

ORDINANCE NO. Substitute 2009-331

SPONSOR Mr. Pry

DATE _____

COMMITTEE Rules

A Substitute Ordinance amending Section 169.28 of the Codified Ordinances of the County of Summit, entitled "Substance Abuse Prevention Policy", to revise the County's pre-employment and post-accident testing program for alcohol and/or controlled substances in response to recent opinions by the Ohio Attorney General and County Prosecutor and to make other revisions to clarify the County's testing process, for the Executive, and declaring an emergency.

WHEREAS, on May 30, 2007, the Ohio Attorney General issued an informal opinion, No. 2007OPR003, which addressed constitutional issues related to pre-employment and post-accident testing for alcohol and/or controlled substances and the Bureau of Workers' Compensation drug-free workplace discount program, in which the County has participated; and

WHEREAS, on January 16, 2009, the County Prosecutor issued Revised Prosecutor Opinion No. 08-036, which suggested the use of a consent form and the establishment of an appeal procedure in the County's pre-employment testing program; and

WHEREAS, in response to the opinions, the County wishes to amend Section 169.28 of the Codified Ordinances of the County of Summit, entitled "Substance Abuse Prevention Policy", to revise the County's pre-employment and post-accident testing for alcohol and/or controlled substances to address the issues raised; and

WHEREAS, in response to the opinions, the County wishes to revise its pre-employment testing program to require the use of a consent form and to establish an appeal procedure; and

WHEREAS, in response to the opinions, the County further wishes to revise post-accident testing for alcohol and/or controlled substances to require that reasonable suspicion be present before testing is required; and

WHEREAS, the County further wishes to make additional changes to clarify the testing process; and

WHEREAS, this Council has determined by reviewing all pertinent information that it is necessary and in the best interest of the County of Summit to amend Section 169.28 for the aforementioned reasons;

NOW, THEREFORE, BE IT ORDAINED by the Council of the County of Summit, State of Ohio, that:

SECTION 1

Section 169.28 of the Codified Ordinances of the County of Summit, entitled "Substance Abuse Prevention Policy", is hereby amended as follows:

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"169.28 SUBSTANCE ABUSE PREVENTION POLICY.

(a) Purpose. The County of Summit (~~"Employer"~~) has a strong commitment to the health, safety, and welfare of its employees, their families and the public. Widely available statistics and information establish that the incidence of drug and alcohol abuse is increasing and the effect is devastating to lives, businesses, and the community at large. The County of Summit is concerned that, in the event of substance abuse among our employees, the safety of our employees and the public could be endangered. Our commitment to maintaining a safe and secure workplace requires a clear policy and supportive programs relating to the detection, treatment, and prevention of substance abuse by employees. It is the goal of the County of Summit to provide a safe workplace by eliminating the hazards to health and job safety created by alcohol and other drug abuse. We believe this goal to be in the best interest of our employees and the general public.

(b) Implementation. The County Executive's ~~Department of Insurance and Risk Management~~ is responsible for implementing and communicating these policies. Any questions regarding these policies should be directed to the ~~Department of Insurance and Risk Management~~ County Executive.

(c) Voluntary Admission of Problem. Employees are encouraged to voluntarily admit problems with drugs and alcohol prior to violating these policies. Employees who voluntarily admit problems with drugs and alcohol prior to violating these policies will not have his or her job security or promotional opportunities jeopardized by a request for treatment. Employees should not read this to mean that a request for treatment will automatically excuse them from discipline or discharge where the ~~Employer~~ appointing authority initiates corrective action for violation of these policies. Rather, an employee who seeks treatment on his or her own initiative is in a better position than one who brings up a drinking or drug problem for the first time in response to an investigation by the ~~Employer~~ County of Summit. It will be the responsibility of the employee to comply with the ~~Employer's~~ County of Summit's referral for diagnosis, and it is also the employee's responsibility to cooperate with the prescribed treatment. An employee's refusal to accept referral or follow the prescribed plan of treatment may be considered insubordination. An employee who is referred to a drug rehabilitation program and fails to satisfactorily participate in the program may be terminated from employment. Referral to a rehabilitation program is designed primarily for those employees who appear to have a treatable condition, not to protect those who manufacture, distribute, or dispense drugs in the workplace.

(d) Applicability. This policy applies to all employees of the County of Summit, including all levels of management while on the job, while subject to duty, and while riding in a County owned vehicle. This policy also applies to situations where an employee's off-the-job or off-premises conduct impairs work performance. The ~~Employer~~ County of Summit wants to assure that employees report to work in condition to perform their duties safely and efficiently in the interest of their fellow workers and the public as well as themselves.

