

# City of Niles, Ohio

SPONSORED BY: COUNCIL AS A WHOLE  
AUTHORIZED BY: ALL MEMBERS OF COUNCIL

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DRAFT NO. 147-19

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION ADOPTING THE AMENDED DRUG FREE SAFETY POLICY  
FOR THE CITY; AND, DECLARING AN EMERGENCY

WHEREAS, the City is in need of an updated Drug Free Safety Policy (attached hereto).

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NILES, STATE OF OHIO:

SECTION 1: That Council hereby approves the updated Drug Free Safety Policy, a copy of which is attached hereto.

SECTION 2: This Ordinance is hereby declared to be an emergency measure in the interests of the public health, safety and welfare, for the reason that it is imperative that the updated Drug Free Safety Policy be established as soon as possible to give proper guidance to City officials and employees at the earliest possible time. As such an emergency measure, this ordinance shall take effect upon passage by Council and approval by the Mayor.

Passed: \_\_\_\_\_

\_\_\_\_\_  
President of Council

Attest: \_\_\_\_\_  
Clerk of Council

Received by the Mayor of the City of Niles this \_\_\_\_\_ day of \_\_\_\_\_, 2019,  
and approved by me as such Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Mayor

## **City of Niles Drug Free Safety Policy**

**Subject:** Policy on Drug and Alcohol Use

**Policy:** Drug use in the workplace is a danger to us all. It impairs the safety, health and welfare of all employees, promotes crime and lowers production and quality.

This Policy applies to all hourly and salaried employees, and is a condition of employment in accordance with any collective bargaining agreements.

In compliance with the Ohio Bureau of Workers' Compensation Drug Free Safety Program, City of Niles's view on substance abuse is as follows:

### **Statement of Policy**

City of Niles, (hereinafter referred to as the "Company") will not condone and will not tolerate any of the following workplace related behaviors by its employees:

- A) The use of illegal drugs;
- B) The use of alcohol;
- C) The sale, purchase, manufacture, transfer, use or possession of any illicit drugs, or prescription drugs obtained without a valid prescription; or
- D) The employee's presence at work under the influence of any drug (legal or illegal) or alcohol to the extent that job performance or safety may be affected.

The purpose of this Policy is to promote safety. All employees or applicants who are required testing for specific drugs and/or alcohol, based on established thresholds, as applicable under any law, regulation, or Policy; who violates this DFSP (hereinafter referred to as the "Policy") will be subject to discipline, up to and including termination of employment. The implementation of discipline or of sanctions shall be at the sole discretion of the Company in compliance with applicable Policy or law.

The Company will appoint a Designated Employee Representative (DER) to administer this Policy. This individual may authorize other employees to receive drug and alcohol test results. All communications regarding the Policy must be done through the identified individual(s). Confidentiality will be maintained with no information be made available without a legitimate need to know.

Affected individuals (hereinafter referred to as "employee(s)", include all regular, full-time, part-time, and temporary workers; all officers, managers; all sub-contractors, while performing work for the Company, on or off Company properties; and individuals seeking employment, where applicable.

An employee's violation of this Policy will not ordinarily be reported to any law enforcement agency with the exception that all reasonable and necessary measures will

be taken to assure the safety and security of all employees, the public and the Company. Law enforcement will be called on as required by any regulatory body or criminal statute, or in conjunction with a referral for criminal prosecution.

**Testing Frequency and Patterns**

General expectations of all drug and alcohol testing situations include: reporting at the designated testing location upon notification (within 2 hours if an off-site collection facility is used), providing the required specimen(s) within 2 hours, and full compliance with this Policy and the procedures used by the collection personnel and facilities. In all cases where employee safety may be an issue, the Company will provide transportation to and from the testing site.

Refusal to comply with the testing requirements, failure to provide the required valid specimen(s), adulteration, or substitution of a specimen will be considered a refusal to test. In the case of a lab reported dilution, a retest will be done and a second dilution will result in a refusal to test. Any such refusal may be subject to immediate termination of employment or the cancellation of an offer of employment at the discretion of the Administration.

**Post-Offer, Pre-Employment or New Hire DFSP Testing**

Effective immediately, upon implementation of this Policy, all applicants are subject to post-offer, pre-employment or new hire drug and alcohol testing conducted by a contractor selected by the Company. The Company will require a result of this testing prior to the employee performing any services for the Company, or will require testing prior to the end of the employee's probationary period (not to exceed 90 days). The Company will decline to extend an offer of regular employment to any applicant with a verified positive test result(s) to any tested substance, or any refusal to test and this applicant may not reapply for employment with the Company for a period of six months.

The applicant will be given a copy of the Company's Policy and the "Consent and Release Form." The interviewer will then give the applicant an opportunity to ask questions he/she may have concerning the Policy or the Consent, and obtain the applicant's signature on the Consent and Release Form.

