

**RESOLUTION NO. 11-978**

**A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, COUNTY OF YAVAPAI, AMENDING THE "TOWN OF CHINO VALLEY PERSONNEL POLICY AND ADMINISTRATIVE GUIDELINE MANUAL" DATED SEPTEMBER 12, 2002 BY AMENDING POLICY NO. 430 "DRUG AND ALCOHOL FREE WORKPLACE AND TESTING"**

**WHEREAS**, the Town Council adopted the "Town of Chino Valley Personnel Policy and Administrative Guideline Manual" ("Personnel Manual") dated September 12, 2002; and

**WHEREAS**, Policy No. 430 in the Personnel Manual provides for policies with regard to drug and alcohol free workplace and testing; and

**WHEREAS**, the Town of Chino Valley operates a transit program with grant funding from the Federal Transit Administration (FTA) through ADOT, which requires funding sub-recipients to comply with applicable federal drug and alcohol procedures identified in 49 Code of Federal Regulations (CFR) Part 655, 653, 40, and 29; and

**WHEREAS**, the Council has approved Resolution No. 11-977, establishing a new Drug and Alcohol Policy to comply with FTA Section 5311 Rural Transportation Grant Guidelines; and

**WHEREAS**, the Town Council desires its current policies to be consistent with Resolution No. 11-977 "Drug and Alcohol Policy;"

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Chino Valley, Yavapai County, Arizona, that the Council approve amendments to Policy No. 430 of the "Town of Chino Valley Personnel Policy and Administrative Guideline Manual" dated September 12, 2002, attached hereto as **Exhibit A**.

**PASSED AND ADOPTED** by the Mayor and Common Council of the Town of Chino Valley, Arizona this 13th day of December, 2011.

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Chris Marley, Mayor

ATTEST:

APPROVED AS TO FORM:

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Jami C. Lewis, Town Clerk

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Musgrove, Drutz & Kack, PC  
Town Attorney

## **EXHIBIT A**

CHINO VALLEY PERSONNEL POLICY NO. 430  
AMENDMENTS DATED DECEMBER 13, 2011

## DRUG AND ALCOHOL FREE WORKPLACE AND TESTING

### I. PURPOSE:

To establish the Town's policy prohibiting the use, possession, manufacture, purchase, sale, transfer or being under the influence of alcoholic beverages, controlled substances, illegal drugs or other intoxicants at any time during the course of employment, while on Town premises or property or while on Town business.

It is our intent to protect the safety of our employees and the public we serve, and to prevent accidents that are the result of use of alcohol or one or more drugs or controlled substances as defined below.

### II. SCOPE:

This policy applies to all job applicants and employees. However, where this policy is less onerous than the requirements of the written drug and alcohol testing policy of the Police Department of the Town, the written policy of the Police Department shall control and be followed by covered personnel, including the additional provisions in the Police Department Policy regarding drug and alcohol testing of law enforcement officers.

Additionally, where this policy is less onerous than the requirements of the written Chino Valley Transit Drug & Alcohol Policy, the written policy shall control and be followed by covered personnel, including the additional provisions in the Chino Valley Transit Drug & Alcohol Policy regarding drug and alcohol testing of safety sensitive employees.

Portions of this policy also apply to employees who are required on a regular, intermittent, or occasional basis to perform duties which demand the possession of a commercial driver's license (CDL).

### III. GUIDELINES:

#### A. Definitions.

The term "alcohol" means ethanol, isopropanol, methanol, or any low molecular weight alcohol. The term "drugs" means any unlawful nonprescription drug, dangerous drug, narcotic drug, marijuana, or the metabolite of any such substance or drug, as defined in A.R.S. § 13-3401 *et. seq.*, or any substance considered unlawful under the Controlled Substances Act (21 United States Code ' 812) or the metabolite of such substance. The testing is designed to, but not limited to, detect alcohol and such drugs as amphetamines and methamphetamines (*speed*), barbiturates (*sleeping pills, downers*), benzodiazepine (*Valium*), methadone (*heroin substitute*), phencyclidine (*PCP*), propoxyphene (*darvon*), opiates (*heroin, morphine, opium*), THC (*marijuana, hashish*).

