a written report of the complaint or grievance and provide a copy of it to the department head. Any supervisor in the chain-of-command shall attach his/her recommendation regarding the unresolved complaint or grievance if it proceeds to a higher level. No supervisor may hold a complaint longer than 72 hours without forwarding it to the next supervisory level.

**STEP TWO:** If the grievance cannot be resolved on an informal basis between the employee and supervisor, the employee may proceed to the second procedural step. Before proceeding, an employee must reduce the complaint or grievance to writing and request that the written statement be delivered to the department head. If an employee wishes a hearing, the department head will accommodate the employee. Upon hearing the grievance, the department head must provide a written response to the employee and the immediate supervisor within three days (72 hours) of the hearing.

**STEP THREE:** If the grievance is not resolved with the department head, the employee may request in writing a hearing with the Mayor. The Mayor shall have calendar days to schedule the hearing, after which the Mayor shall provide a written response to the employee with copies to the department head and immediate supervisor. Every attempt will be made to resolve the employee's grievance.

#### **M. APPEALS PROCESS**

Any town employee reprimanded, suspended, or dismissed may submit a request in writing to the mayor, asking for a review of the disciplinary action. An employee must submit the request for an appeal within seven (7) calendar days of receiving notification of the disciplinary action and must also state his/her intent to have representation and name the representatives. The Mayor shall schedule a hearing before the board of mayor and aldermen within seven (7) calendar days of receiving the employee's request for appeal and will call a

special meeting of the board of mayor and aldermen to consider the employee's appeal. The action of the board of mayor and aldermen shall be final and binding on all parties involved, unless appealed to Chancery Court by the employee. (as amended by Ord. #376, July 1999)

## **SECTION XI - AMENDMENTS TO THE PERSONNEL RULES**

### **A. AMENDMENTS**

Amendments or revisions of these rules may be recommended for adoption by the \_\_\_\_\_. Such amendments or revisions of these rules shall become effective after public hearing and approval by resolution of the governing body.

### **B. SEVERABILITY**

Each section, subsection, paragraph, sentence, and clause of this policy document is hereby declared to be separable and severable. The invalidity of any section, subsection, paragraph, sentence, or clause shall not affect the validity of any other portion of these rules, and only any portion declared to be invalid by a court of competent jurisdiction shall be deleted.

### **C. SPECIAL NOTE**

These personnel policies are believed to be written within the framework of the charter of the Town of Monterey but, in case of conflict, the charter takes precedence.

These personnel regulations are for information only. This is not an employment contract. This document is a statement of current policies, practices, and procedures. Nothing in this document is to be interpreted as giving employees any more property rights in their jobs than may already be given by the town charter. These personnel policies, rules, and regulations shall be reviewed periodically. The employer reserves the right to change any or all such policies, practices, and procedures in whole or in part at any time, with or without notice to employees.

## **APPENDICES**

## APPENDIX A

### 1994 DRUG AND ALCOHOL TEST STANDARDS

<u>Drug</u>	<u>Cutoff Level Screen (ml)</u>	<u>Cutoff Level Confirmation (ng/ml)</u>
Amphetamine (speed)	1000.00	
Amphetamine		500.00
Methamphetamine		500.00
Cannabinoid (marijuana)	50.00	15.00
Cocaine (benzoylecgonine)	300.00	150.00
Opiate	300.00	
Codeine		300.00
Morphine		300.00
Phencyclidine (PCP)	25.00	25.00
Alcohol	.04 percent BAL	.04 percent BAL

**(Note - Additional substances listed under the Tennessee Drug Control Act of 1989 may be tested at the cutoff level customarily used by the selected laboratory. Cutoff levels are subject to change as DOT rules change.)**

## APPENDIX B

### DESIGNATED DRUG TESTING COLLECTION FACILITY

#### Possible Option:

St. Mary's Medical Services Center  
1725 Triangle Park Drive  
Maryville, Tenn. 37801  
(615) 982-9532

Blount Memorial Hospital  
907 E. Lamar Alexander Parkway  
Maryville, Tenn. 37801-5193  
(615) 983-7211



## APPENDIX C

### DESIGNATED DEPARTMENT OF HEALTH AND HUMAN SERVICE (DHHS) CERTIFIED LABORATORIES

#### Possible Options:

Aegis Analytical Laboratories, Inc.  
624 Grassmere Park, Suite 21  
Nashville, Tenn. 37211  
(615) 323-0250

America School Management  
Corporation  
(ASMC)  
P.O. Box 571  
Selmer, Tenn. 38375-0571

AMS Distributors, Inc.  
P.O. Box 457  
Roswell, Ga. 30077

Attest National Drug Testing, Inc.  
1600 W. Seventh St., Suite 505  
Fort Worth, Texas 76102

Baptist Occupational Medicine  
Centers  
342 21st Ave. N.  
Nashville, Tenn. 37203  
(615) 321-4800

Collins & Company  
928 McCallie Ave.  
Chattanooga, Tenn. 37403  
Attn: Joe Horne

