

**TITLE 4**

**MUNICIPAL PERSONNEL**

**CHAPTER**

1. PERSONNEL POLICY.
2. OCCUPATIONAL SAFETY AND HEALTH PROGRAM.
3. TRAVEL REIMBURSEMENT REGULATIONS.
4. DRUG AND ALCOHOL TESTING POLICY.

**CHAPTER 1**

**PERSONNEL POLICY**

**SECTION**

4-101. Personnel rules and regulations.

**4-101. Personnel rules and regulations.**<sup>1</sup> The personnel rules and regulations for the City of LaFayette are adopted herein as if set out verbatim. (1973 Code, § 1-701, as amended by Ord. #699, Feb. 2017 *Ch3\_3-5-19*, and Ord. #702, May, 2017 *Ch3\_3-5-19*, and replaced by Ord. #704, July 2017 *Ch3\_3-5-19*)

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<sup>1</sup>The LaFayette Personnel Rules and regulations (Ord. #704, July 2017), and all amending ordinances, may be found in the office of the recorder.

## CHAPTER 2

### OCCUPATIONAL SAFETY AND HEALTH PROGRAM

#### SECTION

- 4-201. Title.
- 4-202. Purpose.
- 4-203. Coverage.
- 4-204. Standards authorized.
- 4-205. Variances upon standards authorized.
- 4-206. Administration.
- 4-207. Funding the program plan.

**4-201. Title.** This section shall be known as "The Occupational Safety and Health Program Plan" for the employees of the City of Lafayette. (1973 Code, § 1-1101, as replaced by Ord. #651, Oct. 2013)

**4-202. Purpose.** The City of Lafayette in electing to update the established program plan will maintain an effective and comprehensive occupational safety and health program plan for its employees and shall:

(1) Provide a safe and healthful place and condition of employment that includes:

- (a) Top management commitment and employee involvement;
- (b) Continually analyze the worksite to identify all hazards and potential hazards;
- (c) Develop and maintain methods for preventing or controlling existing or potential hazards; and
- (d) Train managers, supervisors, and employees to understand and deal with worksite hazards.

(2) Acquire, maintain and require the use of safety equipment, personal protective equipment and devices reasonably necessary to protect employees.

(3) Record, keep, preserve, and make available to the Commissioner of Labor and Workforce Development, or persons within the Department of Labor and Workforce Development to whom such responsibilities have been delegated, adequate records of all occupational accidents and illnesses and personal injuries for proper evaluation and necessary corrective action as required.

(4) Consult with the Commissioner of Labor and Workforce Development with regard to the adequacy of the form and content of records.

(5) Consult with the Commissioner of Labor and Workforce Development, as appropriate, regarding safety and health problems which are considered to be unusual or peculiar and are such that they cannot be achieved under a standard promulgated by the state.

(6) Provide reasonable opportunity for the participation of employees in the effectuation of the objectives of this program plan, including the opportunity to make anonymous complaints concerning conditions or practices injurious to employee safety and health.

(7) Provide for education and training of personnel for the fair and efficient administration of occupational safety the health standards, and provide for education and notification of all employees of the existence of the program plan. (1973 Code, § 1-1102, as replaced by Ord. #651, Oct. 2013)

**4-203. Coverage.** The provisions of the occupational safety and health program plan for the employees of the City of Lafayette shall apply to all employees of each administrative department, commission, board, division, or other agency whether part-time or full-time, seasonal or permanent. (1973 Code, § 1-1103, as replaced by Ord. #651, Oct. 2013)

**4-204. Standards authorized.** The occupational safety and health standards adopted by the City of Lafayette are the same as, but not limited to, the State of Tennessee Occupational Safety and Health Standards promulgated, or which may be promulgated, in accordance with section 6 of the Tennessee Occupational Safety and Health Act of 1972.<sup>1</sup> (1973 Code, § 1-1104, as replaced by Ord. #651, Oct. 2013)

**4-205. Variances upon standards authorized.** Upon written application to the Commissioner of Labor and Workforce Development of the State of Tennessee, we may request an order granting a temporary variance from any approved standards. Applications for variances shall be in accordance with Rules of Tennessee Department of Labor and Workforce Development, Occupational Safety and Health, VARIANCES FROM OCCUPATIONAL SAFETY AND HEALTH STANDARDS, chapter 0800-01-02, as authorized by Tennessee Code Annotated, title 50. Prior to requesting such temporary variance, we will notify or serve notice to our employees, their designated representatives, or interested parties and present them with an opportunity for a hearing. The posting of notice on the main bulletin board shall be deemed sufficient notice to employees. (1973 Code, § 1-1105, as replaced by Ord. #651, Oct. 2013)

**4-206. Administration.** For the purposes of this chapter, the City of Lafayette Safety Director is designated as the director of occupational safety and health to perform duties and to exercise powers assigned to plan, develop, and

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<sup>1</sup>State law reference

Tennessee Code Annotated, title 50, chapter 3.

administer the program plan.<sup>1</sup> The Safety Director shall develop a plan of operation for the program plan in accordance with Rules of Tennessee Department of Labor and Workforce Development Occupational Safety and Health, SAFETY AND HEALTH PROVISIONS FOR THE PUBLIC SECTOR, chapter 0800-01-05, as authorized by Tennessee Code Annotated, title 50. (1973 Code, § 1-1106, as replaced by Ord. #651, Oct. 2013)

**4-207. Funding the program plan.** Sufficient funds for administering and staffing the program plan pursuant to this chapter shall be made available as authorized by the City of Lafayette. (1973 Code, § 1-1107, as replaced by Ord. #651, Oct. 2013)

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<sup>1</sup>The Occupational Safety and Health Program Plan of Operation for the City of Lafayette, including all appendices, has been added to this municipal code as Appendix B.