**Site Testing**

**When drugs, alcohol, suspicious materials or paraphernalia are found; the Administration will reserve the right to test any and all personnel that had access to the work area.**

The following procedure will be followed if any suspected illegal drug and/or paraphernalia is found.

1. **SECURE THE SCENE.** Do not remove the illegal drug and/or paraphernalia from the location where it was found. Also, secure the scene until the appropriate parties are notified and have come and secured the scene.
2. Police Department is to be notified immediately.
3. The immediate Supervisor, the Mayor, the Service Director and/or the Safety Director are to be notified immediately.
4. Human Resources Department to be notified immediately.

**For all Reasonable Suspicion Testing and all Post Accident Testing, the employee shall be driven by a supervisor to the testing facility**

**Reasonable Suspicion Testing**

Reasonable Suspicion Testing will be performed when a trained Company management official and/or supervisor determine that an employee may be under the influence of an unacceptable substance (i.e., drugs and/or alcohol). This testing may be ordered at any time after this Policy was originally put into effect, providing at least 30 days have passed since the original implementation date, notwithstanding any subsequent revisions. The suspensions must be documented by a trained supervisor within 24 hours of the event and in no case later than the release of laboratory findings. These reasonable suspicions may be released to the Medical Review Officer (hereinafter referred to as "MRO") upon his/her request. The Reasonable Suspensions may be based upon:

- 1) Observable phenomena which may include, but are not limited to: direct observation of drug or alcohol use or possession; the physical symptoms of being under the influence of drugs and/or alcohol; the odor of alcoholic beverages or other prohibited substances.
- 2) An abnormal pattern of conduct or erratic behavior which may include deteriorating job performance, absenteeism, tardiness, recurrent accidents, flagrant or repeated violations of safety and/or other work rules, which cannot be attributed to other known factors.
- 3) Conviction of or plea (including no contest or *nolo contendere*) to a drug related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug violations including use, possession, manufacturing or trafficking.
- 4) Newly discovered evidence that the employee has tampered with a previous drug or alcohol test.

Although reasonable suspicion testing does not require certainty, mere "hunches" are not sufficient to meet required standards. To address this, all supervisors will be trained in the recognition of drug and alcohol related signs and symptoms, and testing may only be requested by a supervisor which has been trained per this Policy. The trained supervisor may request the concurrence of a second person, preferably a second trained supervisor.

All employees are responsible for obtaining and providing a release to the Company, prior to performing their regular job duties, if they are placed on any medication that may impair their normal functioning. This release is known as a "Fit for Duty Slip" and must be signed by a licensed medical practitioner who has the employee under their care. The slip may not divulge the nature of the care or anything other than the employee is, or is not, "Fit for Duty" and any restrictions they must follow while working. The Company will attempt to find suitable assignments for the employee, but failing that, the employee will be placed on medical leave until such time as a suitable job becomes available or the employee is released for full-duty. The employee may use available permissive leave during this time, but otherwise will be on unpaid medical leave. All leaves will be recorded as "Family and Medical Leave Act" leaves, as applicable.

The first priority of the supervisor is to remove the suspected employee from the work environment. This shall be done to prevent the employee from causing injury to themselves or someone else.

A supervisor shall instruct the employee to accompany them to a private area away from co-workers and the public. If transportation is needed, the Company will provide transportation to and from whatever location is used. Should the employee attempt to drive or walk home after refusing a test or completing a reasonable suspicion test, the police will be called and given information regarding the employee's actions. . When the employee is sent home he/she must call for a ride home. They may not drive, walk or be taken home by Company officials.

The employee will be paid for time off if test results come back negative. The employee will not be paid if any test is reported positive to the Company.

#### **Post Accident Testing**

An accident, for the purpose of this Policy, may include, but is not limited to: an unplanned, unexpected, or unintended negative event that occurs during the employee's workday and in relation to the Company's business. In addition to personnel, it may involve personal or business property/equipment or vehicles used in the performance of the employee's job.

Upon implementation of this Policy, post accident drug and alcohol testing is mandatory in all cases for all individuals who may have caused and contributed to an "on-the-job" accident, which meets any of the following criteria:

- 1) A fatality;
- 2) An employee is involved in an employment related accident that causes bodily injury requiring off-site medical treatment of the employee or another person;
- 3) An employee is involved in an employment related accident that results in significant property damage, exceeding five hundred dollars; or
- 4) An Employee is involved in an employment related vehicular accident that results in damage that exceeds one thousand dollars.

