

# **ORDINANCE NO. 105**

***AN ORDINANCE ESTABLISHING A POLICY FOR A DRUG-FREE WORKPLACE***

***BE IT ORDAINED BY THE CITY COUNCIL OF CHERRY VALLEY, ARKANSAS, THAT AN EMERGENCY IS HEREBY DECLARED***

## **SECTION 1:**

### **PURPOSE OF POLICY**

*The City has a vital interest in providing for the safety and well being of all employees and the public, and maintaining efficiency and productivity in all of its operations. In fulfillment of its responsibilities, the City is committed to the maintenance of a drug and alcohol free workplace.*

*The City and certain employees who drive commercial motor vehicles are subject to the requirements of federal statutes and implementing regulations by the Federal Highway Administration of the U.S. Department of transportation. However, certain city employees who perform safety and security-sensitive functions are not covered by the foregoing provisions. In addition, the City has an interest in maintaining the efficiency, productivity and well being of employees who do not perform safety or security-sensitive functions. In order to further provide a safe environment for city employees and the public, the City has adopted the following Drug-Free Workplace policy for those employees who are not covered by federal law.*

*This policy does not govern or apply to employees who are subject to testing as commercial motor vehicle operators under the foregoing federal law and regulations. They are governed by a separate policy enacted pursuant to that legislation*

**REVISED SEPTEMBER 8, 2000**

## **SECTION 2:**

### **POLICY STATEMENT**

- (a) All employees must be free from the effects of illegal drugs and alcohol during scheduled working hours as a condition of employment. Drinking alcoholic beverages or using drugs while on duty, on City property, in City vehicles, during breaks or at lunch, or working or reporting for work when impaired by or under the influence of alcohol, or when drugs and / or drug metabolites are present in the employee's system, is strictly prohibited and grounds for disciplinary action up to and including immediate discharge for the unlawful manufacture, distribution, dispensation, possession, concealment or sale of alcohol or drugs while on duty, on City property, in City vehicles, during breaks or at lunch.*

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## SECTION 2: (Continued)

- (b) *The City reserves the right to require employees to submit to urine drug testing and breathalyzer alcohol testing to determine usage of drugs and / or alcohol as provided below. Employees must submit to all required tests. Any employee who refuses to submit to any required test without a valid medical explanation will be subject to immediate discharge. Refusal to execute any required consent forms, refusal to cooperate regarding the collection of samples, or submission or attempted submission of an adulterated or substituted urine sample shall be deemed refusal to submit to a required test.*

## SECTION 3:

### SAFETY AND SECURITY- SENSITIVE POSITIONS DEFINED

*[Note this section is extremely important! The fourth amendment to the United States Constitution prohibits random drug testing of any employee or official except those holding safety or security sensitive positions].*

- (a) *A safety-sensitive position is one in which a momentary lapse of attention may result in grave and immediate danger to the public. The following positions are considered safety sensitive:*
- (1) Law Enforcement officers who carry firearms and jailers.*
  - (2) Motor vehicle operators who carry passengers, including but not limited to, ambulance drivers, bus or jitney drivers, and drivers who transport other city employees.*
  - (3) Fire Department employees who directly participate in fire-fighting activities.*
  - (4) Medical personal with direct patient care responsibilities including physicians, nurses, surgical scrub technicians, emergency medical technicians and trainees, medical and nurses assistants.*
  - (5) Mechanics, welders and sheet metal workers who work on vehicles designed to carry passengers such as buses, ambulances, police cruisers, vans and the like.*
  - (6) Other employees whose duties meet the definition of safety or security sensitive after consultation with and approval by the Arkansas Municipal League.*
- (b) *A security sensitive position includes*
- (1) Any police officer, jailer, police dispatcher and police department employee, including clerical workers, having access to information concerning ongoing criminal investigations and criminal cases, which information could, if revealed, compromise, hinder or prejudice the investigation or prosecution of the case.*

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## SECTION 3: (Continued)

- (2) *The city also considers law enforcement officers as holding security-sensitive positions by reason of their duty to enforce the laws pertaining to the use of illegal substances. Officers who themselves use such substances may be unsympathetic to the enforcement of the law and subject to blackmail and bribery.*

*[Note: SECTION 3 lists safety-sensitive employees for which the Arkansas Municipal League provides coverage. Additional positions may be added after consultation with and approval by the league. The city shall submit a written job description of any such additional employee to the Arkansas Municipal League along with a request for coverage.]*

## SECTION 4:

### DRUG-FREE AWARENESS PROGRAM / EDUCATION AND TRAINING

*The City will establish a Drug-Free Awareness Program to assist employees to understand and avoid the perils of drug and alcohol abuse. The City will use this program in an ongoing educational effort to prevent and eliminate drug and alcohol abuse that may affect the workplace.*