## CHAPTER 3

### TRAVEL REIMBURSEMENT REGULATIONS

#### SECTION

- 4-301. Enforcement.
- 4-302. Travel policy.
- 4-303. Travel reimbursement rate schedules.
- 4-304. Administrative procedures.
- 4-305. City-owned vehicle policy.

**4-301. Enforcement.** The Chief Administrative Officer (CAO) of the city or his or her designee shall be responsible for the enforcement of these regulations. (1973 Code, § 1-1401)

**4-302. Travel policy.** (1) In the interpretation and application of this chapter, the term "traveler" or "authorized travel" means any elected or appointed municipal officer or employee, including members of municipal boards and committees appointed by the mayor or the municipal governing body, and the employees of such boards and committees who are traveling on official municipal business and whose travel was authorized in accordance with this chapter. "Authorized traveler" shall not include the spouse, children, other relatives, friends, or companions accompanying the authorized traveler on city business, unless the person(s) otherwise qualifies as an authorized traveler under this chapter.

(2) Authorized travelers are entitled to reimbursement of certain expenditures incurred while traveling on official business for the city. Reimbursable expenses shall include expenses for transportation; lodging; meals; registration fees for conferences, conventions, and seminars; and other actual and necessary expenses related to official business as determined by the CAO. Under certain conditions, entertainment expenses may be eligible for reimbursement.

(3) Authorized travelers can request either a travel advance for the projected cost of authorized travel, or advance billing directly to the city for registration fees, air fares, meals, lodging, conferences, and similar expenses. Travel advance requests aren't considered documentation of travel expenses. If travel advances exceed documented expenses, the traveler must immediately reimburse the city. It will be the responsibility of the CAO to initiate action to recover any undocumented travel advances.

(4) Travel advances are available only for special travel and only after completion and approval of the travel authorization form.

(5) The travel expense reimbursement form will be used to document all expense claims.

(6) To qualify for reimbursement, travel expenses must be:

(a) Directly related to the conduct of the city business for which travel was authorized, and

(b) Actual, reasonable, and necessary under the circumstances. The CAO may make exceptions for unusual circumstances.

Expenses considered excessive won't be allowed.

(7) Claims of five dollars (\$5.00) or more for travel expense reimbursement must be supported by the original paid receipt for lodging, vehicle rental, phone call, public carrier travel, conference fee, and other reimbursable costs.

(8) Any person attempting to defraud the city or misuse city travel funds is subject to legal action for recovery of fraudulent travel claims and/or advances.

(9) Mileage and motel expenses incurred within the city are not ordinarily considered eligible expenses for reimbursement. (1973 Code, § 1-1402)

**4-303. Travel reimbursement rate schedules.** Authorized travelers shall be reimbursed according to the State of Tennessee travel regulation rates. The city's travel reimbursement rates will automatically change when the state rates are adjusted.

The municipality may pay directly to the provider for expenses such as meals, lodging, and registration fees for conferences, conventions, seminars, and other education programs. (1973 Code, § 1-1403)

**4-304. Administrative procedures.** The city adopts and incorporates by reference--as if fully set out herein--the administrative procedures submitted by MTAS to, and approved by letter by, the Comptroller of the Treasury, State of Tennessee, in June 1993. A copy of the administrative procedures is on file in the office of the city recorder. This chapter shall take effect upon its final reading by the municipal governing body. It shall cover all travel and expenses occurring on or after July 1, 1993. (1973 Code, § 1-1404)

**4-305. City-owned vehicle policy.** The Internal Revenue Service requires certain affirmative policies by local governments to enable record-keeping and valuation rules be utilized.

The purpose of this regulation is to establish rules for the utilization of both city-owned vehicles and equipment that are owned or leased by the city be used by employees in the performance of their official duties for commuting to assist in scheduling and response time in the various city offices and departments.

Employees and officials of the City of Lafayette are prohibited from using city-owned vehicles for personal use, except for commuting when authorized to do so by the City of Lafayette City Council or by a designated official for bona fide non-compensatory reasons in the conduct of city business and for

de minimis personal use, such as stops for meals taken in the course of employment or on the way to and from home that does not materially increase the number of miles a vehicle is driven.

City vehicles shall be used for official city business and shall be made available for use in connection with city business.

On-call employees may from time to time be allowed to take a vehicle home. On such occurrences the rules that apply to those assigned vehicles shall be followed by those temporarily assigned vehicles.

Under no circumstances are employees operating city vehicles or city equipment to allow nonemployees to operate such equipment.

No driver or operator of a city vehicle or piece of equipment shall carry passengers except another city employee, elected city officials, approved volunteer personnel (reserve police officers and volunteer firefighters), clients or persons engaged in or advising on matters relating to city business. Other persons in the following categories are exceptions to this rule and may be transported in a city vehicle:

(1) Persons who are detained or who must be transported by the police department within the scope of their police duties;

(2) Spouses who are accompanying a city employee to a meeting in which the employee is representing the city (prior approval of the city mayor is required).

All city employees who are assigned a city vehicle and then use the vehicle for travel to and from work shall receive a statement indicating the amount of benefit, for tax purposes, derived from their use of vehicle.