B. Testing.

1. Pre-employment. Prior to commencing any job duties, all new employees shall be required to undergo testing for alcohol, illegal/illicit drugs, and controlled substances. Any job candidate who tests positive for drugs, controlled substances, or alcohol will not be hired. Pre-employment testing also pertains to current employees who transfer or are promoted into a position which requires the possession of a commercial driver's license (CDL). Any candidate who refuses a pre-employment test will not be hired.
2. Reasonable Suspicion. Reasonable suspicion testing will be conducted when any employee, as a result of the observation of a supervisor or independent report of the employee's behavior, is reasonably suspected of prohibited conduct that is characteristic of alcohol, drug or controlled substance use, as outlined in this guideline. The employee shall be ordered to submit to a drug, controlled substance and alcohol test. The employee must report to the test site, driven by a supervisor, immediately upon being notified of the need to test.
3. Post-Accident Testing. Employees who are involved in an accident within or outside the workplace, while on duty, shall be required to undergo drug and alcohol testing following the accident. The drug testing shall be done within 32 hours of an accident, and breath and alcohol testing should be done within 2 hours after the accident.

Nothing in this guideline should be construed as to require the delay of necessary medical attention for any injured people following an accident, or to prohibit a driver from leaving the scene of an accident under appropriate circumstances to obtain assistance in responding to the accident or necessary medical care.

Following an accident which meets the criteria listed above, the employee's supervisor should take the employee to the designated testing facility immediately. If the alcohol test is not administered within 2 hours following the accident, the supervisor will prepare a written report stating the reasons the test was not administered. Copies of the report shall be maintained in both the affected department and in risk management. If the alcohol test is not administered within 8 hours following an accident, all attempts to administer the test will cease. The supervisor will prepare a written report stating the reasons the test was not administered, and copies of the report shall be maintained in both the affected department and in risk management.

If the controlled substances test is not administered within 32 hours following the accident, all attempts to administer it will cease. The supervisor will prepare a written report stating the reasons the test was not administered, and copies of the report shall be maintained in both the affected department and in risk management.

4. Random. Random drug, alcohol, and controlled substance testing is required of all CDL drivers under the Omnibus Transportation Employee Testing Act of 1991 and the FHWA Controlled Substances and Alcohol Use Rule.

Random drug and alcohol testing is accomplished through the use of a computer program which generates at random a list of employees who are selected for testing. The names and social security numbers of all employees will be entered into a computer, and the computer will draw the name or names of the employees subject to such testing from the pool of employees. The computer will select the date and time, which will be unannounced, and such date and time will be with unpredictable frequency throughout the year. Random rate adjustments, where applicable, will be determined based on the annual Management Information System (MIS) report submitted by the employer to the department of transportation agencies. Once the employee is notified of selection for random testing, the employee must proceed to the designated collection site to provide the requisite sample.

5. Self-Identified. Except in the case of Police Officers, a one time self-identification opportunity is available for regular employees and must be totally voluntary. Self-identification is not allowed after an employee has been notified to report for a random, post-accident, or reasonable suspicion test. The employee shall be required to report for the above-mentioned test if they identify themselves as being on alcohol, controlled substances or drugs as defined in this guideline.

However, discipline will not be initiated where he or she self identifies pursuant to this guideline.

6. Return to Duty and Follow-up. Any employee of the Town who has violated the prohibited alcohol and drug standards set forth herein will be subjected to drug and alcohol testing upon returning to duty following suspension or rehabilitation, and all such employees will be required to undergo follow-up drug and alcohol testing (which will be comprised of at least six unannounced tests that will be conducted in the first twelve months after the employee returns to duty, and, in addition, follow-up testing may be extended for up to sixty months following a return to duty).

C. Prohibited Conduct. No employee shall:

1. Refuse to submit to an alcohol, drug or controlled substance test;
2. Use, sell, purchase, transfer or have in possession alcohol, any illegal drug, or controlled substance as defined herein while on Town time;
3. Operate a vehicle or perform a safety-sensitive function while using, or having used, any illegal drug, alcohol, or controlled substance or medication in violation of the Town's policies and guidelines;
4. Test positive for alcohol of .02 or above; and/or
5. Test positive for an illicit/illegal drug or controlled substance.

D. Collection and Testing Procedures.

The Town will test samples obtained from job applicants and employees for unlawful drugs and/or alcohol. The term "sample" means urine, blood, breath or saliva from the person being tested.

Sample collection, transportation, testing and storage will be accomplished using procedures that ensure accuracy, reliability and confidentiality of test results.