*The City's Drug-Free Awareness Program will inform employees about:*

- (1) The dangers of drug and alcohol abuse in the workplace;*
- (2) The City policy of maintaining a drug and alcohol free workplace;*
- (3) The availability of drug and alcohol treatment, counseling and rehabilitation programs; and*
- (4) The penalties that may be imposed upon employees for drug and alcohol abuse violations.*

*As part of the Drug-Free Awareness Program, the City shall provide educational materials that explain the City's policies and procedures. Employees shall be provided with information concerning the effects of alcohol and drug use on an individual's health, work and personal life; signs and symptoms of an alcohol or drug problem; and available methods of intervening when an alcohol or drug problem is suspected, including confrontation and / or referral to management.*

*Supervisors who may be asked to determine whether reasonable suspicion exists to require an employee to undergo drug and / or alcohol testing shall receive at least 60 minutes of training on alcohol misuse and 60 minutes of training on drug abuse. The training shall cover the physical, behavioral, speech, and performance indicators of probable misuse and drug use.*

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## SECTION 5:

### PROHIBITED SUBSTANCES / LEGAL DRUGS / UNAUTHORIZED ITEMS

- (a) Prohibited Substances. Alcohol beverages are considered to be prohibited substances in the workplace. For purposes of this policy, the term "drugs" includes controlled substances (as identified in Schedules I through V of Section 202m of the Controlled Substances Act, 21 U.S.C § 812, and the regulations promulgated there under, and defined in the Uniform Controlled Substances Act, Ark. Code Ann. § 5-64-201-216), including synthetic narcotics, designer drugs, and prescription drugs excepting: prescription drugs approved by and used in accordance with the directions of the employee's physician.
- (b) Legal Drugs. The appropriate use of prescription drugs and over the counter medication is not prohibited. Any employee using a prescription drug should consult with his / her physician and pharmacist regarding the effects of th drug. Employees should read all label carefully.
- (c) Unauthorized Items. Employees may not have any authorized items in their possession or in any area used by the or under their control. Unauthorized items include, but are not limited to, alcoholic beverage containers and drug paraphernalia.

## SECTION 6:

### USE OF ALCOHOL AND DRUGS / PROHIBITED CONDUCT

All employees covered under this policy are subject to the following prohibitions regarding the use of alcohol and drugs (controlled substances):

- (1) Employees shall not report for duty or remain on duty while impaired by the consumption of alcohol. An employee will be deemed to be impaired by alcohol if that employee has a blood alcohol concentration of 0.04 or greater.
- (2) Employees shall not consume alcohol while on duty.
- (3) Employees required to undergo post-accident testing shall not use alcohol for 8 hours following the accident, or until they undergo a post-accident alcohol test.
- (4) Employees shall submit to all authorized drug and alcohol tests.
- (5) Employees shall not report for duty or remain on duty while under the influence of any controlled substance, except when the use thereof is pursuant to the instructions of a licensed physician who has advised the employee that the effect of the substance on the employee does not pose a significant risk of substantial harm to the employee or others in light of his / her normal job duties.

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## SECTION 6: (Continued)

*In addition, subject to disciplinary rules set forth below, employees who are found to have an alcohol concentration of 0.02 or greater, but less than 0.04, in any authorized alcohol test shall be removed from duty, and may not return to duty until the start of the employee's next regularly scheduled shift, but not less than 24 hours following administration of the test.*

*The foregoing rules shall apply to all employees and shall apply while on duty, during periods when they are on breaks, or at lunch, or not performing safety or security sensitive functions.*

## SECTION 7:

### WHEN DRUG AND ALCOHOL TESTING MAY BE REQUIRED OF ALL EMPLOYEES

*Employees (and applicants) covered by this policy shall be required to submit to urine testing for use of prohibited drugs and / or Breathalyzer alcohol testing in the following circumstances:*

- (a) When the city has reasonable suspicion that an employee has violated any of the above prohibition regarding use of alcohol or drugs. For purposes of this rule, reasonable suspicion shall be based on specific, contemporaneous, articulable observations must be made by two individual or city official or employee who is trained in detecting the signs and symptoms of misuse of alcohol and drug use.*
- (b) Return to duty is required after an employee has engaged in any of the above prohibitions concerning use of alcohol or drugs, unless the violation results in termination.*
- (c) As part of a pre-employment physical examination after a conditional job offer has been made, a fitness for duty physical examination, or any other lawful required periodic physical examination. Non-safety and non-security sensitive positions will not be required to undergo a pre-employment drug or alcohol test unless the applicants is otherwise required to undergo a pre-employment physical examination after a conditional job offer has been extended to the employee.*
- (d) When the city management has a reasonable suspicion based on observation or credible information submitted to the City, that the employees currently using, impaired by or under the influence of drugs or alcohol.*



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## SECTION 7: (Continued)