Commuting rule: Under this rule, you determine the value of a vehicle you provide to an employee for commuting use by multiplying each one (1) way commute (that is, from home to work or from work to home) by one dollar and fifty cents (\$1.50) or current IRS commuting rate. If more than one (1) employee commutes in the vehicle, this value applies to each employee.

The primary driver or operator of each city vehicle or piece of equipment shall be immediately reported to the supervisor responsible for the vehicle or piece of equipment. If damage also occurs to vehicles or property not owned by the city, the accident shall also be reported to the appropriate police department. Whenever an accident occurs locally to a police department vehicle or whenever injury or death has occurred, the Tennessee Highway Patrol (THP) shall be notified and the THP will handle the investigation. If the THP is not available, the Lafayette Police Department or Macon County Sheriff's Office shall investigate. All accidents shall be reported as soon as possible by the supervisor to the maintenance shop and the recorder.

Regulations and procedures regarding the routine maintenance and care of city vehicles and equipment shall be issued by the maintenance supervisor. Any regulations which the maintenance supervisor may issue or which he has already issued shall be considered a part of the formal regulations concerning

the operation of city vehicles and equipment. The maintenance supervisor shall inform the city mayor or the mayor designee of any violations of these procedures.

City-owned vehicles not being used for commuting purposes or after normal business shall be secured on city-owned property unless temporarily located elsewhere, such as for maintenance.

All drivers and operators of city vehicles and equipment shall have appropriate (as required by the employee's job description) driver's/operator's licenses issued by the State of Tennessee or the state in which the employee resides and shall obey all traffic laws, rules, and regulations of the State of Tennessee and the City of Lafayette. (Ord. #608, Dec. 2011)



## CHAPTER 4

### DRUG AND ALCOHOL TESTING POLICY<sup>1</sup>

#### SECTION

- 4-401. Purpose.
- 4-402. Scope.
- 4-403. Consent form.
- 4-404. Compliance with substance abuse policy.
- 4-405. General rules.
- 4-406. Drug testing.
- 4-407. Alcohol testing.
- 4-408. Education and training.
- 4-409. Consequences of a confirmed positive drug and/or alcohol test result and/or verified positive drug and/or alcohol test result.
- 4-410. Voluntary disclosure of drug and/or alcohol use.
- 4-411. Exceptions.
- 4-412. Modification of policy.
- 4-413. Definitions.

**4-401. Purpose.** The City of Lafayette recognizes that the use and abuse of drugs and alcohol in today's society is a serious problem that may involve the workplace. It is the intent of the City of Lafayette to provide all employees with a safe and secure workplace in which each person can perform his/her duties in an environment that promotes individual health and workplace efficiency. Employees of the City of Lafayette are public employees and must foster the public trust by preserving employee reputation for integrity, honesty, and responsibility.

To provide a safe, healthy, productive, and drug-free working environment for its employees to properly conduct the public business, the City of Lafayette has adopted this drug and alcohol testing policy effective January 1, 1996. This policy complies with the Drug-Free Workplace Act of 1988, which ensures employees the right to work in an alcohol- and drug-free environment and to work with persons free from the effects of alcohol and drugs; Federal Highway Administration (FHWA) rules, which require drug and alcohol testing for persons required to have a Commercial Driver's License (CDL); Division of Transportation (DOT) rules, which include procedures for urine drug testing and breath alcohol testing; and the Omnibus Transportation Employee Testing Act of 1991, which requires alcohol and drug testing of safety-sensitive employees in the aviation, motor carrier, railroad, pipeline, commercial marine, and mass transit industries. In the case of this policy, the Omnibus Transportation

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<sup>1</sup>Appendices codified in this chapter are of record in the recorder's office.

Employee Testing Act of 1991 is most significant with its additional requirement of using the "split specimen" approach to drug testing, which provides an extra safeguard for employees. The types of tests required are: pre-employment, transfer, reasonable suspicion, post-accident (post-incident), random, return-to-duty, and follow-up.

It is the policy of the City of Lafayette that the use of drugs by its employees and impairment in the workplace due to drugs and/or alcohol are prohibited and will not be tolerated. Engaging in prohibited and/or illegal conduct may lead to termination of employment. Prohibited and/or illegal conduct includes but is not limited to:

- (1) Being on duty or performing work in or on city property while under the influence of drugs and/or alcohol;
- (2) Engaging in the manufacture, sale, distribution, use, or unauthorized possession of (illegal) drugs at any time and of alcohol while on duty or while in or on city property;
- (3) Refusing or failing a drug and/or alcohol test administered under this policy;
- (4) Providing an adulterated, altered, or substituted specimen for testing;
- (5) Use of alcohol within four (4) hours prior to reporting for duty on schedule or use of alcohol while on-call for duty; and
- (6) Use of alcohol or drugs within eight (8) hours following an accident (incident) if the employee's involvement has not been discounted as a contributing factor in the accident (incident) or until the employee has successfully completed drug and/or alcohol testing procedures.

This policy does not preclude the appropriate use of legally prescribed medication that does not adversely affect the mental, physical, or emotional ability of the employee to safely and efficiently perform his/her duties. It is the employee's responsibility to inform the proper supervisory personnel of his/her use of such legally prescribed medication before the employee goes on duty or performs any work.

In order to educate the employees about the dangers of drug and/or alcohol abuse, the city shall sponsor an information and education program for all employees and supervisors. Information will be provided on the signs and symptoms of drug and/or alcohol abuse; the effects of drug and/or alcohol abuse on an individual's health, work, and personal life; the city's policy regarding drugs and/or alcohol; and the availability of counseling. The personnel director has been designated as the municipal official responsible for answering questions regarding this policy and its implementation.

