

ORDINANCE NO. 20-819

CITY OF GENTRY, ARKANSAS

**AN ORDINANCE ESTABLISHING AN UPDATED DRUG-FREE
WORKPLACE POLICY; REPEALING INCONSISTENT
ORDINANCES; DECLARING AN EMERGENCY; AND FOR
OTHER PURPOSES.**

WHEREAS, the City Council of the City of Gentry finds that there is a need to update the City's Drug-Free Workplace Policy;


NOW THEREFORE, be it ordained by the City Council of the City of Gentry:

Section 1: The attached Drug-Free Workplace Policy is hereby adopted.

Section 2: This Ordinance supersedes all prior Ordinances, Resolutions, policies, or provisions of the City Code that may conflict with the provisions of this Ordinance.

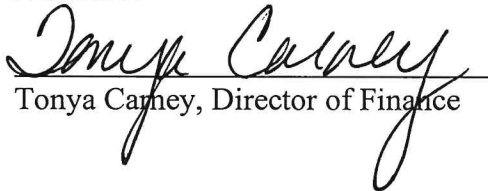
Section 3: Emergency. Given the recent legalization and commencement of commercial sales of medical marijuana in Arkansas, and the uncertainty surrounding the legality of use of medical marijuana by City employees and job applicants, the Council finds that this Ordinance is necessary for the immediate protection of the public peace, health and safety of the citizens of the City of Gentry, Arkansas, and shall take effect immediately on its passage and approval.

PASSED and APPROVED in regular session this 2nd day of March 2020.



Kevin Johnston, Mayor

ATTEST:



Tonya Carney, Director of Finance



CITY OF GENTRY DRUG-FREE WORKPLACE POLICY

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 issued by the U.S. Department of Transportation. However, certain City employees who perform safety-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-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. However, such employees may be tested as authorized by this policy if the circumstances giving rise to such testing do not arise from the employee's operation of a commercial motor vehicle.

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. In addition, employees are subject to 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.
- (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.
- (c) The City also reserves the right to require return-to-duty and follow-up testing as a result of a condition of reinstatement or continued employment in conjunction with or following completion of an approved drug and/or alcohol treatment, counseling or rehabilitation program.

3. Safety-Sensitive Positions Defined.

(a) "Safety-sensitive position" means any position in which a momentary lapse of attention may result in grave and immediate danger to the public or other persons, including without limitation, a position that requires or regularly involves any of the following activities:

- (1) Carrying a firearm;
- (2) Performing medical or first-aid procedures;
- (3) Operating, repairing, maintaining, or monitoring heavy equipment, machinery, or motor vehicles;
- (4) Working with hazardous or flammable materials, controlled substances, food, medicine, drinking water, or wastewater; or
- (5) Working with confidential information or documents pertaining to criminal investigations or cases.

(b) "Safety-sensitive position" also means any position involving a safety-sensitive function as defined by the United States Department of Transportation regulations or by any other rules, guidelines, or regulations adopted by any other federal or state agency.

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's 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 use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and drug use.

5. Prohibited Substances/Legal Drugs/Unauthorized Items.

- (a) **Prohibited Substances.** Alcoholic beverages and drugs (including medical marijuana) are considered to be prohibited substances in the workplace (including when in the field), in a City vehicle, or during work hours. For purposes of this policy, the term “drugs” includes controlled substances (as identified in Schedules I through V of Section 202 of the Controlled Substances Act, 21 USC § 812, and the regulations promulgated thereunder, as defined in the Uniform Controlled Substances Act, Ark. Code Ann. § 5-64-201 *et seq.*, or as defined by federal and state law), 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 medications is not prohibited. Any employee using a prescription drug should consult with his/her physician and pharmacist regarding the effects of the drug. Employees should read all labels carefully. The overmedication, inappropriate consumption, or mistreatment of prescription drugs approved by the employee’s physician is considered to be the abuse of “drugs” as stated in Section 5(a) of this Policy.
- (c) **Unauthorized Items.** Employees may not have any unauthorized items in their possession or in any area used by them or under their control. Unauthorized items include, but are not limited to, alcoholic beverage containers and drug paraphernalia.

6. Use of Alcohol and Drugs/Prohibited Conduct.

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

- (a) 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. 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, and shall be subject to the disciplinary rules in Section 11.
- (b) Employees shall not consume alcohol while on duty.
- (c) 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.
- (d) Employees shall submit to all authorized drug or alcohol tests.
- (e) Employees shall not report for duty or remain on duty while under the influence of any controlled substance, except for prescription drugs, 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.

