

**TITLE 3**

**PERSONNEL**

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#### Chapters:

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## Chapter 3.02

### ESTABLISHING RANKS FOR THE POLICE DEPARTMENT

#### Sections:

- 3.02.010 Classification of Ranks
- 3.02.020 Requirements of Ranks
- 3.02.030 Classification of Additional Titles
- 3.02.040 Determination of Number of Officers

**3.02.010 Classification of Ranks.** The following classification of ranks is available to officers in the Ferdinand Police Department (in descending order of command):

- (1) Chief of Police
- (2) Assistant Chief of Police
- (3) Captain
- (4) Lieutenant
- (5) Sergeant
- (6) Corporal
- (7) Patrolman
- (8) Reserve Patrolman

(Ord. 2012-08, S1, Sept. 11, 2012) (Ord. 89-11 S1, 1989)

**3.02.020 Requirements of Ranks.** The following requirements must be met in order to be eligible for such rank and approved by the Town Council. Ranks will be filled by the Chief of Police upon his request and approved by the Town Council. Not all ranks will be filled:

- (1) Chief of Police: The rank of Chief of Police shall be appointment of the Town Council. This rank is the equivalent of the rank of Marshal. The officer must meet the requirements established by the State of Indiana.
- (2) Assistant Chief of Police: The rank of Assistant Chief of Police shall be based on the recommendation of the Chief of Police and approved by the Town Council.
- (3) Captain: The rank of Captain may be appointed by the Town Council based upon the recommendation of the Chief of Police. This is open to any officer who has served on the department and has not received any disciplinary action for thirty-six (36) months prior to the recommendation of the Chief of Police to the Town Council.
- (4) Lieutenant: The rank of Lieutenant, upon recommendation of the Chief of Police, may be appointed by the Town Council. This is open to any officer who has served on the department and has not received any disciplinary action for thirty-six (36) months prior to the recommendation of the Chief of Police to the Town Council.

- (5) Sergeant: The rank of Sergeant, upon recommendation of the Chief of Police, may be appointed by the Town Council. This is open to any officer who has served on the department and has not received any disciplinary action for twenty-four (24) months prior to the recommendation of the Chief of Police to the Town Council.
- (6) Corporal: The rank of Corporal, upon recommendation of the Chief of Police, may be appointed by the Town Council. This is open to any officer who has served on the department for two (2) years or any non-probationary officer who has served as an officer at another department for three (3) or more years. In order to be eligible, such officer must not have received any disciplinary action for twelve (12) months prior to the recommendation of the Chief of Police to the Town Council.
- (7) Patrolman: The rank of Patrolman is given to an officer after being hired by the Town. The officer must complete all requirements of the State of Indiana and the Town of Ferdinand. The rank does not affect the probationary status of the officer.
- (8) Reserve Patrolman: The rank of Reserve Patrolman is given to a reserve officer after being hired by the Town. The Reserve Patrolman must meet all requirements as given by the State of Indiana and the Town of Ferdinand.

In situations where two officers have the same rank, seniority is determined by the date the rank was appointed. (Ord. 2012-08, S2, Sept. 11, 2012) (Ord. 89-11 S2, 1989)

**3.02.030 Classification of Additional Titles.** The following titles are also available to officers in the Ferdinand Police Department.

- (1) 2<sup>nd</sup> in command: The Town Council may assign an officer to the rank of Assistant Chief of Police. Or, upon recommendation of the Chief of Police, may assign the 2<sup>nd</sup> in command title to an officer who will then become the next highest ranking officer after Chief of Police.
- (2) Detective: The title of Detective is assigned to an officer by the Town Council upon recommendation of the Chief of Police.
- (3) Instructor: The title of Instructor can be given to any officer of any rank upon completion of the ILEA Instructor Course.  
All ranks and titles will be made and approved during a regular, special or emergency meeting of the Town Council. (Ord. 2012-08, S3, Sept. 11, 2012)

**3.02.040 Determination of Number of Officers.** In addition to the foregoing, the Town Council does, by virtue of this Ordinance, determine the number of officers on its force and reserves the right to, from time to time, determine if additional officers are necessary. One, the Police Chief, shall act as the head of the Department; five officers, other than the Police Chief, shall act as full-time Deputy Police Officers; one officer shall act as part-time Deputy Police Officer; and five officers shall act as Reserve Officers. (Ord. 2012-08, S4, Sept. 11, 2012)