All City of Lafayette property may be subject to inspection at any time without notice. There should be no expectation of privacy in such property. Property includes, but is not limited to, vehicles, desks, containers, files, and lockers. (1973 Code, § 1-1501)

**4-402. Scope.** Certain aspects of this policy may apply to full-time, part-time, temporary, and volunteer employees of the City of Lafayette. The policy also applies to applicants for positions requiring a CDL and other safety sensitive positions who have been given a conditional offer of employment from the City of Lafayette. (1973 Code, § 1-1502)

**4-403. Consent form.** Before a drug and/or alcohol test is administered, employees and applicants will be asked to sign a consent form authorizing the test and permitting release of test results to the laboratory, Medical Review Officer (MRO), or his/her designee. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the city's drug and alcohol testing policy.

The consent form shall set forth the following information:

- (1) The procedure for confirming and verifying an initial positive test result;
- (2) The consequences of a verified positive test result; and
- (3) The consequences of refusing to undergo a drug and/or alcohol test.

The consent form also provides authorization for certified or licensed attending medical personnel to take and have analyzed appropriate specimens to determine if drugs or alcohol were present in the employee's system. (1973 Code, 1-1503)

**4-404. Compliance with substance abuse policy.** Compliance with this substance abuse policy is a condition of employment. The failure or refusal by an applicant or employee to cooperate fully by signing necessary consent forms or other required documents or the failure or refusal to submit to any test or any procedure under this policy in a timely manner will be grounds for refusal to hire or for termination. The submission by an applicant or employee of a urine sample that is not his/her own or is adulterated shall be grounds for refusal to hire or for termination. (1973 Code, § 1-1504)

**4-405. General rules.** These are the general rules governing the City of Lafayette drug and alcohol testing program:

- (1) City employees shall not take or be under the influence of any drugs unless prescribed by the employee's licensed physician. Employees who are required to take prescription and/or over-the-counter medications shall notify the proper supervisory personnel before the employees go on duty.
- (2) City employees are prohibited from engaging in the manufacture, sale, distribution, use, or unauthorized possession of illegal drugs at any time and of alcohol while on duty or while in or on city property.
- (3) All City of Lafayette property is subject to inspection at any time without notice. There should be no expectation of privacy in or on such property. City property includes, but is not limited to, vehicles, desks, containers, files, and lockers.

(4) Any employee convicted of violating a criminal drug statute shall inform the director of his/her department of such conviction (including pleas of guilty and nolo contendere) within five (5) days of the conviction occurring. Failure to so inform the city subjects the employee to disciplinary action up to and including termination for the first offense. The city will notify the federal contracting officer pursuant to applicable provisions of the Drug-Free Workplace Act and the Omnibus Transportation Employee Testing Act. (1973 Code, § 1-1505)

**4-406. Drug testing.** An applicant or employee must carry and present a current and recent photo ID to appropriate personnel during testing. Failure to present a photo ID is equivalent to refusing to take the test. Employees and applicants may be required to submit to drug testing under six (6) separate conditions:

(1) Types of tests. (a) Pre-employment. All applicants for employee status for positions requiring a CDL or for a position in the fire department, police department, gas department, and transit department who have received a conditional offer of employment with the City of Lafayette, must take a drug test before receiving a final offer of employment.

(b) Transfer. Employees transferring to the fire department, police department, gas department, and transit department and/or another position within the city that requires a Commercial Driver's License (CDL) shall undergo drug testing.

(c) Post-accident/post-incident testing. Following any workplace accident (incident) determined by supervisory personnel of the City of Lafayette to have resulted in significant property or environmental damage or in significant personal injury, including but not limited to a fatality or human injury requiring medical treatment, each employee whose performance either contributed to the accident (incident) or who cannot be discounted as a contributing factor to the accident (incident) and who is reasonably suspected of possible drug use as determined during a routine post-accident (post-incident) investigation or who receives a citation for a moving violation arising from the accident will be required to take a post-accident (post-incident) drug test.

Post-accident (post-incident) testing shall be carried out within thirty-two (32) hours following the accident (incident). Urine collection for post-accident (post-incident) testing shall be monitored or observed by same-gender collection personnel at the established collection site(s).

In instances where post-accident (post-incident) testing is to be performed, the City of Lafayette reserves the right to direct the Medical Review Officer (MRO) to instruct the designated laboratory to perform testing on submitted urine specimens for possible illegal/illegitimate substances.

Any testing for additional substances listed under the Tennessee Drug Control Act of 1989 as amended shall be performed at the urinary cutoff level that is normally used for those specific substances by the laboratory selected.

(i) Post-accident (post-incident) testing for ambulatory employees. Following all workplace accidents (incidents) where drug testing is to be performed, unless otherwise specified by the department head, affected employees who are ambulatory will be taken by a supervisor or the designated personnel of the City of Lafayette to the designated urine collection site within thirty-two (32) hours following the accident. In the event of an accident (incident) occurring after regular work hours, the employee(s) will be taken to the testing site within thirty-two (32) hours. No employee shall consume drugs prior to completing the post-accident (post-incident) testing procedures. No employee shall delay his/her appearance at the designated collection site(s) for post-accident (post-incident) testing. Any unreasonable delay in providing specimens for drug testing shall be considered a refusal to cooperate with the substance abuse program of the City of Lafayette and shall result in administrative action up to and including termination of employment.

