

ORDINANCE NO. 2020 - 01

AN ORDINANCE AMENDING THE SEARCY EMPLOYEE HANDBOOK; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES

WHEREAS, the Arkansas Legislature requires that the City of Searcy, Arkansas, adopt the Searcy Employee Handbook as the official statement of the employment policy of the City of Searcy, Arkansas; and

WHEREAS, the City Council for the City of Searcy, Arkansas, has reviewed the Employee Handbook, and the related changes and additions thereto, and has determined that the Employee Handbook correctly reflects the statements of employee policy of the City of Searcy, Arkansas; and

WHEREAS, the City Council for the City of Searcy, Arkansas, recognizes that a portion of the Employee Handbook should be revised;

NOW, THEREFORE, be it ordained by the Searcy City Council, that:

Section 1. That Section 4.3 Drug Free Workplace Policy of the Employee Handbook should be deleted and restated to provide:

4.3 DRUG FREE WORKPLACE POLICY

The City is committed to providing a safe work environment and to fostering the well-being and health of its employees. That commitment is jeopardized when any employee illegally uses drugs and alcohol in the workplace. Therefore, the City has established the following policy:

1. No employee shall possess, sell, trade, buy or offer for sale illegal drugs or otherwise engage in the illegal use of drugs on the job.
2. No employee shall report to work under the influence of drugs or alcohol. An employee will be in violation of this policy if he reports to work with any detectable trace of illegal drugs or alcohol in his/her system or works while impaired by the lawful use of prescription or non-prescription drugs.
3. No employee shall abuse or use prescription drugs illegally. However, nothing in this policy precludes the appropriate use of legally prescribed medications so long as it does not pose a threat to the safety of the employee or others. Any employee unable to safely and efficiently perform the essential functions of his/her position because of the effects of a prescription or non-prescription drug must inform his/her supervisor of same and shall not work.
4. Employees who have a Registry Identification Card for the use of medical marijuana must nonetheless refrain from working under the influence or

possessing or ingesting medical marijuana while on City premises or while conducting business-related activities off City premises. Employees who are currently using medical marijuana may not work in safety sensitive positions. For purposes of this policy, a safety sensitive position is: any position so deemed by federal regulation including those adopted by the Department of Transportation, as well as any position in which a person performing the position while under the influence of marijuana may constitute a threat to health or safety, including without limitation, carrying a firearm, working with hazardous or flammable materials, controlled substances, food or medicine, or operating machinery or motor vehicles. Employees employed in safety sensitive positions shall disclose whether they are a Registry Identification Card holder using marijuana. If they do, the City will consider whether they can be transferred to a non-safety sensitive position, placed on leave, or otherwise accommodated. If the employee cannot be accommodated he may be terminated.

5. Do not disclose to us that you have a Registry Identification Card unless you are employed in a safety sensitive position or have tested positive for marijuana or THC.

Employee Drug Testing

We have adopted testing practices to identify employees who abuse drugs either on or off the job. It shall be a condition of employment for all employees to submit to drug testing under the following circumstances:

1. When there is reasonable suspicion, in the sole discretion of the City, to believe that an employee is illegally using drugs or under the influence of drugs or alcohol at work.
2. Examples of facts leading to a reasonable suspicion of impairment or being under the influence include, but are not limited to, odor of drugs or alcohol, physical manifestations such as glassy or watery eyes, inability to walk, slurred speech, reports by a co-worker, supervisor or others, employee's admission of drug use, behavior that is abnormal for that employee, violation of safety rules, arrest for drug related crimes, sudden decrease in work performance.
3. When employees are involved in on-the-job accidents or near misses, when in the sole discretion of the City, the accident or near miss was or could have been caused or contributed to by impairment of the Employee.
4. Employees in safety sensitive positions as labeled in the job description are subject to random drug screening. Safety sensitive positions are defined in Act 527 of 2016 Section 2 Definitions # 25A and #25B, which say: (A) "Safety sensitive position" means any position involving a safety sensitive function pursuant to federal regulations governing drug and alcohol testing adopted by the United States Department of Transportation or any other rules, guidelines or regulations adopted by any other federal or state agency. (B) "Safety sensitive position" also means any position designated in writing by an employer as a safety sensitive position in which a person performing the position while under the influence of marijuana may constitute a threat to health or safety, including

without limitation a position: (i) That requires any of the following activities: (a) Carrying a firearm; (b) Performing life-threatening procedures; (c) Working with confidential information or documents pertaining to criminal investigations; or (d) Working with hazardous or flammable materials, controlled substances, food, or medicine; or (ii) In which a lapse of attention could result in injury, illness, or death, including without limitation a position that includes the operating, repairing, maintaining, or monitoring of heavy equipment, machinery, aircraft, motorized watercraft, or motor vehicles as part of the job duties;

Refusal to submit to any test or to cooperate fully in testing will result in discharge. Failure to cooperate includes any circumstances indicating the employee has attempted to dilute or alter the result including delaying the test.