## Chapter 3.04

### POLICE RESERVE UNIT

#### Sections:

- 3.04.010 Establishment
- 3.04.020 Membership
- 3.04.030 Qualifications
- 3.04.040 Removal
- 3.04.050 Supervision
- 3.04.060 Duties
- 3.04.070 Uniforms and Equipment
- 3.04.080 Liability
- 3.04.090 Ferdinand Police Continuing Education and Training Fund
- 3.04.100 Compensation

**3.04.010 Establishment.** Pursuant to the authority granted in I.C. 36-8-3-20, there is hereby established a police reserve unit for the Town of Ferdinand, to be known as the Ferdinand Police Reserve Unit. (Ord. 11-02, S3.04.010, Jan. 18, 2011) (Ord. 0-86-4)

**3.04.020 Membership.** The membership of the Ferdinand Police Reserve Unit shall be limited to not more than eight (8) who shall be approved by the Ferdinand Town Council, upon the recommendation of the Chief of police and shall be no less than twenty-one (21) years of age. Any appointment shall be deemed conditional and strictly contingent upon the applicant receiving a favorable background investigation report and pre-employment drug screen. The Ferdinand Town Council may appoint, as members of the Ferdinand Police Reserve Unit, individuals who are completing internships at institutions of higher learning. Due to the temporary nature of such appointments, reserve officers who are completing such an internship shall not be counted in calculating the total number of reserve officers in the unit. (Ord. 2019-11, S3.04.020, May 8, 2019) (Ord. 2014-04, S1, March 11, 2014) (Ord. 11-02, S3.04.020, Jan. 18, 2011) (Ord. 0-86-4)

**3.04.030 Qualifications.** In order to be considered for appointment, applicants must pass all the physical requirements established by the Indiana Law Enforcement Training Board. After appointment all reserve officers will complete a total of 240 hours of training which includes a 40 hour pre-basic training course as required by the Indiana Law Enforcement Academy. (Ord. 11-02, S3.04.030, Jan. 18, 2011) (Ord. 0-86-4)

**3.04.040 Removal.** Any reserve officer appointed under this chapter may be removed by the Ferdinand Town Council at any time without notice and without assigning cause. (Ord. 11-02, S3.04.040, Jan. 18, 2011)

**3.04.050 Supervision.** The reserve unit will operate under the direction of the Chief of Police or his designee. Before beginning his or her duties, each member will take and subscribe to an oath and affirmation. (Ord. 11-02, S3.04.050, Jan. 18, 2011) (Ord. 0-86-4)

**3.04.060 Duties.** Reserve Officers will be assigned the following duties within the Town of Ferdinand:

- (1) Assist full time police officers on routine patrols
- (2) Supplement traffic control activities
- (3) Be available for duty prior to and during special events
- (4) Assist the full time officers in implementation of disaster and emergency planning duties
- (5) Perform other duties as may from time to time be approved by the Chief of Police or his designee.

While on duty, members of the Ferdinand Police Reserve Unit will have the same arrest powers as any regular police officer for the Town of Ferdinand. (Ord. 11-02, S3.04.060, Jan. 18, 2011) (Ord. 0-86-4)

**3.04.070 Uniforms and Equipment.** A Ferdinand Police Reserve Officer may carry an authorized firearm while on duty and in uniform. Ferdinand Police Reserve Officers shall furnish their own firearm, without reimbursement from the Town. Such firearms shall be of the type and caliber used by the rest of the force for training and on duty use. The Town of Ferdinand shall furnish all Ferdinand Police Reserve Officers with a uniform and, if the Reservist's firearm is compatible with the ammunition currently furnished by the Town for training, the ammunition for both training and on duty use. Such uniform shall be distinguishable from that worn by regular Police Officers for the Town of Ferdinand. (Ord. 11-02, S3.04.070, Jan. 18, 2011) (Ord. 0-86-4)

**3.04.080 Liability.** Each appointed member of the Police Reserve Unit shall promptly after being appointed as said member, and prior to taking his oath, execute and deliver to the Clerk-Treasurer of the Town of Ferdinand an instrument in the form to be approved by the Town Attorney, releasing the Town from all liability for any injury or death of such member in the line of duty as a member of said Unit, excepting only such liability, if any, as shall be attributable to gross negligence on the part of the Town. (Ord. 0-86-4)