- (f) Employees shall report to their immediate supervisor the use of any medically prescribed drug or other substance that impairs the employee's ability to perform the essential functions of his or her job in a safe manner, without posing a threat to the safety and health of the employee or others. Employees shall also provide proper written medical authorization to work from a physician, if requested. It is the employee's responsibility to determine whether a prescribed drug or other substance impairs his or her ability to perform the essential functions of his or her job in a safe manner, without posing a threat to the safety and health of the employee or others. Failure to report the use of such drug or other impairing substance or failure to provide proper evidence of medical authorization upon request may result in appropriate disciplinary action.
- (g) Employees shall not abuse, knowingly overmedicate, inappropriately consume, or otherwise mistreat any prescription drugs approved by the employee's physician.
- (h) Employees shall not possess, smoke, ingest, or otherwise use medical marijuana while on City premises or while on duty, regardless of whether he or she possesses a medical marijuana card.

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

7. Under the Influence.

The term "under the influence" means demonstrating symptoms of the current use of drugs or alcohol that may negatively impact the performance of the job duties or tasks or constitute a threat to health or safety. These can include:

- (a) Variations in an employee's manner of speech, walking or standing; physical dexterity; agility; coordination; actions; movement; demeanor; appearance; clothing; odor; or manifestation of other irrational or unusual behavior by the employee;
- (b) Negligence or carelessness in operating equipment, machinery, or production or manufacturing processes;
- (c) A disregard for the safety of the employee or others;
- (d) Involvement in an accident that results in:
 - (i) Damage to equipment, machinery, or property;
 - (ii) Disruption of a production or manufacturing process; or
 - (iii) An injury; or
- (e) Other symptoms causing a reasonable suspicion that the current use of drugs or alcohol is negatively impacting the performance of the job duties or tasks or constitutes a threat to health or safety of others.

The determination of whether an employee is under the influence of medical marijuana will not be based solely on the results of a drug test. Additional factors will be considered in making a determination, including (but not limited to) the following: observed conduct, behavior or appearance; information reported by a person believed to be reliable, including a report by a person who witnessed the use or possession of medical marijuana or medical marijuana paraphernalia by an applicant or employee in the workplace; lawful video surveillance; statements from the employee or other persons; printed materials that may accompany medical marijuana; information from a physician, medical review officer, or dispensary; records of government agencies, law enforcement or the courts; information from reputable reference sources in print or on the internet; and any other information reasonably believed to be reliable or accurate, including information obtained as a result of an accident or injury of any type.

8. Use of Medical Marijuana Prohibited for Employees in Safety-Sensitive Jobs.

Any employee who is or is about to become a current user of medical marijuana and whose job is classified as safety-sensitive by the City must disclose his or her current or upcoming use immediately to Human Resources. The employee need not disclose the reason why he or she was issued a medical marijuana certification or anything about his or her underlying medical condition, unless required for other reasons. The employee must provide his or her current medical marijuana certification card to Human Resources in order that a copy be made for the employee's medical file. If a new certification card is issued, the employee must provide it as well.

Current users of medical marijuana will normally be excluded from safety-sensitive jobs. If feasible, the City will attempt to accommodate employees in safety-sensitive roles who are or are about to become current users of medical marijuana. If an accommodation is not feasible, employees may be terminated, although they will be considered eligible for rehire.

Applicants (internal or external) for safety-sensitive jobs who are current users of medical marijuana pursuant to a certification must disclose their status only if they receive a conditional offer of employment from the City. Applicants with a certification who are current users of medical marijuana will be disqualified from any safety-sensitive jobs, but will be considered eligible to apply for available non-safety-sensitive jobs. Further, these applicants will not be considered ineligible for safety-sensitive jobs in the future when they are no longer a current user of medical marijuana.

Any applicant for a position at the City (safety-sensitive or not) who is under the influence of medical marijuana during the application process will be disqualified from consideration. This determination will be made by the hiring manager and/or Human Resources based on the factors listed in Section 7 above.

9. 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 prohibitions regarding use of alcohol or drugs.