(e) Violations. It is a violation of this policy to do any of the following:

(1) Report to duty or remain on duty while having an alcohol concentration from a breathalyzer test of .02 or greater;

(2) Report to duty or remain on duty while using a controlled substance (including prescription drugs that impair the employee's ability to perform the assigned duties, unless such use has been approved by a physician and reported to the ~~Human Resource~~ County Executive's designee);

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(3) Test positive for controlled substances (a positive test is defined as a test showing controlled substance concentrations in excess of the threshold amounts set forth in subsection (i) hereof);

(4) Possess alcohol, controlled substances or drug paraphernalia while on duty;

(5) Use alcohol or controlled substances while on duty;

(6) Refuse to submit to a post-accident, reasonable suspicion, return-to-duty, or follow-up alcohol or controlled substance test.

(f) Consequences of a Violation.

(1) If an employee violates any of the policies set forth in this Substance Abuse Prevention Policy:

A. The employee may be disciplined, up to and including dismissal.

B. The employee may be reassigned.

C. The employee will be provided with information regarding the services available for alcohol and substance abuse.

D. The employee will be referred for an evaluation by a substance abuse professional.

E. The employee will be subject to reevaluation, return-to-duty testing, and unannounced follow-up testing.

(2) Violation of subsection (e)(6) above will result in immediate termination (See, subsection (k) below for definitions of what constitutes failure to submit).

(g) Legally Prescribed Drugs and Non-prescription Medications. The appropriate use of legally prescribed drugs and non-prescription medication is not prohibited. However, when taking any prescription or non-prescription medication which may interfere with the safe and effective performance of their duties, employees are encouraged to consult their physician and report such use to the Human Resources County Executive's designee. Certification of fitness to work from a medical doctor that an employee is able to perform the normal functions of their position may be required before the employee will be allowed to continue working.

(h) Types of Testing for Alcohol and/or Controlled Substances.

(1) Commercial driver's licenses. All employees who are required to hold commercial driver's licenses shall be subject to testing for alcohol and/or controlled substances as required by federal and State of Ohio law.

(2) Firearms. All employees who are required to carry firearms shall be subject to testing for alcohol and/or controlled substances pursuant to a testing program established by their appointing authority. Each appointing authority that has employees who are required to carry firearms shall establish a testing program and shall provide a copy of its program's policies and procedures to the County Executive.

(3) Other employees and applicants for employment.

~~All~~ All employees other than those described in subsections (1) and (2) or applicants for employment will shall be required to submit to testing for alcohol and/or controlled substances under the following circumstances:

~~(1) A.~~ Pre-employment Testing: Prior to ~~the first time an employee performs official duties for the~~ an offer of employment with the Employer County of Summit, and/or within ninety (90) days of employment, the employee applicant for employment ~~will shall~~ be tested for controlled substances. The employee applicant ~~will shall~~ not be hired ~~or will be terminated, whichever is applicable,~~

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unless the controlled substance test is negative. Any applicant ~~or probationary employee~~ who refuses a controlled substance test ~~will~~ shall not be hired ~~or will be terminated, whichever is applicable.~~ An applicant who is not hired due to the applicant's refusal to submit to a test for controlled substances or due to a positive test for controlled substances shall be ineligible to apply for County employment for a period of one year.

1. Consent form. Prior to pre-employment testing, the appointing authority shall present a standard form issued by the County Executive to the **applicant** consenting to the pre-employment testing.

2. Right of appeal. If the pre-employment test is positive, the **applicant** shall have the right to file a written appeal to the Human Resource Commission concerning the validity of the test. The Human Resource Commission's rules concerning appeals of employment decisions shall apply. The Human Resource Commission may rule that the test is valid or order that a second test be performed. The order of the Human Resource Commission is final. If the test is ruled valid, the **applicant** shall not be hired. If a second test is ordered and the test is positive, the **applicant** shall not be hired.

~~(2)~~ B. Post-accident Testing: All employees who may have caused or contributed to an accident on the job, as defined below, and where there is reasonable suspicion of use of alcohol and/or controlled substances, as set forth in subsection C., that employee will be required to submit to drug and/or alcohol testing. The test will be administered as soon as possible after the employees involved ~~have~~ has received the necessary medical treatment, or within ~~3~~ 8 hours for alcohol testing and ~~8~~ 32 hours for testing of other drugs. An accident is defined as an unplanned, unexpected, or unintended event that occurs ~~on County property,~~ during the conduct of County business, or during work hours, including but not limited to, an event in the course of County business that results in:

- ~~A. i.~~ A. i. A fatality,
- ~~B. ii.~~ B. ii. Bodily injury requiring off-site medical treatment,
- ~~C. iii.~~ C. iii. Vehicular damage, or
- ~~D. iv.~~ D. iv. ~~Major p~~Property damage.

A positive drug test or refusal to submit to a test after an accident may affect the employee's eligibility to receive Workers' Compensation benefits under Chapters 4121 and 2123 of the Ohio Revised Code and may also result in termination.