(ii) Post-accident (post-incident) testing for injured employees. An affected employee who is seriously injured, non-ambulatory and/or under professional medical care following a significant accident (incident) shall consent to the obtaining of specimens for drug testing by qualified, licensed attending medical personnel and consent to the testing of the specimens. Consent shall also be given for the attending medical personnel and/or medical facility (including hospitals) to release to the Medical Review Officer (MRO) of the City of Lafayette appropriate and necessary information or records that would indicate only whether or not specified prohibited drugs (and what amounts) were found in the employee's system. Consent shall be granted by each employee at the implementation date of the substance abuse policy of the City of Lafayette or upon hiring following the implementation date.

Post-accident (post-incident) urinary testing may be impossible for unconscious, seriously-injured, or hospitalized employees. If this is the case, certified or licensed attending medical personnel shall take and have analyzed appropriate specimens to determine if drugs were present in the employee's system. Only an accepted method for collecting specimens will be used. Any failure to do post-accident (post-incident) testing within

thirty-two (32) hours must be fully documented by the attending medical personnel.

(d) Testing based on reasonable suspicion. A drug test is required where there is reasonable suspicion to believe the employee is using or is under the influence of drugs and/or alcohol.

The decision to test for reasonable suspicion must be based on a reasonable and articulate belief that the employee is using or has used drugs. This belief should be based on recent, physical, behavioral, or performance indicators of possible drug use. One (1) supervisor who has received drug detection training that complies with DOT regulations must make the decision to test and must observe the employee's suspicious behavior.

Supervisory personnel of the City of Lafayette making a determination to subject any employee to drug testing based on reasonable suspicion shall document their specific reasons and observations in writing to the personnel director within twenty-four (24) hours of the decision to test and before the results of the urine drug tests are received by the department. Urine collection for reasonable suspicion testing shall be monitored or observed by same-gender collection personnel.

(e) Random testing. Only employees of the City of Lafayette possessing or wishing to obtain a Commercial Driver's License (CDL) are subject to random urine drug testing. It is the policy of the City of Lafayette to annually random test for drugs for at least fifty percent (50%) of the total number of drivers possessing or obtaining a Commercial Driver's License (CDL).

A minimum of fifteen (15) minutes and a maximum of two (2) hours will be allowed between notification of an employee's selection for random urine drug testing and the actual presentation for specimen collection.

Random donor selection dates will be unannounced with unpredictable frequency. Some may be tested more than once each year while others may not be tested at all, depending on the random selection.

If an employee is unavailable (i.e., vacation, sick day, out of city, work-related causes, etc.) to produce a specimen on the date random testing occurs, the City of Lafayette may omit that employee from that random testing or await the employee's return to work.

(f) Return-to-duty and follow-up. Any employee of the City of Lafayette who has violated the prohibited drug conduct standards and is allowed to return to work, must submit to a return-to-duty test. Follow-up tests will be announced, and at least six (6) tests will be conducted the first twelve (12) months after an employee returns to duty. Follow-up testing maybe extended for up to sixty (60) months following

return to duty. The employee will be required to pay for his or her return-to-duty and follow-up tests accordingly.

Testing will also be performed on any employee possessing a CDL returning from leave or special assignment in excess of six (6) months. In this situation, the employee will not be required to pay for the testing.

(2) Prohibited drugs. All drug results will be reported to the Medical Review Officer (MRO). If verified by the MRO, they will be reported to the personnel director. The following is a list of drugs for which tests will be routinely conducted (see Appendix A<sup>1</sup> for cutoff levels):

- (a) Amphetamines;
- (b) Marijuana;
- (c) Cocaine;
- (d) Opiates;
- (e) Phencyclidine (PCP);
- (f) Alcohol; and
- (g) Depressants.

The city may test for any additional substances listed under the Tennessee Drug Control Act of 1989.

(3) Drug testing collection procedures. Testing will be accomplished as non-intrusively as possible. Affected employees, except in cases of random testing, will be taken by a supervisor or designated personnel of the City of Lafayette to a drug test collection facility selected by the City of Lafayette (see Appendix B<sup>1</sup>), where a urine sample will be taken from the employee in privacy. The urine sample will be immediately sealed by personnel overseeing the specimen collection after first being examined by these personnel for signs of alteration, adulteration, or substitution. The sample will be placed in a secure mailing container. The employee will be asked to complete a chain-of-custody form to accompany the sample to a laboratory selected by the City of Lafayette to perform the analysis on collected urine sample.

(4) Drug testing laboratory standards and procedures. All collected urine samples will be sent to a laboratory that is certified and monitored by the Federal Department of Health and Human Services (DHHS) (see Appendix C<sup>1</sup>).

As specified earlier, in the event of an accident (incident) occurring after regular work hours, the supervisor or designated personnel shall take the employee(s) to the testing site within thirty-two (32) hours where proper collection procedures will be administered.

The Omnibus Act requires that drug testing procedures include split specimen procedures. Each urine specimen is subdivided into two (2) bottles labeled as a "primary" and a "split" specimen. Both bottles are sent to a laboratory. Only the primary specimen is opened and used for the urinalysis. The split specimen bottle remains sealed and is stored at the laboratory. If the

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<sup>1</sup>Appendices codified in this chapter are of record in the recorder's office.

analysis of the primary specimen confirms the presence of drugs, the employee has seventy-two (72) hours to request sending the split specimen to another federal Department of Health and Human Services (DHHS) certified laboratory for analysis. The employee will be required to pay for his or her split specimen test(s).

