

CHAPTER 37: TOWN POLICIES

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POLICY FOR A DRUG-FREE WORKPLACE

§ 37.01 PURPOSE.

(A) The purpose of this subchapter is to set forth a policy and establish a program as required by 41 USC Section 701, and other provisions of law, in order to comply with the provisions of federal mandates and to provide a drug-free workplace.

(B) The policy and programs implemented herein are applicable to all persons in the employment of the town irrespective of whether such employment is as an employee, independent contractor, or otherwise, and irrespective of whether such employee is a full-time employee, part-time employee, quasi employee, or also employed by another governmental agency. Persons in the employment of the town are specifically notified that the provisions of this directive are, at a minimum, sufficient for compliance with federal requirements for a drug-free workplace.

(C) The statement of policy and enumeration of requirements are not intended and do not supplant an employee's obligation to perform without impairment, whether such impairment arises from the use

of drugs, alcohol, or any other impairing substance, and the town is not limited from taking any action up to and including termination of employment for any act or omission of an employee occurring within the purview of matters normally or reasonably subject to supervision in the employment relationship.

(Ord. 1992-5, passed 6-15-92)

§ 37.02 DEFINITIONS.

Unless otherwise provided, the Town of Tryon is the employer referred to in this subchapter and the definitions in 41 USC Section 706 shall apply to similar terms used herein.

(Ord. 1992-5, passed 6-15-92)

§ 37.03 POLICY.

In order to assist in providing a drug-free workplace, it is the policy of the town that:

(A) All employees be notified that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the workplace is prohibited.

(B) Violations of the prohibition in division (A) above subject the employee to action taken on behalf of the employer, which action includes investigation, oral or written warning, recommended or mandated counseling, suspension, with or without pay, termination of employment and any other legal action deemed appropriate by the employer.

(C) As a condition of employment, any employee will abide by the terms of the statement in division (A) and shall notify the employer of any final conviction for a violation of any criminal drug statute occurring in the workplace not later than five days after such conviction. Within 10 days from the receipt of such notification or any other actual notice of such conviction, any granting agency will be notified of such conviction if the offending employee is in any manner engaged in the performance of a grant from such agency.

(D) Any employee who suffers a final conviction of a violation of any criminal drug statute occurring in the workplace shall be sanctioned or required to satisfactorily participate in a drug abuse acceptance or rehabilitation program as required by 41 USC Section 703.

(Ord. 1992-5, passed 6-15-92)

§ 37.04 PROGRAM ESTABLISHED.

(A) There is hereby established a drug-free awareness program to inform employees about the dangers of drugs in the workplace, the employers policy of maintaining a drug-free workplace, available drug counseling, rehabilitation and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.

(B) In order to implement the drug awareness program, the Polk County Mental Health Association is designated as an agency from which employees may obtain information regarding the dangers of drug abuse in the workplace and information on the availability of drug counseling, rehabilitation, and employee assistance programs.

(C) For information on the penalties that may be imposed on employees for drug abuse violations,

employees are directed to the federal and state criminal codes and advised to seek specific information from a duly licensed and practicing attorney at law.
(Ord. 1992-5, passed 6-15-92)

§ 37.05 IMPLEMENTATION.

In order to inform employees of the drug-free workplace policy and comply with the provisions of 41 USC section 702 (a), (c), and (g),

(A) Every employee shall be given a copy of the policy;

(B) All employees shall be informed of the drug-free workplace policy in a manner deemed appropriate by the town; and

(C) The foregoing policy and program shall be periodically reviewed in a continuing good-faith effort to maintain a drug-free workplace.

(Ord. 1992-5, passed 6-15-92)

DRUG TESTING POLICY AND PROCEDURES

§ 37.10 POLICY.

(A) Purpose

The purpose of this policy is to promote and maintain a drug free environment in the Town of Tryon work place and to protect Town employees and the public by ensuring that Town employees, and potential employees, are fit to perform the duties of their positions. The Town of Tryon is committed to developing and maintaining a fair and equitable policy which promotes and maintains a drug free work environment and is consistent with the guidelines established under the Drug-Free Work Place Act of 1988.

(B) Intent

As a public employer, the Town of Tryon is entrusted through its operations, with the health and safety of its citizens. In keeping with this obligation, it is the intent of this policy to address the testing for drug use or drug abuse by Town employees and applicants. This policy does not supersede any other provision(s) of the Town of Tryon Personnel Ordinance as adopted by the Tryon Town Council or approved by the Town Manager.

(C) Program

To accomplish the purposes of this policy, and prior to its implementation, the Town of Tryon shall conduct an initial and continuing education and training program for all employees to help them understand the policy and to educate supervisors in recognizing performance and/or behavioral problems which are associated with or indicative of drug use or abuse. Future new employees will all receive an orientation to this policy by their respective department supervisor. The Town also provides an Employee Assistance Program to help employees deal with personal problems which may be affecting their job performance or well being. This program may be either voluntary or involuntary depending upon the employee circumstances.