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In accordance with the Ohio Revised Code section known as the "Rebuttable Presumption" law, the Company will seek disallowance of a workers' compensation claim when an employee tests positive for alcohol at a level of .08% BAC, or above, or a controlled substance as specified in the Policy after a work related accident or injury. An employee may dispute or prove untrue the presumption (or belief) that alcohol or a controlled substance, not prescribed by the employee's physician, is the proximate cause (main reason) of the work related injury. The burden of proof is on the employee to prove that the presence of alcohol and or a controlled substance was not the proximate cause of the work related injury. An employee who tests positive or refuses to submit to a chemical test may be disqualified for compensation and benefits under the Workers' Compensation Act.

Any employee who is injured on the job and waits until sometime later to seek off-site medical attention for that injury must secure from the medical provider a drug and alcohol test compliant with this Policy. It is the employee's responsibility to inform the provider of this Policy and to execute such forms as the provider may require and have the results of the test forwarded directly to the DER. It is the employee's responsibility to have these tests done and they should be done at the time of medical attention if at all possible.

In the event a hospital refuses or fails to provide an alcohol/drug test, the employee is to contact the employer if this occurs during hours of operation. If it occurs after hours of operation, the employee is to contact the lab at the phone number provided to them to arrange the test.

Specimen collection is to occur as soon as possible after a need has been determined, and any necessary medical attention has been rendered, in accordance with 1-4 above. Every reasonable effort shall be made to assure that the total elapsed time before a drug specimen has been collected does not exceed thirty-two (32) hours period. Alcohol testing will be performed within eight hours of the employee related incident to be applicable to the Ohio Revised Code. Regardless of the time frames, alcohol and drug testing must be completed at the initial medical treatment following an employment related injury, unless it involves a DOT regulated driver. DOT drivers are regulated by Part 382 of the Federal Motor Carrier Safety Regulations.

Any employee involved in the employment related accident expressly grants unto Company its officers and management, the right to request that attending medical personnel or collection personnel obtain appropriate specimens (breath/blood and or urine) for the purpose of conducting alcohol and or drug testing. All employees expressly grant unto the DER, access to all medical information that may be relevant in conducting a complete and thorough investigation of the employment related accident, to include but not limited to, a full medical report from the examining physician(s) or other health care providers.

The refusal of an employee to allow the collection of these specimens, any attempt to block the release of the results of any substance abuse tests taken, or failure to report a work related accident, will be considered and managed the same as a refusal to test.

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Employees are specifically required to immediately file a First Report of Injury (FROI) with the Company for any injury related to their employment in compliance with our on-the-job injury Policy. All injuries must be reported immediately and no later than the date that they occurred.

Employees are required to return to work following medical treatment unless reasonable suspicion exists from the Company on the employee's level of impairment or the medical practitioner fails to label them as "Fit for Duty."

#### **Random Drug Testing**

The Company has contracted with a collection contractor to perform the periodic selection of employees from the employment pool to be tested. This non-Company testing entity will ensure that all employees have an equal statistical likelihood of being selected for random testing. In accordance with Ohio Bureau of Workers' Compensation Advanced Level requirements, 15 percent of the average annual total work force will receive random drug testing, as applicable.

In order to implement mandatory random drug testing, the Company will provide employee identification information to the non-Company testing entity for use in the Random selection database. The entity will, in turn, furnish the Company with a list of individuals to be tested for each selection period.

#### **Follow Up Testing**

Effective immediately, certain employees will be subject to follow-up testing prior to being permitted to return to work. Those employees who have previously tested positive for a prohibited substance(s) will be subject to no notice follow-up testing at any time for a period not to exceed two years from the date they returned to work. A minimum of four follow-up tests will be required within the first year of returning to work. A positive result on any follow-up test will result in the employee being immediately terminated from the Company for cause.

Other employees who may be subject to this testing are those individuals who have self reported a chemical or alcohol abuse problem, received substance abuse treatment and are released to return to work, and those who have been off work for more than thirty days. It may also be required for individuals who have been temporarily reassigned for safety reasons in order to return to their regular position.

In addition to the preceding circumstances, the Administration may also test in accordance with applicable law, including determining the reasonable scope and number of personnel tested.

**Drugs Tested / Cut-Off Levels**

The testing procedures will seek to identify the presence of the following controlled substances that may be present: (a negative screening test, EMIT or other form of immunoassay is considered a negative test)