For the employee's protection, the results of the analysis will be confidential except for the testing laboratory. After the MRO has evaluated a positive test result, the employee will be notified, and the MRO will notify the personnel director.

(5) **Reporting and reviewing.** The City of Lafayette shall designate a Medical Review Officer (MRO) to receive, report, and file testing information transmitted by the laboratory. This person shall be a licensed physician with knowledge of substance abuse disorders (see Appendix C<sup>1</sup>).

(a) The laboratory shall report test results only to the designated MRO, who will review them in accordance with accepted guidelines and the procedures adopted by the City of Lafayette.

(b) Reports from the laboratory to the MRO shall be in writing or by fax. The MRO may talk to the employee by telephone upon exchange of acceptable identification.

(c) The testing laboratory, collection site personnel, and MRO shall maintain security over all the testing data and limit access to such information to the following: the respective department head, the personnel director, and the employee.

(d) Neither the City of Lafayette, the laboratory, nor the MRO shall disclose any drug test results to any other person except under written authorization from the affected employee, unless such results are necessary in the process of resolution of accident (incident) investigations, requested by court order, or required to be released to parties (i.e., DOT, the Tennessee Department of Labor, etc.) having legitimate right-to-know as determined by the city attorney. (1973 Code, § 1-1506)

**4-407. Alcohol testing.** An applicant or employee must carry and present a current and recent photo ID to appropriate personnel during testing. Failure to present a photo ID is equivalent to refusing to take the test. Employees and applicants may be required to submit to alcohol testing under six (6) separate conditions:

(1) **Types of tests.** (a) Post-accident/post-incident testing. Following any workplace accident (incident) determined by supervisory personnel of the City of Lafayette to have resulted in significant property or environmental damage or in significant personal injury, including but not limited to a fatality or human injury requiring medical treatment, each

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employee whose performance either contributed to the accident (incident) or cannot be discounted as a contributing factor to the accident (incident) and who is reasonably suspected of possible alcohol use as determined during a routine post-accident (post-incident) investigation or who receives a citation for a moving violation arising from the accident will be required to take a post-accident (post-incident) alcohol test.

Post-accident (post-incident) testing shall be carried out within two (2) hours following the accident (incident).

(i) Post-accident (post-incident) testing for ambulatory employees. Following all workplace accidents (incidents) where alcohol testing is to be performed, unless otherwise specified by the department head, affected employees who are ambulatory will be taken by a supervisor or designated personnel of the City of Lafayette to the designated breath alcohol test site for a breath alcohol test within two (2) hours following the accident. In the event of an accident (incident) occurring after regular work hours, the employee(s) will be taken to the testing site within two (2) hours. No employee shall consume alcohol prior to completing the post-accident (post-incident) testing procedures.

No employee shall delay his/her appearance at the designated collection site(s) for post-accident (post-incident) testing. Any unreasonable delay in appearing for alcohol testing shall be considered a refusal to cooperate with the substance abuse program of the City of Lafayette and shall result in administrative action up to and including termination of employment.

(ii) Post-accident (post-incident) testing for injured employees. An affected employee who is seriously injured, non-ambulatory, and/or under professional medical care following a significant accident (incident) shall consent to the obtaining of specimens for alcohol testing by qualified, licensed attending medical personnel and consent to specimen testing. Consent shall also be given for the attending medical personnel and/or medical facility (including hospitals) to release to the Medical Review Officer (MRO) of the City of Lafayette appropriate and necessary information or records that would indicate only whether or not specified prohibited alcohol (and what amount) was found in the employee's system. Consent shall be granted by each employee at the implementation date of the substance abuse policy of the City of Lafayette or upon hiring following the implementation date.

Post-accident (post-incident) breath alcohol testing may be impossible for unconscious, seriously injured, or hospitalized employees. If this is the case, certified or licensed attending medical personnel shall take and have analyzed appropriate specimens to determine if alcohol was present in the employee's

system. Only an accepted method for collecting specimens will be used. Any failure to do post-accident (post-incident) testing within two (2) hours must be fully documented by the attending medical personnel.

(b) Testing based on reasonable suspicion. An alcohol test is required for each employee where there is reasonable suspicion to believe the employee is using or is under the influence of alcohol.

The decision to test for reasonable suspicion must be based on a reasonable and articulate belief that the employee is using or has used alcohol. This belief should be based on recent, physical, behavioral, or performance indicators of possible alcohol use. One (1) supervisor who has received alcohol detection training that complies with DOT regulations must make the decision to test and must observe the employee's suspicious behavior.

Supervisory personnel of the City of Lafayette making a determination to subject any employee to alcohol testing based on reasonable suspicion shall document their specific reasons and observations in writing to the personnel director within eight (8) hours of the decision to test and before the results of the tests are received by the department.

(c) Random testing. Only employees of the City of Lafayette possessing or wishing to obtain a Commercial Driver's License (CDL) or who are gas department employees are subject to random alcohol testing. It is the policy of the City of Lafayette to annually random test for alcohol at least twenty-five percent (25%) of the total number of drivers possessing or obtaining a commercial driver's license (CDL).

A minimum of fifteen (15) minutes and a maximum of two (2) hours will be allowed between notification of an employee's selection for random alcohol testing and the actual presentation for testing.

Random test dates will be unannounced with unpredictable frequency. Some employees may be tested more than once each year while others may not be tested at all, depending on the random selection.

If an employee is unavailable (i.e., vacation, sick day, out of town, work-related causes, etc.) to be tested on the date random testing occurs, the City of Lafayette may omit that employee from that random testing or await the employee's return to work.