~~(3)~~ C. Reasonable Suspicion Testing: A trained supervisor or official may require an employee to undergo testing for alcohol and/or controlled substances based upon specific, objective facts and reasonable inferences drawn from these facts in light of experience and training. Such facts and inferences may be based on, but are not limited to, any of the following:

- ~~A. i.~~ A. i. Observable phenomena, such as direct observation of drug or alcohol use, possession, or distribution, or the physical symptoms of being under the influence of drugs or alcohol, such as, but not limited to, slurred speech, dilated pupils, odor of alcohol or marijuana, changes in affect, dynamic mood swings, etc.;

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~~B.~~ ii. A pattern of abnormal conduct, erratic or aberrant behavior, or deteriorating work performance which appears to be related to substance abuse and does not appear to be attributable to other factors;

~~C.~~ iii. An employee being charged with unauthorized drug possession, use or trafficking;

~~D.~~ iv. Repeated or flagrant violations of the ~~Employer's~~ appointing authority's safety or work rules, which are determined by a supervisor to pose a substantial risk of physical injury or property damage and which appear to be related to substance abuse or substance use and do not appear to be attributable to other factors.

(4) Transportation of employee. An employee who is being tested shall be transported to the collection facility and then home by an appointing authority-arranged neutral third party (such as a taxi or a designated County employee).

~~(4)~~ (5) Return-to-Duty Testing: Before an employee who has been found to be in violation of this policy may return to duty, the employee must undergo testing for alcohol and controlled substances. The results of the alcohol test must show less than .02 concentration from a breathalyzer test, and the controlled substance test must be negative or such employee will not be permitted to return to duty and shall be terminated.

~~(5)~~ (6) Follow-up Testing: When an employee has been found to be in violation of this policy, the employee will be subject to four (4) unannounced follow-up tests, in addition to the return-to-duty test, within the first twelve (12) months following the employee's return to duty. The results of any follow-up alcohol test must show less than .02 concentration and any follow-up controlled substance test must be negative or such employee shall be terminated.

(i) Substance Abuse Testing Process. All drug screening and confirmation tests shall be conducted by a laboratory certified under the United States Department of Health and Human Services "Mandatory Guidelines for Federal Workplace Drug Testing Programs;" and the National Institute for Drug Abuse ("NID"). The ~~Employer~~ County of Summit and the laboratory shall have a clear and well-documented procedure for collection, shipment, and accessing of urine specimens. The procedures utilized by the ~~Employer~~ County of Summit and the laboratory shall be consistent with the collection and testing procedures established by the United States Department of Health and Human Services and required by the United States Department of Transportation, and shall include an evidentiary chain of custody and control and split sample collection and testing. The collection site person is responsible for maintaining the integrity of the specimen collection and transfer process. All procedures shall be outlined in writing and provided to the ~~Employer~~ County of Summit's representatives and donors. There shall be a Medical Review Officer ("MRO"). The MRO is a physician specially trained in substance abuse disorders. If a test is positive, the MRO gives the employee a chance to provide a legitimate medical explanation, such as a legal prescription for the positive result. If the explanation and subsequent proof satisfy the MRO, the MRO reports a negative drug test to the ~~employer~~ County of Summit. Each specimen will be tested for the following substances and will be subject to the following cut off levels based on nanograms per milliliter:

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<u>Substance</u>	<u>Initial Level</u>	<u>Confirmation Level</u>
Amphetamines		
Methamphetamine	1,000	500
Amphetamine	300	200
MDA	1,000	500
MDMA	1,000	500
Barbiturates		
Butalbital	300	200
Cannabinoids		
Secobarb	300	200
Phenobarb	2,500	5,000
Benzodiazepines		
Alprazolam	300	300
Oxazepam	300	300
Nordiazepam	300	300
THC-COOH	50	15
Cocaine Metabolites		
Benzoyllecgonine	300	150
Methadone	300	300
Methaqualones	300	100
Opiates		
Morphine	300	300
Codeine	300	300
Hydrocodone	400	300
Hydromorphone	500	300
Oxycodone	1,000	500

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Propoxyphene 300 300

(j) Alcohol Testing Process. Alcohol tests shall be administered using a breath or saliva initial screen with a confirmatory evidential breath test ("EBT") administered by a trained breath alcohol technician ("BAT") or a law enforcement officer certified to conduct such tests. All tests shall be administered in accordance with federal standards for alcohol testing.