(D) Scope of Coverage

All employees of the Town of Tryon applying for a promotion or transfer within the Town of Tryon, or applicants applying for employment or re-employment with Town of Tryon are subject to the provisions of this policy. The following positions are exempted from this policy:

(1) All elected officials of the Town of Tryon which shall include the Mayor and all Tryon Town Council members.

(2) All persons appointed by the Town Council to serve as members of a regulatory or advisory board.

(E) Definitions

“EMPLOYEE” shall mean any person employed in a budgeted position in which wages are paid for services rendered, regardless of employment status or hours worked.

“APPLICANT” shall mean any person whose offer of employment is contingent upon the production of a negative drug test. “Applicant” shall also refer to any employee who applies for and is extended an offer of a promotion or transfer to another position within the Tryon Town Government.

“THE TOWN” shall mean the Tryon Town Government.

“REASONABLE SUSPICION” shall mean an expressible believe based upon specific, objective facts, and rational inferences drawn from those facts, that an employee has consumed or is under the influence of drugs and/or alcohol while at work or while performing Town business off Town premises. Circumstances which may constitute a “reasonable suspicion” may include, but are not limited to:

(1) Observable occurrences of drug or alcohol use and/or the physical symptoms of being under the influence of a drug or alcohol.

(2) A pattern of excessive absenteeism or tardiness, a deterioration in work performance, abnormal conduct, or erratic behavior while at work.

(3) A verbal or written report or complaint, by a reliable and credible source, of drug or alcohol use by an employee while at work or while performing, purporting to perform, Town business on or off Town premises.

(4) A pattern of unexplained but preventable accidents and/or other information based upon a specific objective facts that an employee has caused, or contributed to, an accident while at work or while performing, or purporting to perform, Town business on or off Town premises.

(5) Evidence that an employee is involved in the unauthorized and/or illegal possession, sale, manufacture, solicitation, transfer or offer of drugs or alcohol while at work or while performing, or purporting to perform, Town business on or off premises.

“EMPLOYEE ASSISTANCE PROGRAM shall mean a benefit program of counseling and services for employees which include assessment, evaluation, referral, and treatment and follow up procedures provided by the Town of Tryon.

“APPROVED LABORATORY” shall mean a laboratory which is federally approved and certified by the U.S. Department of Health and Human Services to conduct employee and job applicant drug testing.

“POSITIVE DRUG TEST” shall mean a positive result of an initial drug test, which may be confirmed by a second confirmation test utilizing a gas chromatography/mass spectrometry testing method.

“MEDICAL REVIEW OFFICER” shall mean a licensed physician whose services are obtained by the Town, to whom all positive laboratory test will be sent, and who reviews and interprets such laboratory tests results.

“SAFETY AND SECURITY SENSITIVE POSITION” shall mean any job classification or position which has been evaluated and determined by the Town Manager to be of such a critical nature in terms of public services or public safety that random drug testing has been determined to be a necessary public policy. Such positions include, but are not limited to, law enforcement officers, vehicle operators, emergency service personnel, and others as may be determined by this policy.

§ 37.11 DRUGS TO BE TESTED

(A) Coverage

When a drug screening is required under the provisions of this policy, a urinalysis test will be given to detect the presence of the following drugs:

- (1) Amphetamines
- (2) Barbiturates
- (3) Cocaine
- (4) Methaqualone
- (5) Opiates
- (6) Phencyclidine (PCP)
- (7) Marijuana (THC)
- (8) Benzodiazepines

In addition, any employee found to have abused prescription drugs will also be subject to the terms and conditions of this policy. Also, when an alcohol screening is required under the provisions of this policy, a blood sample will be drawn from the applicant or employee, by an approved laboratory or medical provider to detect the presence of alcohol.

(B) Threshold Levels

The threshold levels established by the Department of Health and Human Services for Federal Work Place Drug Testing programs are hereby adopted by reference and shall automatically include any later amendments and editions unless herein amended. The content level of each substance needed to determine whether an employee or applicant has consumed a drug or alcohol

covered by this policy will be determined by a certified toxicologist of the approved laboratory.

(C) Confirmatory Test

Should a confirmatory or a “second level” gas chromatography/mass spectrometry test be necessary, the cost of such a test will be the responsibility of the Town. At the discretion of the Town Manager, the Town will pay for a second level test of an employee whose first test has been deemed to be a false positive test.

(D) Other Controlled Substances

The Town Manager may also include any other controlled substance(s) as defined under North Carolina General Statute 90-87(5) or metabolite thereof. The Town Manager is authorized to utilize additional medical resources from a Medical Review Officer or other medical programs in use by the Town for the purposes of this policy.