All drug and alcohol sample collection and testing will be performed according to the following conditions:

1. The collection of samples will be performed under reasonable and sanitary conditions.
2. Sample collections will be documented and the documentation procedures will include labeling of samples in order to reasonably preclude the possibility of misidentification of the person tested in relation to the test sample/result provided. The employee being tested will be afforded the opportunity to provide, on his or her own volition, notification of any information that he or she feels may be considered relevant to the test, including identification of currently or recently used prescription or non-prescription drugs or other relevant medical information.
3. Sample collection, storage and transportation to the place of testing will be performed in a manner reasonably designed to prevent the possibility of sample contamination, adulteration or misidentification.
4. Sample testing will comply with scientifically accepted analytical methods and procedures, and drug testing will be conducted at an approved/certified laboratory.

5. Drug and alcohol samples will be collected at a certified collection facility. Samples will then be transported from the collection facility to a certified laboratory for testing.
6. Drug and alcohol testing under this policy will be deemed "work time" for the purposes of compensation and benefits for employees. The Town will pay all actual costs for drug and alcohol testing required of job applicants and employees, and the Town will pay reasonable transportation costs to employees who are required to travel to and from the testing facility.
7. Any job applicant or employee reporting for testing, who is experiencing a condition referred to as shy bladder and cannot provide an adequate amount of specimen, will remain in the presence of the technician for a period up to three (3) hours, and may consume up to 40 ounces of liquid. If after the above-stated time has lapsed and an adequate amount of specimen still cannot be collected, action will be taken by the employer, which may include re-testing, or referral to a physician for cause.

Drug testing may be conducted by analyzing urine specimens of job applicants and employees. The job applicant or employee will provide a urine specimen in a location that affords privacy to the applicant or employee, and the "collector" will then seal and label the specimen, complete a chain of custody document, and prepare the specimen and accompanying paperwork for shipment to a drug testing laboratory. A collection and chain of custody procedure will be used that will ensure the specimen's security, proper identification and integrity.

A two-stage process will be used to test for drugs. First, a screening test is performed. If the laboratory obtains a positive test for one or more drugs, then a confirmation test will be performed for each identified drug using a gas chromatography/mass spectrometry analysis.

Any negative drug result will be reported to the Town as such, and in the event of a positive drug test result, the employee will be given an opportunity to provide the Town with appropriate documentation of any legitimate medical explanation that may exist for the presence of the prohibited drug so a determination can be made by the testing facility as to whether the drug test should be reported as a negative or positive test result. If no such documentation is provided, the test result will remain as is. If documentation is provided by the employee and the testing facility determines that a legitimate medical explanation exists for the presence of the prohibited drug, then the drug test result will be reported to the Town as a negative test result. And conversely, if the testing facility determines that a legitimate explanation does not exist for the presence of the prohibited drug, then the test result will be reported to the Town as a positive test result.

Any of the following constitutes a positive test for illegal/illicit drugs or controlled substances:

**Initial Test Level**

Marijuana	50 ng/ml**
Cocaine metabolites	300 ng/ml
Opiate metabolites	2,000 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	1,000 ng/ml

**Confirmatory Test Level**

Marijuana metabolites	15 ng/ml
Cocaine metabolites	150 ng/ml
Opiates	300 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	500 ng/ml <sup>1</sup>

Employees testing positive for drugs or controlled substances will immediately be removed from their position and will be subject to termination, pending a pre-termination conference. They may be referred to a Substance Abuse Professional (SAP) and will be required to undergo the treatment specified, at the employee's expense. Upon recommendation of the SAP, the employee must complete a return-to-duty test before returning to work in a safety-sensitive capacity. The results of the test must be negative. An employee who fails a return-to-duty test will be subject to further disciplinary action, up to and including termination. An employee's continued employment is contingent upon keeping scheduled SAP appointments, a negative return-to-duty drug screen, following the treatment plan established by the SAP counselor, and negative alcohol/drug screens. A second occurrence of testing positive for drugs or controlled substances will result in termination.

With respect to breath alcohol testing, the Town will use training and proficiency requirements for breath alcohol technicians, quality assurance plans for the breath testing devices, requirements for suitable test locations, and measures designed to ensure privacy and confidentiality of employee test records, as are set forth in 49 Code of Federal Regulations Part 40.

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\*\*ng/ml ' nanogram per milliliter. A nanogram is one billionth of a gram.