For purposes of this rule, reasonable suspicion shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. The required observations must be made by a supervisor, City official, or other City employee who is trained in detecting the signs and symptoms of misuse of alcohol and drug use. When possible a second managerial employee should also observe the employee to verify that there is reasonable suspicion to believe that drug consumption may be involved. A summary of the facts supporting any determination of drug/alcohol use shall be documented in writing by the supervisor or management official within 24 hours.

- (b) Return-to-duty testing 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-sensitive positions will not be required to undergo a pre-employment drug or alcohol test unless the applicant 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 observations or credible information submitted to the City, that the employee is currently using, impaired by or under the influence of drugs or alcohol.
- (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 test 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 approved 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 test indicating an alcohol concentration of less than 0.02, and be evaluated and released by a substance abuse professional. 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 a substance abuse professional'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 a substance abuse professional'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.

10. When Drug and Alcohol Testing May Be Required of Employees in Safety-Sensitive Jobs

Employees in (and applicants for) safety-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 its 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 can be found in *The Omnibus Transportation Employee Testing Act of 1991 - Steps to Compliance for Arkansas Municipalities*, published by the Arkansas Municipal League.

11. Disciplinary Action.

Employees may be subject to disciplinary action, up to and including discharge, for any of the following infractions:

- (1) Refusal to submit to 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 is not limited to, refusal to execute any required consent forms, refusal to cooperate regarding the collection of samples, 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.
- (3) Unlawful manufacture, distribution, dispensation, possession, concealment or sale of any prohibited substance, including an alcoholic beverage, while on duty, on City property, in

City vehicles, during breaks or at lunch.

- (4) Any criminal drug statute conviction and/or failure to notify the City of such conviction within five days.
- (5) Refusal to cooperate in a search.
- (6) Having an alcohol concentration of 0.04% or greater in any authorized alcohol test.
- (7) Testing positive for drugs and/or their metabolites in any authorized drug test (except that employees authorized to use medical marijuana under the Arkansas Medical Marijuana Amendment are not subject to discipline solely because of a positive test for marijuana).

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.

12. Employment Status Pending Receipt of Test Results.

In addition to appropriate disciplinary measures, including suspension, which may be taken in response to the incident or course of conduct which gave rise to the test, the City reserves the right to decide whether the incident or course of conduct prompting the test is of such a nature that the employee should not be put back to work until the test results are received. If such a decision is made, the employee will be suspended without pay. Where the test result is negative, the employee will be reinstated with back pay, provided the employee has not been given an appropriate disciplinary suspension for violation of another work rule which also covers the time missed waiting for the test results.

13. Voluntary Drug and Alcohol Rehabilitation.

If an employee who is not otherwise subject to disciplinary action for use of drugs and/or alcohol voluntarily admits that he/she has a drug and/or alcohol abuse problem, the Mayor or City Manager (or his/her designee) will meet with the employee to discuss the various treatment, counseling and rehabilitation options that are available. For purposes of this section, an employee's admission to having a drug and/or alcohol abuse problem will not be defined as "voluntary" if it is made after the employee learns that he or she has been selected for a random drug test.

These options may include allowing the employee to continue working while receiving outpatient treatment, counseling or rehabilitation in an approved drug/alcohol abuse program, or placing the employee on a medical leave of absence while he/she is receiving treatment, counseling or rehabilitation in an approved inpatient or outpatient drug/alcohol abuse program.

When an employee voluntarily admits that he/she has a drug and/or alcohol abuse problem, the City shall have the right to require the employee to be evaluated by a substance abuse professional and/or submit to drug and/or alcohol testing prior to deciding what action is appropriate. No disciplinary action will be taken by the City against an employee who voluntarily admits that he/she has a drug and/or alcohol abuse problem in the situation described

above. However, the City shall have the following rights in such a situation:

- (1) The employee may be required to enroll in and successfully complete an approved inpatient or outpatient drug and/or alcohol abuse program, and remain drug and alcohol free for its duration as a condition of reinstatement or continued employment. However, the City will not be responsible for financial obligations associated with treatment.
- (2) If the employee is required to enroll in such a program, he/she must submit to any drug and/or alcohol tests administered as part of the program, and provide the City with the results of such tests. The employee must also provide the City with progress reports from his/her therapist, or the agency running the program, on at least a monthly basis. (Failure to provide such reports or the results of such tests will result in discipline up to and including termination.)
- (3) The employee shall be required to agree to be subject to unannounced follow-up drug and/or alcohol tests, at the City's discretion, for a period of up to 24 months.