§ 37.12 APPLICANT TESTING

(A) Coverage

All applicants for full time, part time, or temporary positions with the Town, which include employees applying for a promotion or transfer within Tryon Town Government, are subject to the terms of this policy. Only those applicants who are extended an offer of employment, will be required to undergo and pass a drug test as a condition of employment, re-employment, promotion, or transfer prior to final appointment. Final appointments are to be authorized by the Town Manager upon an applicant’s satisfactory completion of the required test.

(B) Notification

All applicants extended an offer of employment will be provided with written notification of this policy and be required to sign a consent form authorizing a drug test and permitting the release of the test results to Town officials with a need to know. A separate form will be provided to indicate current or recent use of prescription drugs as prescribed by a physician or over the counter medication. The written notification shall contain the following:

- (1) Reason for the drug test
- (2) Circumstances under which testing may be required
- (3) Procedures for confirming an initial positive drug test result
- (4) Consequences of a positive drug test result, and
- (5) Consequences of refusing to undergo a drug test

(C) Refusal to Comply

An applicant who refuses to comply with the requirements of the drug testing procedure will be denied employment with the Town of Tryon. Such applicant may be considered for future employment after a one year period from the date of the refusal to comply with the requirements of the drug testing procedures.

(D) Positive Test

An applicant who tests positive in a drug test shall be notified, in writing, by the Town Manager or Department head, that they are no longer under consideration for employment with the Town. The letter of notification shall include a report of the test results.

(E) Confirmatory Test

However, if the applicant is not an employee, and believes that the results of the drug test is in error, the applicant may request a confirmatory or “second level” gas chromatography/mass spectrometry test be performed, at the expense of the applicant until the results are made known to the Town Manager and those Town officials with the need to know.

(F) Waiver of Applicant Testing

At the discretion of the Town Manager, drug testing of applicants for part time or temporary employment may be waived. This waiver does not apply to “safety and security sensitive” positions.

§ 37.13 CURRENT EMPLOYEE TESTING

(A) Employee Responsibility

All Town employees are responsible for knowing and adhering to the requirements of this policy. Employees are also expected to share in the responsibility of insuring that the Town’s work place is safe and free from the dangers associated with the abuse of alcohol and other drugs. Any employee having a reasonable basis to believe that another employee is illegally using, or is in possession of any controlled substance, or is intoxicated shall report the facts and circumstances to their immediate supervisor or other superior.

(B) Notice of Testing

Before a drug test is administered to any employee, the employee’s supervisor or Department Head will provide the employee with written notice of this policy. The supervisor will also provide the employee with a consent form authorizing a drug test and permitting the release of the test results to Town officials with a need to know. A separate form will be provided to indicate current or recent use of prescription drugs as prescribed by a physician or over the counter medication. The notice shall contain the following:

- (1) Reason for drug testing
- (2) Circumstances under which testing may be required
- (3) Procedures for confirming an initial positive drug test result
- (4) Consequences of a positive drug test result
- (5) Consequences of refusing to undergo a drug test
- (6) Explanation of a positive confirmatory test result
- (7) Appeal procedures available to the employee, and
- (8) Availability of drug abuse counseling and referral services

(C) Positive Test

Except as otherwise provided in this policy, any Town employee who tests positive in a drug test, will be subject to disciplinary action up to and including discharge. The supervisor may recommend to the Department Head a mandatory Employment Assistance Program referral in lieu of discharge. When making recommendations for disciplinary actions, the supervisor or department head shall consider factors which include the employee's:

- (1) work history
- (2) job assignment
- (3) length of employment
- (4) current job performance, and
- (5) past disciplinary action

(D) Refusal to Comply

Any employee who refuses to comply with the requirements of the Town drug testing policy or procedures will be discharged according to the policy stated in the Town of Tryon Personnel Ordinance. The basis for discharge may include, but is not limited to, the following:

- (1) dishonesty
- (2) drunkenness on duty
- (3) use or possession of illegal narcotics or habit-forming drugs
- (4) willful and wanton disobedience of a supervisor
- (5) reporting to work or working under the influence of an intoxicating beverage and/or other drugs which are not medically prescribed for a specific treatment.
- (6) refusal to accept or follow a reasonable and proper assignment from an authorized supervisor (insubordination)

§ 37.14 MANDATORY EMPLOYEE ASSISTANCE PROGRAM (EAP)

(A) Eligibility for Participation

An employee permitted to continue employment and receive assistance under the Town's Employment Assistance Program will be required to fully comply with the provisions of the recommended rehabilitation program. To participate in the Mandatory Employee Assistance Program, the employee must have the recommendation of their immediate supervisor, and must be approved by their department head and the Town Manager.