Drug Free, Inc.  
P.O. Box 8520  
Little Rock, Ark. 72215-8520  
1-800-762-3623

Drug Intervention Services of  
America

(DISA)

11200 Westheimer, Suite 630  
Houston, Texas 77042

Employers Drug Program  
Management, Inc.  
616 S. Ninth St.  
Birmingham, Ala. 35233

Examination Management  
Services, Inc.  
11 W. Mockingbird Lane, Fourth  
Floor  
Dallas, Texas 75247

Fidelity Search, Inc.  
P.O. Box 3571  
Jackson, Tenn. 38303

Grabek Resource Management  
615 Lindsay St., Suite 330  
Chattanooga, Tenn. 37403

Health Trans  
3250 Dickerson Road, Suite 25  
Nashville, Tenn. 37207

National MRO  
12600 W. Colfax, Suite A500  
Lakewood, Co. 80215

National Health Laboratories  
Incorporated  
2540 Empire Drive  
Winston-Salem, N.C. 27103  
(800) 334-8627 or (919) 760-4620

National Safety Alliance  
446 Metroplex Drive, Suite A 226

Nashville, Tenn. 37215  
(615) 832-0046

National Safety Council  
1121 Spring Lake Drive  
Itasca, Ill. 60143-3201

National Transportation Screening  
Alliance  
P.O. Box 249  
Signal Mountain, Tenn. 37377

Nationwide Truckers Association,  
Inc. (NTA, Inc.)  
P.O. Box 1380  
201 Huntersville-Concord Road  
Huntersville, N.C. 28078  
Attn: Camille Griffin  
1-800-452-0030

Occupational Medicine Works  
Subsidiary of Lacy & Associates,  
Inc.  
1919 Charlotte Ave., Suite 205  
Nashville, Tenn. 37203  
(615) 320-0250

Occupational Rehabilitation of  
Chattanooga (ORC)  
6500 Eastgate Center, Suite 8600  
Chattanooga, Tenn. 37411  
(615) 899-7253

Pembroke Occupational Health  
2307 N. Parham Road  
Richmond, Va. 23229  
(804) 346-1010

Roche Biomedical Laboratories,  
Inc.  
CompuChem Division  
3308 Chapel Hill/Nelson Highway  
Research Triangle Park, N.C.  
27709  
Attn: Lisa Darby

1-800-833-3984, Ext. 3009

Roche Diagnostic Systems  
1080 U.S. Highway 202  
Branchburg, N.J. 08876-1760

Safety and Compliance  
Management, Inc.  
P.O. Box 69  
104 Howard St.  
Rossville, Ga. 30741

Tennessee Consortium  
1320 W. Main St., Suite 418  
Franklin, Tenn. 37064

United Labs  
P.O. Box 1208  
Evans City, Pa. 16033

**APPENDIX D**

**EMPLOYEE ACKNOWLEDGMENT FORM**

**Town of Monterey**

**EMPLOYEE ACKNOWLEDGMENT**

As an applicant or an employee, I have carefully read the Town of Monterey's drug and alcohol testing policy. I have received a copy of the Town of Monterey's drug and alcohol testing policy, understand its requirements, and agree without reservation to follow this policy. As an applicant, I am aware that my offer of employment is conditional upon the results of a drug and/or alcohol test. As an employee, I am aware that I may be required to undergo drug and/or alcohol tests, that I will be informed prior to the drug and/or alcohol test, and that I may be subject to immediate dismissal if I refuse to take the test.

_____ Name of Applicant or Employee	_____ Social Security Number
_____ Department	_____ Supervisor
_____ (Signature of Applicant or Employee)	_____ Date
_____ (Signature of Witness)	_____ Date

**APPENDIX E  
CONSENT AND ACKNOWLEDGMENT FORM**

**Town of Monterey**

**DRUG/ALCOHOL TESTING PROCEDURES**

**CONSENT AND ACKNOWLEDGMENT FORM**

As an applicant or an employee with the Town of Monterey, I hereby consent to and acknowledge that I am scheduled to undergo drug and/or alcohol testing. The test for alcohol will be a breath analysis test. The drug test will involve an analysis of a urine sample, which I will provide at a designated site. The purpose of the test will be to test for the presence of the following substances: amphetamines, marijuana, cocaine, opiates, PCP, alcohol, and/or any additional drugs listed in the Tennessee Drug Control Act. I authorize qualified personnel to take and have analyzed appropriate specimens to determine if drugs and/or alcohol are present in my system. I acknowledge that the drug/alcohol screen test results will be made available to the testing laboratory, medical review officer (MRO), the (personnel director), or his/her designee. As an applicant, I am aware that a confirmed and verified positive drug/alcohol test result will rescind my conditional offer of employment. As an employee, I am aware that a confirmed and verified positive test result may lead to disciplinary action up to and including immediate dismissal. I will present a copy of this form to the collection site when I report for my scheduled drug/alcohol test. I also understand that failure to provide adequate breath for testing without a valid medical explanation, failure to provide adequate urine for controlled substances testing without a valid medical explanation, and engaging in conduct that clearly obstructs the testing process are the same as refusing to test.