(k) Refusal to Submit to a Test. Refusal to submit to any of the alcohol or controlled substance tests required by this policy shall result in the employee's immediate termination. Actions constituting a refusal to submit to a test include:

- (1) Failing to provide adequate breath for alcohol testing;
- (2) Failing to provide adequate urine for controlled substance testing;
- (3) Engaging in conduct that clearly obstructs the testing procedure;
- (4) Failing to remain readily available for a post-accident test;
- (5) Attempting to substitute and/or adulterate the specimen;
- (6) Attempting to delay a test.

(l) Compensation of employees subject to testing. Employees subject to random testing shall be compensated while away from the job undergoing testing unless the result is positive. Employees subject to reasonable suspicion testing shall not be compensated while away from the job undergoing testing or while awaiting test results unless the test result is negative. An employee subject to reasonable suspicion testing cannot resume job duties until the test result is received. If a test result is positive, the employee cannot return to work until the employee has:

- (1) successfully completed treatment in the Employee Assistance Program treatment provided by the County Executive pursuant to the County of Summit's directives and policies, including disciplinary policies; and
- (2) a negative return to duty test result is received by the County of Summit.

(~~m~~) (m) Employee Training. All employees shall receive at least ~~two (2) hours~~ one (1) hour of annual training covering the ~~Employer's~~ County of Summit's written policy and the dangers of, and signs and symptoms associated with, substance abuse. Each employee shall receive and sign an acknowledgment of receipt of the ~~Employer's~~ County of Summit's written policy and the required training annually. The training will be presented by a qualified trainer, or a person supervised by a qualified trainer ~~educator~~ holding one of the following substance-use credentials:

- (1) Substance Abuse Professional (SAP),
- (2) Certified Employee Assistance Professional (CEAP),
- (3) Certified Chemical Dependency Counselor (CCDCIII),
- (4) Ohio Certified Prevention Specialist (OCPS 1 or 2).

(~~m~~) (n) Supervisor Training. All supervisors and selected union officials shall receive ~~at least four (4) hours of initial training prior to implementation of any testing associated with this policy and~~ two (2) hours of initial training and refresher training annually thereafter, on the supervisor's role and responsibility in administering this program. New supervisors shall receive at least two (2) hours of training within six (6) weeks of becoming a supervisor, and will not be involved in testing responsibilities until trained. The training shall include the following topics: how to recognize a possible alcohol or drug problem; how to document behaviors that demonstrate an alcohol or drug problem; how to confront employees with the problem; how to

SECTION 1 (Cont.)

initiate reasonable suspicion testing; how to make appropriate referrals for assessment or assistance; how to follow up with employees returning to work after a positive test; and how to operate consistently with collective bargaining agreements. The training will be presented by a qualified trainer, or a person supervised by a qualified trainer, holding one of the following substance-use credentials:

- (1) SAP,
- (2) CEAP,
- (3) CCDCIII,
- (4) OCPS 1 or 2

~~(n)~~ (o) Employee Resources. Information regarding the effects of alcohol and controlled substance use on an individual's health, work, and personal life, and information about drug and alcohol counseling, rehabilitation, and employee assistance programs is available through the County Executive's ~~Human Resource Department~~, and will be periodically provided to employees.

~~(o)~~ (p) Confidentiality of Records. All records relating to an employee's testing shall be maintained as confidential medical records. A tested employee must provide written authorization before his or her test results may be provided to any person, other than the ~~Employer~~ County of Summit.

~~(p)~~ (q) Relationship to Other Provisions of Law. The terms of this policy do not alter any employment-at-will relationship with employees. All employees subject to this policy remain subject to all other policies, procedures, rules, regulations, and collective bargaining agreements established by the ~~Employer~~ appointing authority under its independent authority, which are not inconsistent with the requirements herein. All employees also remain subject to all other relevant federal, state, and local laws and regulations. Commercial Drivers License holders shall abide by this policy as well as the Department of Transportation guidelines for alcohol and drug testing.

~~(q)~~ (r) Cost of Testing. The cost for all testing under this Policy is the responsibility of the ~~Employer~~ County of Summit. However, if a tested employee disagrees with the result of a test and desires an additional test, the employee may have an additional test at the employee's expense."

SECTION 2

This Ordinance is hereby declared an emergency in the interest of the health, safety and welfare of the citizens of the County of Summit, and for the further reason of immediately amending Section 169.28 of the Codified Ordinances to revise the County's pre-employment and post-accident policies for alcohol and/or controlled substances in response to recent opinions by the Ohio Attorney General and County Prosecutor and to make other revisions to the County's testing process.

SECTION 3

Provided this Ordinance receives the affirmative vote of eight members, it shall take effect immediately upon its adoption and approval by the Executive; otherwise, it shall take effect and be in force at the earliest time provided by law.

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SECTION 4

It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

INTRODUCED August 24, 2009

ADOPTED _____

CLERK OF COUNCIL

PRESIDENT OF COUNCIL

APPROVED _____

EXECUTIVE

ENACTED EFFECTIVE _____