Employees may receive upon request a true and accurate copy of the drug test at no charge.

Positive Drug Test

Any employee who tests positive for illegal drug use or working while impaired by drugs or alcohol will be suspended without pay immediately. A positive test will be cause for termination. Within 48 hours of being notified of the positive test, the employee has the right to request a second test of the original specimen if he disagrees with the results of the first test; however, the second test is at the employee's expense and must be sent to a federally accredited lab.

Employees who voluntarily disclose a drug or alcohol problem before being selected for a test will be given an opportunity to enroll, at their expense, in a rehabilitation program approved by the City. This disclosure must be made to your manager and Human Resource Manager and must be made prior to selection for testing. The employee, upon successful completion of the rehabilitation program and furnishing evidence of same to the City, will be eligible to return to work. The employee shall sign a last chance agreement and be subject to testing for illegal drug or alcohol use upon request for three years after completion of the program; should he test positive for illegal drug use or drug or alcohol impairment a second time, he will be subject to immediate dismissal.

Employees must report any drug-related arrest or conviction within five days.

Commercial Driver Employees and Applicants

Employees and applicants who operate commercial vehicles are subject to additional drug testing and reporting requirements pursuant to the Federal Motor Carrier Safety Act, and Federal Motor Carrier Safety Administration ("FMCSA") regulations. The FMCSA maintains a "Clearinghouse" or database containing information about commercial motor vehicle drivers' drug and alcohol program violations. Pursuant to FMCSA regulations, the City is required by law to report the following events, occurrences, and information to the FMCSA's drug and alcohol Clearinghouse within three (3) business days:

- A verified positive, adulterated, or substituted drug test result;
- An alcohol confirmation test with a concentration of 0.04 or higher;
- A refusal to submit to a drug or alcohol test;
- An employer's report of actual knowledge, as defined at 49 C.F.R. § 382.107;
- On duty alcohol use pursuant to 49 C.F.R. § 382.205;
- Pre-duty alcohol use pursuant to 49 C.F.R. § 382.207;
- Alcohol use following an accident pursuant to 49 C.F.R. § 382.209;
- Drug use pursuant to 49 C.F.R. § 382.213;
- A SAP's report of the successful completion of the return-to-duty process;
- A negative return-to-duty process; and
- An employer's report of completion of follow-up testing.

Drivers who have violated the FMCSA's drug and alcohol program regulations will not be permitted to perform safety-sensitive duties unless the driver complies with the return-to-duty process and is cleared to return to work. This may require SAP evaluation, possible treatment, return-to-duty testing, and follow-up testing.

Additionally, as of January 6, 2020, the City will be required to query the Clearinghouse for all commercial driver employees on an annual basis.

Section 2. The City Clerk-Recorder is directed to notify all employees of the City of Searcy of this Change to the Employee Handbook by copy hereof and to replace said Section 3.9 of the Employee Handbook kept and maintained by the City of Searcy.

Section 3. That all resolutions, codes, ordinances, or parts of ordinances in conflict herewith are hereby repealed.

Section 4. That nothing in this ordinance or in the City of Searcy Employee Handbook hereby adopted shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any causes of action acquired or existing, under any act or ordinance hereby repealed by the act of the adoption of this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

Section 5. That the Searcy City Clerk-Treasurer shall certify to the adoption of this ordinance, and cause the same to be published as required by law.

Section 6. Nothing in this ordinance or the City of Searcy Employee Handbook shall be construed as constituting an employment contract or as altering, modifying or affecting the "at-will" employment relationship between the City of Searcy and any employee of the City of Searcy.

EMERGENCY CLAUSE. The need to ensure the continued employment relationship of all employees of the City of Searcy, Arkansas, being manifest, the City Council for the City of Searcy, Arkansas, finds that an emergency exists and that the provisions of this ordinance shall be in full force and effect from and after its passage.

PASSED AND ADOPTED this 14th day of January, 2020.

/s/ Kyle Osborne
Mayor of Searcy

Attest:

/s/ Jerry Morris
City Clerk