Drug Class	Screening Test Level	Confirmation Test Level	Confirmation Method
Amphetamines	500 ng/mL	250 ng/mL	GC/MS
Barbiturates	300 ng/mL	300 ng/mL	GC/MS
Benzodiazepines	300 ng/mL	300 ng/mL	GC/MS
Cocaine metabolites	150 ng/mL	100 ng/mL	GC/MS
Marijuana metabolites	50 ng/mL	15 ng/mL	GC/MS
Methadone	300 ng/mL	300 ng/mL	GC/MS
Opiates	2000 ng/mL	2000 ng/mL	GC/MS
Phencyclidine	25 ng/mL	25 ng/mL	GC/MS
Propoxyphene	300 ng/mL	300 ng/mL	GC/MS
MDMA/Ecstasy	500 ng/mL	250 ng/mL	GC/MS
6-Acetylmorphine	10 ng/mL	10 ng/mL	GC/MS
Methaqualone	300 ng/mL	200 ng/mL	GC/MS
Expanded Opiates/Synthetic Narcotics	300 ng/mL	300 ng/mL	GC/MS

These detection thresholds are consistent with available technology and have been established by the *Department of Health and Human Service (DHHS) / the Substance Abuse and Mental Health Services Administration (SAMHSA)* for each of the drug groups listed above. These detection thresholds will be used uniformly in the interpretation of all drug screen/drug confirmations, whether for post-offer, pre-employment or new hire examination; random examination; post-accident examination, reasonable suspicion examination; or follow-up examination. Only Department of Health and Human Services, DHHS/SAMHSA, certified laboratories will be utilized for drug confirmations.

Alcohol testing will be conducted by the contractor utilizing only certified equipment and/or testing methods and personnel. Alcohol concentrations exceeding 0.02% on the screening will require a breath alcohol confirmation test. A breath alcohol confirmation result equal to or greater than .04 grams per 210 liters of breath will be considered a verified positive result. In the event of an incident where an employee has a "whole blood" alcohol drawn at a medical treatment facility, a result equal to or greater than 0.04% shall be considered to be a verified positive result.

The Company also expressly reserves the right to add or delete substances on the list set forth in the "Drugs Tested/ Cut-Off Levels" section of this Policy. These changes may be made if, in the Company's discretion, they become warranted by the changing nature of



abused substances, or if mandated by changes in existing Federal, State or local regulations or legislation.

**An individual that tests positive for drugs or self reports drug use:**

- Within 7 days of the test result the employee must contact a Substance Abuse Professional and be scheduled for an evaluation.
- Must comply with all treatments recommended by said Professional .
- Must undergo a "return-to-work" drug test resulting in a negative test result prior to returning to the job and secure authorization to return to work from their SAP.
- Must receive a minimum of four (4) follow-up tests within the first year following the employee's return to work, with additional follow-up tests permitted for a period of up to two (2) years following the original positive test.
  - o The initial one (1) year follow-up testing period has no statute of limitations and is based solely upon the date that the employee returns to work.
- DOT drivers are subject to provisions of Part 382 of the US DOT Federal Motor Carrier Safety Regulations

**An individual that tests positive for alcohol or self reports suspected problems:**

**Test results for alcohol 0.02 Blood Alcohol Level or greater, but less than 0.04 BAL**

- Shall not return to work until the employee's next scheduled duty period, but not less than 24 hours following the test.
- Shall call for someone to take them home.
  - o Discipline for this violation is discussed further into Policy.
  - o DOT drivers are subject to provisions of Part 382 of the US DOT Federal Motor Carrier Safety Regulations

**Test results for alcohol of 0.04 Blood Alcohol Level or higher:**

- Within 7 days of the test result the employee must contact a Substance Abuse Professional and be scheduled for an evaluation.
- Must comply with all recommendations of said Professional
- Must undergo a "Return-to-Duty" alcohol test resulting in a test level of less than 0.02% Blood Alcohol Content and secure authorization from SAP to Return to Work.
- Must be randomly tested as determined by the Company with no less than four (4) random tests for the first year after returning to work.
- DOT drivers are subject to provisions of Part 382 of the US DOT Federal Motor Carrier Safety Regulations

NOTE: Any employee using a prescribed medication which may impair the performance of job duties, either mental or motor physical functions, must have a "Fit for Duty" slip from their prescribing doctor showing that they are capable of performing assigned tasks. For the safety of all employees, the Company will consult with you and your physician to determine if a reassignment of duties is warranted. The Company will attempt to accommodate your needs by making an appropriate reassignment. However, if a reassignment is not possible, you will be placed on a temporary medical leave until

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released as "Fit for Duty" by the prescribing physician. The Company will not condone the inappropriate and/or misuse of legal prescriptions or over-the-counter drugs. It is also not the intent of this Policy for the Company to know what medical conditions and/or medication an employee is using. Physicians working with the Company to find suitable work for your limitation(s) will be encouraged to maintain Doctor/Patient confidentiality in regard to diagnosis and prescribed medications. Our intent is solely to ensure a safe work environment for you and your fellow employees.

Effective September 8, 2016, Ohio's medical marijuana law is in effect. Employees who are using marijuana with a valid prescription are not exempt from this policy in any way. The use of marijuana in any form, with or without a valid prescription will be treated the same as the use of all other Schedule 1 controlled substances or illegal drugs. Employees using Schedule 1 controlled substances or illegal drugs, including marijuana with a valid prescription are still subject to all provisions of this policy.