- (e) *When an employee suffers an on the job injury or following a serious or potentially serious accident or incident in which safety precautions were violated, equipment or property was damaged, an employee or other person was injured, or careless acts were performed by the employee. Such testing will be required of non-safety sensitive employees only when such factors, when taken alone or in combination with other factors, give rise to reasonable suspicion that the employee may be under the influence of drugs or alcohol.*
- (f) *As part of a return to duty or follow-up drug and / or alcohol testing required under an agreement allowing an employee to return to duty following disciplinary action for a positive drug and / or alcohol test or as the result of a condition of continued employment or reinstatement in conjunction with or following completion of an approval drug and / or alcohol treatment, counseling or rehabilitation program. In order to return to duty, an employee who has a positive drug or alcohol test (i.e. a verified positive drug test or an alcohol test indicating an alcohol concentration of 0.04 or greater) must have a verified negative drug test and / or an alcohol concentration of less than 0.02 and be evaluated and released by a substance abuse professional (SAP). In addition, the employee shall be subject to follow-up testing for a period not to exceed 24 months from the date of the employee's return to duty, in accordance with an SAP's recommendations. (The City also reserves the right to require return to duty and follow-up testing of an employee who has an alcohol test indicating an alcohol concentration of 0.02 or greater, but less than 0.04, based on an SAP's recommendations.)*
- (g) *When any prohibited drug or alcoholic beverage, is found in an employee's possession.*
- (h) *When the laboratory values in any authorized drug test indicated the need for additional testing, as determined by the Medical Review Officer (MRO), or where any authorized drug test must be canceled due to a collection, chain of custody or other procedural problem.*

*[NOTE: SECTION 7 dealing with reasonable suspicion requires observation by a person trained in recognizing signs of substance abuse. However, if possible it is recommended that the ordinance specify that testing based on reasonable suspicion be done only when verified by two such persons.]*

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## SECTION 8:

### WHEN DRUG AND ALCOHOL TESTING MAY BE REQUIRED OF EMPLOYEES HOLDING SAFETY AND SECURITY-SENSITIVE POSITIONS

*Employees in (and applicants for) safety and security-sensitive positions shall be required to submit to urine testing for use of prohibited drugs and / or Breathalyzer alcohol testing in the foregoing and in the following circumstances:*

- (a) When a safety sensitive employee is involved in an accident involving a motor vehicle on a public road, and the employee's position is safety-sensitive because it involves driving a motor vehicle.*
- (b) Random testing for drugs (but not alcohol) will be conducted. In order to treat all employees as equally as possible, and to maintain consistency in the administration of is efforts to maintain a drug-free workplace, random testing under this policy will be governed by 49 U.S.C. §31306 and implementing regulations to the extent that it is lawful and feasible to do so. Further guidance must be found in "The Omnibus Transportation Employee Testing Act of 1991 – Steps to Compliance for Arkansas Municipalities," published by the Arkansas Municipal League.*

## SECTION 9:

### DISCIPLINARY ACTION

- (a) Employees may be subject to disciplinary action, up to and including discharge, for any of the following fractions:*
  - (1) Refusal to submit an authorized drug or alcohol test. Refusal to submit to testing means that the employee fails to provide an adequate urine or breath sample for testing without a valid medical explanation after he/she has received notice of the requirement to be tested, or engages in conduct that clearly obstructs the testing process. Refusal to submit to testing includes, but not limited to, refusal to execute any required consent forms, refusal to cooperate regarding the collection of sample, and / or submission or attempted submission of an adulterated or substituted urine sample.*
  - (2) Drinking alcoholic beverages or using drugs while on duty, on City property, in City vehicles, during breaks or at lunch.*

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## SECTION A : (Continued)

- (3) *Unlawful manufacture, distribution, dispensation, possession, concealment, or sale of any prohibited substances, including an alcoholic beverage while on duty, on City property, in City vehicles, during breaks or at lunch.*
- (4) *Any criminal drug statue conviction and / or failure to notify the City of such conviction within five (5) days.*
- (5) *Refusal to cooperate in a search.*
- (6) *Having an alcohol concentration of .04% or greater in any authorized alcohol test.*
- (7) *Testing positive for drugs and / or their metabolites in any authorized drug test. Although the foregoing infractions will ordinarily result in discharge regardless of the employee's position, the City reserves the right to consider extenuating circumstances and impose lesser discipline when such action is deemed appropriate.*

*[ Note: the following language in SECTION 9 is optional. The penalty for a positive test may be determined by each local government and may include immediate termination. However, the AML financial commitment does not include return to duty or follow up testing. The AML financial commitment also does not include the cost for in-patient or out-patient professional counseling or.]*

**PASSED AND APPROVED THIS 21 DAY OF NOVEMBER, 2000**

**APPROVED:**

FORREST M. WOOD  
MAYOR

**ATTEST:**

LEONA MEREDITH  
CITY CLERK