(d) Return-to-duty and follow-up. Any employee of the City of Lafayette who has violated the prohibited alcohol conduct standards must submit to a return-to-duty test. Follow-up tests will be unannounced, and at least six (6) tests will be conducted in the first twelve (12) months after an employee returns to duty. Follow-up testing may be extended for up to sixty (60) months following return to duty.

The employee will be required to pay for his or her return-to-duty and follow-up tests accordingly.

Testing will also be performed on any employee with a CDL returning from leave or special assignment in excess of six (6) months. In this situation, the employee will not be required to pay for the testing.

(2) Alcohol testing procedures. All breath alcohol testing conducted for the City of Lafayette shall be performed using Evidential Breath Testing (EBT) equipment and personnel approved by the National Highway Traffic Safety Administration (NHTSA).

Alcohol testing is to be performed by a qualified technician as follows:

(a) Step one. An initial breath alcohol test will be performed using a breath alcohol analysis device approved by the National Highway Traffic Safety Administration (NHTSA). If the measured result is less than 0.02 percent Breath Alcohol Level (BAL), the test shall be considered negative. If the result is greater or equal to 0.04 percent BAL, the result shall be recorded and witnessed, and the test shall proceed to step two.

(b) Step two. Fifteen (15) minutes shall be allowed to pass following the completion of step one above. Before the confirmation test or step two is administered for each employee, the breath alcohol technician shall insure that the evidential breath testing device registers 0.00 on an air blank. If the reading is greater than 0.00, the breath alcohol technician shall conduct one (1) more air blank. If the reading is greater than 0.00, testing shall not proceed using that instrument. However, testing may proceed on another instrument. Then step one shall be repeated using a new mouthpiece and either the same or equivalent but different breath analysis device.

The breath alcohol level detected in step two shall be recorded and witnessed.

If the lower of the breath alcohol measurements in step one and step two is 0.04 percent or greater, the employee shall be considered to have failed the breath alcohol test. Failure of the breath alcohol test shall result in administrative action by proper officials of the City of Lafayette up to and including termination of employment.

Any breath level found upon analysis to be between 0.02 percent BAL and 0.04 percent BAL shall result in the employee's removal from duty without pay for a minimum of twenty-four (24) hours. In this situation, the employee must be retested by breath analysis and found to have a BAL of less than 0.02 percent before returning to duty with the City of Lafayette.

All breath alcohol test results shall be recorded by the technician and shall be witnessed by the tested employee and by a supervisory employee of the City of Lafayette, when possible.

The completed breath alcohol test form shall be submitted to the personnel director. (1973 Code, § 1-1507)

**4-408. Education and training.** (1) Supervisory personnel who will determine reasonable suspicion testing. Training supervisory personnel who will determine whether an employee must be tested based on reasonable suspicion will include at the minimum two (2) sixty (60) minute periods of training on the specific, contemporaneous, physical, behavioral, and performance indicators of both probable drug use and alcohol use. One (1) sixty (60) minute period will be for drugs and one (1) will be for alcohol.

The City of Lafayette will sponsor a drug-free awareness program for all employees.

(2) Distribution of information. The minimal distribution of information for all employees will include the display and distribution of:

- (a) Informational material on the effects of drug and alcohol abuse;
- (b) An existing community services hotline number, available drug counseling, rehabilitation, and employee assistance programs for employee assistance;
- (c) The City of Lafayette policy regarding the use of prohibited drugs and/or alcohol; and
- (d) The penalties that may be imposed upon employees for drug and alcohol abuse violations occurring in the workplace. (1973 Code, § 1-1508)

**4-409. Consequences of a confirmed positive drug and/or alcohol test result and/or verified positive drug and/or alcohol test result.** Job applicants will be denied employment with the City of Lafayette if their initial positive pre-employment drug and alcohol test results have been confirmed/verified.

If a current employee's positive drug and alcohol test result has been confirmed, the employee is subject to immediate removal from any safety-sensitive function and may be subject to disciplinary action up to and including termination. The city may consider the following factors in determining the appropriate disciplinary response: the employee's work history, length of employment, current work assignment, current job performance, and existence of past disciplinary actions. However, the city reserves the right to allow employees to participate in an education and/or treatment program approved by the city employee assistance program as an alternative to or in addition to disciplinary action. If such a program is offered and accepted by the employee, then the employee must satisfactorily participate in and complete the program as a condition of continued employment.

No disciplinary action may be taken pursuant to this drug policy against employees who voluntarily identify themselves as drug users, obtain counseling and rehabilitation through the city's employee assistance program or other program sanctioned by the city, and thereafter refrain from violating the city's policy on drug and alcohol abuse. However, voluntary identification will not

prohibit disciplinary action for the violation of city personnel policy and regulations, nor will it relieve the employee of any requirements for return to duty testing.

Refusing to submit to an alcohol or controlled substances test means that a driver:

(1) Fails to provide adequate breath or testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with the provisions of this part;

(2) Fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing accordance with the provisions of this part; or

(3) Engages in conduct that clearly obstructs the testing process. In either case the physician or breath alcohol technician shall provide a written statement to the city indicating a refusal to test. (1973 Code, § 1-1509)

**4-410. Voluntary disclosure of drug and/or alcohol use.** In the event that an employee of the City of Lafayette is dependent upon or an abuser of drugs and/or alcohol and sincerely wishes to seek professional medical care, that employee should voluntarily discuss his/her problem with the respective department head in private.