#### **Specimen Collection Procedure**

Drug and alcohol testing for the Company shall only be conducted by trained collection personnel who meet quality assurance and chain-of-custody standards for urine collection procedures, alcohol testing and strict confidentiality procedures for the certified lab. Breath testing instruments must be approved by DHHS and operators certified by the instrument manufacturer, or a certified training agency.

Any individual subject to testing under this Policy shall be permitted to provide urine specimens in private, but subject to controls designed to minimize invalidity in the testing process such as alteration or substitution of the specimen provided. In the event that the collector feels the collection process has been compromised, a witness void will be conducted utilizing a same gender witness, unless the witness is a licensed medical professional. Alcohol testing will likewise be done in an area that affords the individual privacy. In all cases, there will only be one individual tested at a time.

#### **A. Employee's Rights Related to an Initial Positive Test Result:**

In the event that an employee tests positive for any drugs or alcohol as prohibited in this Policy, the employee will be given an opportunity to explain the findings to the Medical Review Officer (MRO) prior to the issuance of a report of a positive test result to the Company.

Accordingly, upon receipt of a confirmed positive finding, the MRO shall contact, or attempt to contact, the employee by telephone or in person. If contact is made by the MRO, the MRO shall inform the employee of the positive findings and give the employee an opportunity to rebut or explain the findings.

The MRO can request information on recent medical history and on medication taken within the last thirty (30) days by the employee. In the event that the MRO finds support in the explanation offered by the employee, the employee may be asked to provide documentary evidence to support the employee's position (for example, the names of treating physicians, pharmacies where prescriptions have been filled, etc.). A failure on the part of the employee to provide such documentary evidence will result in the issuance of a positive test result report by the MRO with no attendant

medical explanation. A medical disqualification of the employee will result.

If the employee fails to contact the MRO within three (3) days of having been instructed to do so, the MRO will issue a positive report to the Company. Since no contact with employee was possible, no medical explanation can be provided and the employee shall forego the right to offer a defense to the positive test result. A medical disqualification shall result, subject to re-test provisions set forth in the MRO's report.

**B. Split Specimen**

An employee wishing to request a re-test must do so within three (3) days of learning that the first test was positive. Employees will be required to pay for the costs of the re-test. The specimen will be shipped to a different DHHS/SAMHSA certified laboratory other than the one that analyzed the first specimen. Our MRO determines to which lab the split specimen will be sent and the request for split sample re-testing is made to this MRO when the employee is first contacted for an explanation. If the results come back negative, the Company will reimburse the employee for the costs of the test that the employee paid for prior to the test. The same paperwork and procedure protections used for the first test will be utilized for the split specimen. The collection agency that collects the initial screen is responsible to split the specimen. *A split specimen is not required for Pre-Employment testing.*

**C. Report of Results**

All positive lab test results will be reported to the MRO prior to the results being issued to the Company. The MRO will receive from the DHHS/SAMHSA testing laboratory a detailed report of the findings of the specimen. Each drug for which the individual was tested and alcohol will be listed along with the results of the testing. The Company will receive a summary report, and this report will indicate that the employee passed or failed the drug/alcohol test. Breath alcohol results will be made available immediately and not forwarded to the MRO unless requested by the MRO.

All of the above procedures are intended to be consistent with the most current guidelines for the Medical Review Officer that are published by the Federal Department of Health and Human Services.

**D. Confidentiality**

All parties to this Policy and program have only the interests of the employees in mind and therefore encourage any employee with a substance abuse problem to come forward and voluntarily accept our assistance program in dealing with this illness. An employee assistance program will provide guidance and direction for you during your recovery period. If you volunteer for help, the Company will make every reasonable effort to return you to work upon recovery. The Company will also take action to assure that your illness is handled in a confidential manner.

Any employee who self reports a problem with alcohol or drugs will be considered the same as a person who tests positive and will follow the same procedures as a person testing positive as set forth in this policy.

All actions taken under this Policy and program will be confidential and disclosed only to those with a ' Need to Know"; See page one.

The program will be in compliance with all federal, state and local laws and regulations. An employee's violation under the DFSP Policy shall not be reported to law enforcement officials unless required by a regulatory body or by criminal statute. Law enforcement authorities may be contacted and requested to come onto the Company's premises, when appropriate, in conjunction with a referral for criminal prosecution. This also includes employees attempting to drive after being asked for a chemical test without receiving a negative result and/or failing a chemical test.

When a test is required, the specimen will be identified by a code number - *Not By Name* - to insure confidentiality of the donor. Each specimen container will be properly labeled and made tamper proof. The donor must witness this procedure.