Alcohol testing will be performed using a breath testing instrument that conforms with the requirements of the United States Department of Transportation. Two breath tests are required to determine whether an applicant or employee has a prohibited alcohol concentration. A screening test is conducted first. An alcohol concentration of .019 grams per 210 liters of expired breath or lower is acceptable, and therefore any test result showing an alcohol concentration of .019 grams per 210 liters of expired breath or lower is considered a "negative". If the screening test yields an alcohol concentration of .020 grams per 210 liters of expired breath or above, a second/"confirmation" test must be performed. The employee must remain in the presence of the breath alcohol technician throughout the time the confirmation test is being performed. If a confirmation test is required, the test will be conducted using a breath testing device that prints out the results, date and time, a sequential test number, and the name and serial number of the breath testing device to ensure the reliability of the results. The confirmation test result will determine whether any disciplinary action is appropriate.

A confirmed breath test result showing an alcohol concentration of .020 grams per 210 liters of expired breath or above is unacceptable, constitutes a "positive" test result and is grounds for disciplinary action up to and including termination. A job applicant with an alcohol concentration of .020 grams per 210 liters of expired breath or above will be denied employment. An employee with an alcohol concentration of .020 to .039 grams per 210 liters of expired breath will be removed from duty for 24 hours and, at the discretion of the Town, may be discharged.

Any refusal to submit to a drug or alcohol test will result in the refusal being treated as a positive test result and will subject the employee to termination.

Additional information concerning testing methods and collection procedures will be posted in the Personnel Department office of the Town.

E. Consequences of Prohibited Conduct by CDL Drivers.

The following consequences apply to CDL drivers who are found to be in violation of the above-referenced policy and guidelines:

1. Drivers shall not be permitted to perform safety-sensitive functions.

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~~3.2.~~ Drivers shall be advised by the Town of the resources available in evaluating and resolving problems associated with the misuse of alcohol or use of drugs or controlled substances.

- 4.3. Drivers shall be evaluated by SAP, at the Town's expense, which shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and drug or controlled substances use.
- 5.4. Before a driver returns to duty requiring performance of a safety-sensitive function, they shall undergo a return-to-duty alcohol test with a result indicating a breath alcohol level of 0.00, if the conduct involved alcohol; or a drug or controlled substance test with a verified negative result, if the conduct involved drug or controlled substance use.
- 6.5. In addition, each driver identified as needing assistance in resolving problems associated with alcohol, drugs or controlled substances shall be evaluated by a SAP to determine that the driver has followed the rehabilitation program prescribed.
- 7.6. The driver shall also be subject to unannounced follow-up alcohol, drug and controlled substance testing. If the SAP determines that follow-up testing for alcohol, drugs or controlled substances be conducted, follow-up tests will be conducted for all three, although the driver may have violated only an alcohol or drug/controlled substance violation. The number and frequency of such follow-up tests shall be as directed by the SAP, and consist of at least six tests in the first 12 months. Follow-up testing shall not exceed 60 months from the date of the driver's return to duty.

In addition to the required action described above, the Town's policy will be that disciplinary action up to and including termination, may be taken against CDL drivers who engage in conduct prohibited by the FHWA rule and/or Town policy or guideline.

F. Adverse Employment Action.

The Town may take adverse employment action against an employee or prospective employee based on a positive drug test or positive alcohol test. The Town may use that test result or test refusal as a basis for disciplinary or rehabilitative action that may include any of the following:

1. A requirement that the employee enroll in a rehabilitation, treatment or counseling program approved by the Town, which may include additional drug testing and alcohol testing, participation in which may be a condition of continued employment and the cost of which may or may not be covered by the Town or the Town's health plan or policy.

2. Suspension of the employee, with or without pay, for a designated period of time.
3. Termination of employment.
4. Refusal to hire a prospective employee.
5. Other adverse employment action.

The type of disciplinary or rehabilitative action taken will be a decision within the sole discretion of the Town.

G. Confidentiality of Results and Access to Records.

All communications received by the Town relevant to drug tests or alcohol test results and received through the Town's testing program will be kept confidential. The Town will only disclose the test results to:

1. The tested employee or prospective employee or any person designated in writing by that employee or prospective employee. The employee has the right, on request, to obtain the written test results.
2. Individuals designated by the Town to receive and evaluate test results or hear the explanation of the employee or prospective employee.
3. An arbitrator or mediator, or a court or governmental agency as authorized by state or federal law.

A tested employee has a right of access to the written test results that pertain to him or her, subject to the maintenance of confidentiality for other individuals. Any request for such information must be put in writing, addressed to the Town and signed by the tested employee or prospective employee or signed by a person designated (in writing) by that employee or prospective employee.