Such voluntary desire for help with a substance abuse problem will be honored by the City of Lafayette. If substance abuse treatment is required, the employee will be removed from active duty pending completion of the treatment.

Affected employees of the City of Lafayette may be allowed up to thirty (30) consecutive calendar days for initial substance abuse treatment as follows:

(1) The employee must use all vacation, sick, and compensatory time available.

(2) In the event accumulated vacation, sick, and compensatory time is insufficient to provide the medically prescribed and needed treatment up to a maximum of thirty (30) consecutive calendar days, the employee will be provided paid/unpaid leave for the difference between the amount of accumulated leave and the number of days prescribed and needed for treatment up to the maximum thirty (30) day treatment period.

Voluntary disclosure must occur before an employee is notified of or otherwise becomes subject to a pending drug and/or alcohol test.

Prior to any return-to-duty consideration of an employee following voluntary substance abuse treatment, the employee shall obtain a return-to-duty recommendation from the Substance Abuse Professional (SAP) of the City of Lafayette. The SAP may suggest conditions of reinstatement of the employee that may include after-care and return-to-duty and/or random drug and alcohol testing requirements. The respective department head and personnel director of the City of Lafayette will consider each case individually and set forth final conditions of reinstatement to active duty. These conditions of reinstatement must be met by the employee. Failure of the employee to

complete treatment or follow after-care conditions, or subsequent failure of any drug or alcohol test under this policy will result in administrative action up to and including termination of employment.

These provisions apply to voluntary disclosure of a substance abuse problem by an employee of the City of Lafayette. Voluntary disclosure provisions do not apply to applicants. Employees found positive during drug and/or alcohol testing under this policy are subject to administrative action up to and including termination of employment as specified elsewhere in this policy. (1973 Code, § 1-1510)

**4-411. Exceptions.** This policy does not apply to possession, use, or provision of alcohol and/or drugs by employees in the context of authorized work assignments (i.e., undercover police enforcement, intoxilyzer demonstrations). In all such cases, it is the individual employee's responsibility to ensure that job performance is not adversely affected by the possession, use, or provision of alcohol. (1973 Code, § 1-1511)

**4-412. Modification of policy.** This statement of policy may be revised by the City of Lafayette at any time to comply with applicable federal and state regulations that may be implemented, to comply with judicial rulings, or to meet any changes in the work environment or changes in the drug and alcohol testing policy of the City of Lafayette. (1973 Code, § 1-1512)

**4-413. Definitions.** For purposes of the drug and alcohol testing policy, the following definitions are adopted:

(1) "Alcohol." The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol.

(2) "Alcohol concentration." The alcohol in a volume of breath expressed in terms of grams of alcohol per two hundred ten (210) liters of breath as indicated by a breath test.

(3) "Alcohol use." The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

(4) "Applicant." 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 this 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.

(5) "Breath Alcohol Technician (BAT)." An individual who instructs and assists individuals in the alcohol testing process and operates an Evidential Breath Testing (EBT) device.

(6) "Chain of custody." 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.

(7) "Collection site." A place where applicants or employees present themselves to provide, under controlled conditions, a urine specimen that will be analyzed for the presence of alcohol and/or drugs. Collection site may also include a place for the administration of a breath analysis test.

(8) "Collection site personnel." A person who instructs donors at the collection site.

(9) "Commercial Driver's License (CDL)." A motor vehicle driver's license required to operate a Commercial Motor Vehicle (CMV).

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

(11) "Confirmation test." In drug testing, a second analytical procedure that is independent of the initial test to identify the presence of a specific drug or metabolite that uses different chemical principle from that of the initial test to ensure reliability and accuracy. In breath alcohol testing, a second test following an initial test with a result of 0.02 percent or greater that provides quantitative data of alcohol concentration.

(12) "Confirmed positive result." The presence of a 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 (2) 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 percent is considered a positive result.

(13) "Consortium." An entity, including a group or association of employers or contractors, which provides alcohol or controlled substances testing as required by this part or other DOT alcohol or drug testing rules and that acts on behalf of the employers.

(14) "Department director." The director or chief of a city department or his/her designee. The designee may be an individual who acts on behalf of the director to implement and administer these procedures.

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

(16) "DOT agency." An agency of the United States Department of Transportation administering regulations related to alcohol and/or drug testing. For the City of Lafayette, the Federal Highway Administration (FHWA) is the DOT agency.

(17) "Driver." Any person who operates a commercial motor vehicle.

- (18) "EAP." Employee Assistance Program.
- (19) "Employee." An individual currently employed by the City of Lafayette.
- (20) "Evidential Breath Testing Device (EBT)." 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."
- (21) "FHWA." Federal Highway Administration.
- (22) "Initial test." In drug testing, an immunoassay test to eliminate negative urine specimens from further analysis. In alcohol testing, an analysis procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.
- (23) "Medical Review Officer (MRO)." A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his/her medical history and any other relevant biomedical information.
- (24) "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.
- (25) "NHTSA." National Highway and Traffic Safety Administration.
- (26) "Refuse to submit." Refusing to submit to an alcohol or controlled substances test means that an employee:
  - (a) Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with the provisions of this part;
  - (b) Fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with the provisions of this part; or
  - (c) Engages in conduct that clearly obstructs the testing process.
- (27) "Safety-sensitive drivers." Employees in the aviation, motor carrier, railroad, and mass transit industries.
- (28) "Split specimen." Urine drug test sample will be divided into two (2) parts. One (1) part will be tested initially, the other will remain sealed in case a retest is required or requested.
- (29) "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. (1973 Code, § 1-1513)