Unless an initial positive result is confirmed as positive, it shall be deemed negative and reported by the laboratory as such.

The handling and transportation of each specimen will be properly documented through strict chain-of-custody procedures.

The Company will bear the cost of all testing procedures with the exception of a positive retest. An employee that tests positive for any drug as prohibited herein has the right to have a retest done on the original split specimen. This retest may be authorized by the MRO only with the employee's request received within three (3) days of their notification of the positive result. The employee is responsible for the prepaid expense at the provider's current rate, and the testing will be performed by a DHHS/SAMHSA certified laboratory of the MRO's choice. Retesting will not delay the report of the positive result to the Company and the result of the retest will also be released to the Company.

To protect the confidentiality of the employee, all records of drug and alcohol testing will be stored separate and apart from the employee's general personnel documents. Access to these records shall be limited to designated Company officials. The information contained in these files shall be utilized only to properly administer this Policy and to provide to auditing and certifying agencies for review as may be required. Those designated Company officials that shall have access to these records are charged with the responsibility of maintaining confidentiality of those records. Any breach of confidentiality with regard to said records will be a terminable offense. Any employee tested under this Policy has the right to review and/or receive a copy of their test results on file with the employer.

**E. Discipline**

1. Each employee will be required to sign a consent and chain of custody form, assuring proper documentation and accuracy. If an employee refuses to sign a consent form authorizing the test, employment by the Company will be terminated and the refusal will be treated the same as

a refusal to test for Workers' Compensation issues.

2. No employee shall refuse to submit to a pre-employment, post-accident, reasonable suspicion, and/or follow-up test. Refusal will result in termination.
3. If the employee fails to comply with or complete the requirements of the rehabilitation program, or fails any post-rehabilitation or subsequent drug and alcohol test, the employee will be terminated.
4. Any employee attempting to manipulate the drug/alcohol testing process, such as trying to adulterate, modify or substitute a specimen will be terminated from employment. The use of masking agents is prohibited and is subject to termination. If dilution is inconclusive, a second test will be done. Two suspected dilutions resulting in invalid results will count as a refusal to test.
5. Any employee convicted of violating a criminal drug statute must inform the DER and Human Resource Manager of such conviction (including pleas of *no-contest* or *nolo-contendere*) within five (5) days of the conviction occurring. Failure to inform the Company subjects the employee to disciplinary action, up to and including, termination of employment.
6. An Employee that tests for alcohol between .02 and <.04% levels will:
  1. First Offense - Will be off work without pay for 24 hours.
  - ii. Second Offense - Will be suspended without pay for 3 days.
  111. Third offense - Will be terminated from employment

For the purpose of this #6 section, timeframes will be limited to a rolling one (1) year calendar.

Contract employees, subcontractors, and any person not directly on the Company payroll will have their services terminated.

Employees are subject to calling for a ride home should they test within this range.

7. Failure to report use of a mood altering prescribed medication that impairs the safety of the employee or others will be considered a positive test.
8. Those employees, sub-contractors and others not directly on the Company payroll will have their services terminated for testing positive and may not reapply for readmission for a period of at least six months.

### **Rehabilitation**

The Company will grant a one (1) time only unpaid leave of absence so that an employee can participate in a medically recognized rehabilitation program. Until such time as the Company is able to provide an in-house Employee Assistance Program (EAP), the Company will assist employees in obtaining information concerning providers of assistance services and will update this information as changes are brought to our attention. The Company will assist the employee in determining the coverage provided for these services by their insurance, as applicable. In those cases where an employee successfully completes a mandated rehabilitation program, the Company shall retain the right to perform no-notice follow-up drug and/or alcohol testing as recommended by the treating substance abuse professional and as agreed to in the employee's return-to-work agreement. Any refusal by the employee to undergo required follow-up drug or alcohol testing will result in their immediate termination for cause.

Providing employment levels mandate participation in Family Medical Leave Act; all leaves grants under the DFSP provisions will run concurrent with FMLA.

### **Termination Notices**

Generally, any release of information related to drug and alcohol testing and the results of that testing require the informed consent of the individual. In those cases where drug and alcohol testing results in the termination of an employee, all termination notices will list "Misconduct" as the reason for termination. Termination shall be "For Cause", and may limit the individual's rights to unemployment or workers' compensation eligibility. However, suspensions, leaves of absences, or terminations based on violations of this Policy may require that this information be presented as evidence for the Company in actions related to benefit payments without being considered a violation of confidentiality.