Name of Applicant or Employee: \_\_\_\_\_

Department Name: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Applicant or Employee)                      Date

\_\_\_\_\_  
(Signature of Witness)    Date

## APPENDIX F

### ORDINANCE NUMBER: 364<sup>1</sup>

**An ordinance to amend the Monterey Municipal Code by adding a new chapter, establishing the Town of Monterey's Personnel System.**

**BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE TOWN OF MONTEREY, TENNESSEE, THAT:**

#### **CHAPTER VI TITLE V - PERSONNEL SYSTEM**

##### **SECTION 1-ADMINISTRATION**

1-801. **PURPOSE** - The purpose of this chapter is to establish a system of personnel administration in the town of Monterey that is based on merit and fitness. The system shall provide a means to select, develop, and maintain an effective municipal work force through impartially applying personnel policies and procedures free of personal and political considerations and regardless of race, color, gender, age, creed, national origin, or disability.

1-802. **COVERAGE** - All offices and positions of the municipal government are classified service. All employment positions of the municipal government shall be subject to the provisions of the town charter.

1-803. **ADMINISTRATION** - The personnel system shall be administered by the Mayor and the personnel committee, who shall have the following duties and responsibilities:

- a. exercise leadership in developing an effective personnel administration system subject to provisions in this ordinance, other ordinances, the town charter, and federal and state laws relating to personnel administration;
- b. recommend to the Mayor and Board of Aldermen policies and procedures for recruiting, appointing, and disciplining all employees of the municipality subject to those policies as set forth in this ordinance, the town charter, and the municipal code;

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<sup>1</sup>This ordinance (Appendix F) is codified as chapter 3 to title 4 of this municipal code.

- c. fix and establish the number of employees in the various town departments and offices and determine the duties, authority, responsibility, and compensation in accordance with the policies as set forth in the town charter and code, and subject to the approval of the Mayor and Board of Alderman and budget limitations.
- d. foster and develop programs for improving employee effectiveness, including training, safety, and health;
- e. maintain records of all employees, subject to the provisions of this chapter of the town code, which shall include each employee's class, title, pay rates, and other relevant data;
- f. make periodic reports to the Mayor and Board of Aldermen regarding administering the personnel system;
- g. recommend to the Mayor and Board of Aldermen a position classification plan and install and maintain such a plan upon approval by the Mayor and Board of Aldermen.
- h. prepare and recommend to the Mayor and Board of Aldermen a pay plan for all municipal government employees;
- i. develop and administer such recruiting programs as may be necessary to obtain an adequate supply of competent applicants to meet the employment needs of the municipal government;
- j. be responsible for certification of payrolls; and
- k. perform such other duties and exercise such other authority in personnel administration as may be prescribed by law.

1-804. **PERSONNEL RULES AND REGULATIONS** - The mayor and board of aldermen shall develop rules and regulations necessary for effectively administering the personnel system. The mayor and the board of aldermen shall adopt the rules. If the mayor and board of aldermen has taken no action within ten (10) days after receiving the draft personnel rules and regulations, they shall become effective as if they had been adopted, and shall have the full force and effect of law.

Amendments to the rules and regulations shall be made in accordance with the procedure below. Nothing in the personnel rules and regulations document shall be deemed to give employees any more property rights in their job than may already be given by the town charter. The town reserves the right to alter or change any or all of these rules without prior notice to employees.

1-805. **RECORDS** - The Mayor shall maintain adequate records of the employment record of every employee as specified herein.

1-806. **RIGHT TO CONTRACT FOR SPECIAL SERVICES** - The mayor and board of aldermen may contract with any competent agency for performing such technical services in connection with the establishment of the personnel system or with its operation as may be deemed necessary.

1-807. **DISCRIMINATION** - No person in the classified service or seeking admission thereto shall be employed, promoted, demoted, discharged, or in any way favored or discriminated against because of political opinions or affiliations, race, color, creed, national origin, gender, age, religious belief, or disability.

1-808. **AMENDMENTS** - Amendments or revisions or these rules may be recommended for adoption by the mayor and personnel committee. Such amendments or revisions of these rules shall become effective after approval by the mayor and board of aldermen.

## **SECTION 2 - SEVERABILITY**

2-801. If any provision of this ordinance, or if any policy or order thereunder, or the application of any provision to any person or circumstances is held invalid, the remainder of the chapter, and the application of the provision of this chapter, or of the policy or order to people or circumstances other than those to which it is held invalid, shall not be affected thereby.

## **SECTION 3 - EFFECTIVE DATE**

3-801. This chapter shall take effect immediately upon final passage, the public welfare requiring it.

Appendix F

PASSED first reading April 7, 1997

PASSED second reading May 5, 1997

PASSED third reading June 2, 1997

s/John H. Bowden  
Mayor/City Recorder

s/Geane A. Lee  
Secretary