(B) Refusal to Comply

Employees who are referred to the EAP for participation in a drug rehabilitation program, and who fail to enter, complete, or otherwise comply with the provisions of the program within the time frame required, will be discharged under the appropriate provisions of the Town of Tryon Town Personnel Ordinance.

(C) Random Drug Testing

Employees who acknowledge that they are participating in an EAP approved drug rehabilitation program, or who have satisfactorily completed a voluntary or mandatory approved drug rehabilitation program, will be subject to unannounced drug tests for a period of one year from the date of such acknowledgement, in accordance with the aforementioned procedures. Upon any subsequent positive drug test, the employee will be discharged under the appropriate provisions of the Town of Tryon Town Personnel Ordinance.

(D) Confidentiality

Nothing in this section is intended to alter the confidential nature of the Employee Assistance Program for employees who voluntarily identify themselves as drug users and individually request assistance from the EAP Program. Employees who have alcohol or drug abuse problems are encouraged to avail themselves of the EAP services. Voluntary participation is strictly confidential.

§ 37.15 POST ACCIDENT TESTING

(A) Coverage

All Town employees subject to this policy shall be required to undergo and pass a drug test on any occasion in which they are involved in a vehicular accident while operating a Town vehicle or performing Town business while using a private vehicle when:

- (1) A citation or ticket is issued indicating that the employee is at fault, or
- (2) The property damage exceeds \$500.00 to any vehicle involved in the accident regardless of ownership, or
- (3) There is any type of injury to anyone, regardless of fault.

(B) Employment Responsibility

Town policy requires all employees to immediately report all accidents, regardless of the extent of damage, to their supervisors or department head. Based upon the information, the supervisor or department head shall determine if a drug test is required.

§ 37.16 RANDOM TESTING

(A) Coverage

All employees who occupy a position which is classified as a “safety and security sensitive position” shall be subject to a random drug test annually as a condition of their employment.

(B) Selection

The actual selection of the employee to be tested and the date and time of the drug test will be conducted at random through the use of a computer program algorithm.

Upon the determination of a specific schedule for testing purposes, a random list of names of active employees will be produced upon the request of the Town Manager. The Town Manager shall

immediately notify each employee selected of the time and location of the test and other notification requirements as identified in section 4.2 of this policy. Such notification shall be confirmed with the employee, but not later than 1:00 P.M. of the same business day.

(C) Refusal to Comply

Any employee who refuses to comply with any part of the test or testing procedures will be discharged as referenced in section 4.4 of this policy.

§ 37.17 NOTIFICATION OF ARREST OR CONVICTION

(A) Employee Responsibility

All employees are responsible for notifying their immediate supervisor or department head of their arrest or conviction of any misdemeanor or felony criminal drug statute not later than five (5) working days after such arrest or conviction. It is understood that such notification shall constitute a reasonable suspicion for such employee to undergo a required drug test.

(B) Failure to Comply

Any employee who refuses to comply with any part of the test or testing procedures will be disciplined as referenced in section 4.4 and 5.2 of this policy.

§ 37.18 MISCELLANEOUS

(A) Non-Disciplinary Suspension

An employee may be suspended pursuant to the Town of Tryon Personnel Ordinance procedures pending an investigation, hearing, or trial of that employee for a drug related offense.

(B) Other Standards or Testing Requirements

All applicants for employment and all employees in positions subject to the provisions of other duly constituted and recognized agencies or licensing boards such as the North Carolina Board of Nursing, North Carolina Board of Medical Examiners, and the North Carolina Criminal Justice Standards and Training Commission, will be subject to the drug testing policies and procedures of such agencies or licensing boards in addition to those outlined herein.

(C) Effective Date

The effective date of this policy is July 17, 1995.

MUNICIPAL SMOKING POLICY

§ 37.20 DEFINITIONS.

SMOKING shall mean the inhaling, exhaling, burning or carrying of a lighted pipe, cigar, cigarette or other combustible tobacco product.

(Ord. 1993-5, passed 8-16-93)

§ 37.21 SMOKING PROHIBITED IN MUNICIPAL BUILDINGS.

It shall be unlawful for any person to smoke in any building or facility or portion of a building or facility now or hereafter owned, leased, operated, occupied, managed or controlled by the town.
(Ord. 1993-5, passed 8-16-93) Penalty, see § 37.99

§ 37.22 SMOKING PROHIBITED IN MUNICIPAL VEHICLES.

It shall be unlawful for any person to smoke in any vehicle now or hereafter owned or leased by the city.
(Ord. 1993-5, passed 8-16-93) Penalty, see § 37.99

§ 37.99 PENALTY.

Violation of this subchapter shall constitute a misdemeanor punishable in accordance with G.S. § 14-4.
(Ord. 1993-5, passed 8-16-93; Am. Ord. 2010-04, passed 02-16-10)