### **Education**

The Company recognizes the pervasive nature of substance abuse in today's society and desires to provide its employees with information pertaining to this problem. As such, all employees will be required to participate in the Company-sponsored education programs. These programs will be provided for all employees and attendance shall be mandatory. All employees will take part in up to one (1) hour initial training, within eight (8) weeks of hire on the policy, covering the disease model for alcohol and drugs, signs and symptoms of substance use/abuse, and the effects of commonly used drugs in the workplace. Additionally, all employees will be required to attend annually up to one (1) hour of refresher training.

All supervisors will receive an initial two (2) hours of informational, problem recognition, policy administration and skill building training, and will also be included in up to one (1) hour of employee training. New supervisors will receive at least two (2) hours of initial training within eight (8) weeks of promotion or hire into the position and prior to being involved in testing responsibilities. All supervisors will then receive up to

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two (2) hours of supervisor refresher/update training and participate in up to one (1) hour of employee annual refresher training.

**Administration**

The Designated Employer Representative (DER) will administer this program. If records are stored in HR, they must be stored separately from any other employee records. All records are to be secured when not under direct supervision. Only the DER and other authorized individuals are permitted to receive test results. All trained supervisors are permitted to refer employees for reasonable suspicion testing and post-accident testing.

**Exceptions**

To the extent federal law and regulations and/or state law and regulations mandate more stringent requirements, including but not limited to drug and alcohol testing procedures, said federal and/or state law and regulations will apply and supersede the tests and procedures outlined in this Policy above. To the extent the Policy set forth a more stringent standard, then, the more stringent standard in the Policy shall apply.

**EMPLOYEE AFFIRMATION**

City of Niles will provide a Drug Free Safety Program to its employees in compliance with standards set forth by the state of Ohio and US DOT as applicable. In addition, employees will receive on-going education about the Company's DFSP and the dangers of drug and alcohol abuse. The Company will also provide supervisory training to assist in identifying and addressing illegal drug and alcohol use by employees.

By signing below, the undersigned certifies that they have:

- 1) Read and/or have had read to them this Policy and agree to abide by its full terms.
- 2) Read and/or have had read to them and understand the Consequences of:
  - a. Being suspected to be under the influence of alcohol and/or drugs;
  - b. Being asked to submit to a drug and/or alcohol test(s);
  - c. Refusing or Failing to get the required test(s) following an injury requiring off-site medical attention or being asked to subject to the test(s) by a supervisor under reasonable suspicion circumstances;
  - d. Failing to abide by rehabilitation program requirements and or failing a follow-up test.
- 3) Agreed to make a good faith effort to continue to maintain a drug and alcohol free workplace.
- 4) Been provided with a written copy of this Policy.
- 5) Understand the consequences of Rebuttable Presumption and the Ohio BWC.
- 6) Have had a full opportunity to ask questions and have received any needed answers.

\_\_\_\_\_  
Name (PRINTED)

Signature \_\_\_\_\_ Date Signed \_\_\_\_\_

Witness Signature \_\_\_\_\_ Date Signed \_\_\_\_\_



**CONSENT & RELEASE FORM FOR EMPLOYEES / APPLICANTS**

I, \_\_\_\_\_ (Applicant or Employee), as an employee/applicant of the Company, hereby acknowledge that the Company's Policy requires me to submit to urine drug testing and/or breath alcohol testing.

I further understand that the purpose of this analysis is to determine or rule out the presence of non-prescribed or prohibited dangerous controlled substances in my system.

I hereby freely and voluntarily consent to this request for a urine sample and/or breath alcohol test, and agree to participate in the testing program.

I hereby and herewith release the Company, its employees, agents and contractors from any and all liability whatsoever arising from this request for testing, from the actual testing procedures, and from decisions made concerning my application for employment, or continuation of employment based upon results from said testing.

I agree to cooperate in all aspects of the testing program.

I hereby authorize the release of my drug and/or alcohol test results to the contractor's Medical Review Officer (MRO), and/or to the Company's examining physician, as provided by the Company's Policy.

I understand that a positive test result may affect my ability to collect benefits associated with workers' compensation insurance coverage.

I further acknowledge that the Company has provided an opportunity to ask questions related to its drug and alcohol program and that all my questions have been answered.

Employee/Applicant (PRINT NAME) \_\_\_\_\_

Employee/Applicant Signature \_\_\_\_\_

Witness (PRINT NAME) \_\_\_\_\_

Witness Signature \_\_\_\_\_

Date of Signatures \_\_\_\_\_

# City of Niles, Ohio

SPONSORED BY: FINANCE COMMITTEE  
AUTHORIZED BY: SMITH

DRAFT NO. 148-19

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING LINE ITEM TRANSFERS WITHIN THE WATER DEPARTMENT; AND, DECLARING AN EMERGENCY

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NILES, STATE OF OHIO:

SECTION 1: Council hereby authorizes line item transfers in the amount of Four Thousand Six Hundred Fifty Dollars and Zero Cents (\$4,650.00) from the Water Building Repairs Account 501-5151-53650 to the Water Maintenance Materials Account 501-5151-55350.

SECTION 2: This Resolution is hereby declared to be an emergency measure in the interest of the public health, safety and welfare, for the reason that the funds are needed in the recipient account. As such an emergency measure, this Resolution shall take effect upon passage by Council and approval by the Mayor.

PASSED: \_\_\_\_\_

\_\_\_\_\_  
PRESIDENT OF COUNCIL

ATTEST: \_\_\_\_\_  
CLERK OF COUNCIL

Filed with the Mayor of the City of Niles, Ohio on the \_\_\_\_\_ day of \_\_\_\_\_, 2018 and signed by me as such Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
MAYOR

# City of Niles, Ohio

SPONSORED BY: FINANCE COMMITTEE  
AUTHORIZED BY: SMITH

DRAFT NO. 149-19

ORDINANCE NO. \_\_\_\_\_

## **AN ORDINANCE AMENDING CHAPTER 163, "EMPLOYEES GENERALLY" OF THE CODIFIED ORDINANCE OF THE CITY OF NILES, IN PART, TO UPDATE THE HOLIDAYS SECTION FOR THE NON-UNION, NON-ELECTED EMPLOYEES; AND DECLARING AN EMERGENCY**

SECTION 1: The various Sections of Chapter 163 are hereby amended and enacted to read as follows:

### **163.04 HOLIDAYS.**

- (a) Any City official or employee, other than members of employee bargaining units, who are in the employ of the City, shall not be required to work on days declared in this section to be holidays, unless in the opinion of the employee's responsible administrative superior, failure to work on such holidays would impair the public service.
- (b) Any employee who has worked thirty consecutive eight hour working days, when required to work on any of the holidays designated, shall be paid at the rate of time and one half for hours worked on such day in addition to the holiday pay, unless such employee is one of the City employees hereinafter designated:

The following employees shall not be entitled to any premium rate pay for time worked on the holidays: Chief Clerk of Municipal Court; Deputy Auditor; Police Chief; Fire Chief; Building Inspector; Superintendent of Light; Superintendent of Water/Wastewater; Utilities Billing MANAGER; Park and Recreation Director; PROJECT MANAGER/PUBLIC UTILITIES INFRASTRUCTURE COORDINATOR AND, HOUSING AND ZONING CODE ENFORCEMENT OFFICER.

The following employees shall be paid at straight time rate for hours worked on such day in addition to the holiday pay, instead of being paid at the rate of time and one-half for hours so worked: Street Department Foreman; Assistant Superintendent of Light; Light Foreman; Water Foreman; Sewage Foreman; and, the Light Department Assistant Foreman.

(c) For the purpose of computing holiday pay for hours worked, eight hours shall serve as the basis of such computation.

(d) The holidays are established as follows:

- (1) The first day of January, known as New Year's Day;
- (2) The third Monday in January, known as Martin Luther King Day;
- (3) The third Monday in February known as President's Day.
- (4) Good Friday;
- (5) The last Monday in May, known as Decoration or Memorial Day;
- (6) The Fourth day of July, known as Independence Day;
- (7) The first Monday of September, known as Labor Day;
- (8) The second Monday of October, known as Columbus Day;
- (9) Veteran's Day;
- (10) The fourth Thursday of November, known as Thanksgiving Day;
- (11) The day after Thanksgiving;
- (12) The twenty-fourth day of December, known as Christmas Eve (salary employees);
- (13) The twenty-fifth day of December, known as Christmas Day; and
- (14) The thirty-first day of December, known as New Year's Eve (salary employees).

(e) In the event that any of the aforesaid holidays should fall on Saturday, the Friday immediately preceding shall be observed as the holiday. In the event that any of the aforesaid holidays shall fall on Sunday, the Monday immediately succeeding shall be observed as the holiday.

(f) Any City official or employees not included in the bargaining units must work their scheduled days before and after the holiday in order to be paid for said holiday, unless the employee is on approved vacation or extended illness with the approval of the Service Director or the Director's designee.

SECTION 2: Existing Sections 163.04 is hereby repealed.

SECTION 3: This Ordinance is hereby declared to be an emergency measure in the interest of the public health, safety and welfare, and for the reason that these changes may be made prior to the end of the year. As such an emergency measure, this Ordinance shall take effect upon passage by Council and approval by the Mayor.

\_\_\_\_\_  
PRESIDENT OF COUNCIL

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
CLERK OF COUNCIL

Filed with the Mayor of the City of Niles, Ohio on the \_\_\_\_ day of \_\_\_\_\_, 2019 and signed by me as such Mayor on the \_\_\_\_ day of \_\_\_\_\_, 2019.  
\_\_\_\_\_  
MAYOR