**3.04.090 Ferdinand Police Continuing Education and Training Fund.**

- (1) There is hereby established the Ferdinand Police Continuing Education and Training Fund.
- (2) The Clerk-Treasurer shall cause to be placed in such fund all monies received from the Dubois County Auditor pursuant to I.C. 5-2-8-3, and all other monies authorized by the Board of Trustees.
- (3) The monies accumulated in such fund may be spent after proper appropriation only for purposes related to the continuing education and training of the regular or reserve police personnel of the Town of Ferdinand. (Ord. 0-87-5)

**3.04.100 Compensation.** No member of the Police Reserve Unit shall receive any compensation from the Town for his services as a member of the Police Reserve Unit excepting as may be provided from time to time by the Ordinances of the Board of Trustees. (Ord. 11-02, S3.04.100, Jan. 18, 2011) (Ord. 0-86-4)

## Chapter 3.06

### DEPUTY CAPTAINS

#### Sections:

- 3.06.010 Deputy Captains**
- 3.06.020 Approval**
- 3.06.030 Bonded**

**3.06.010 Deputy Captains.** The Colonel of the Town of Ferdinand may appoint and deputize such Deputy Captains, subject to approval of the Board of Trustees as hereinafter provided, as may be required to insure the protection and safety of persons and property within said Town of Ferdinand. (Ord. O-72-1)

**3.06.020 Approval.** Before any person shall be appointed or deputized by the Colonel under his Ordinance (Chapter) such appointment shall be approved by the Board of Trustees of the Town of Ferdinand; provided only, that in cases of emergency appointment of a Deputy Captains, such approval by the Board shall not be required. (Ord. O-72-1)

**3.06.030 Bonded.** Such Deputy Captains, after being duly appointed, shall be bonded in the same amount of bond as is in effect for the Colonel. Compensation and term of service of such Deputy Captain shall be regulated and set by the Board of Trustees. (Ord. O-72-1)

## Chapter 3.15

### VOLUNTEER FIRE DEPARTMENT

#### Sections:

**3.15.005 Full-time Town Employee Payment Policy**

**3.15.010 Schedule of Fees and Charges**

#### **3.15.005 Full-time Town Employee Payment Policy.**

- (1) The Town Council hereby adopts a written policy that:
  - A. Any full-time employee of the Town of Ferdinand who volunteers to be a member of and performs services (fire runs) for the Volunteer Fire Department of the Town of Ferdinand for the benefit of the Volunteer Fire Department (a non-profit organization) shall be paid by the Town of Ferdinand if the fire run is during his/her normal hours of employment (regular work shift) and by the Volunteer Fire Department for the fire runs to which the employee responds. Provided, however, the total time that the employee may perform such services during the normal hours of employment and be paid regular wages and for the fire run is limited to 200 hours during any calendar year.
- (2) The payroll department and the appropriate officers of the Volunteer Fire Department are instructed to take such actions as are necessary to compensate those certain employees pursuant to this written policy. (Ord. 2023-12, July 25, 2023)

#### **3.15.010 Schedule of Fees and Charges.**

- (1) The schedule attached hereto and labelled as Exhibit A is approved pursuant to Indiana Code 36-8-12-13 and should be published to provide due notification thereof.
- (2) The charges listed on Exhibit A shall not be imposed upon a natural person who resides or pays property tax within the boundaries of the Town of Ferdinand or Ferdinand Township unless the response by the Ferdinand Volunteer Fire Department is due to a spill or chemical or hazardous material fire that poses a threat to persons or property and the charges on Exhibit A shall not be imposed upon the owner or responsible party if the Ferdinand Volunteer Fire Department is a second or subsequently responding department.
  - A. For initial response with a fire engine, a fire truck, or a fire apparatus, including hazardous material response unit, or a fire rescue unit dispatched on a fire or hazardous material incident, \$250.00 per response vehicle except command/control vehicle which is \$100.00 per vehicle. (Ord. 2019-21, S2(A), Aug. 20, 2019)



- B. For each hour or fraction thereof as on-scene assistance, \$150.00 per response unit and \$50.00 per command/control vehicle. (Ord. 2019-21, S2(B), Aug. 20, 2019)
- C. For expendable materials such as absorption material, emulsifiers, or other agents used in clean up operations, the actual replacement cost of those materials. (Ord. 2019-21, S2(C), Aug. 20, 2019)
- D. For collections of debris, chemicals, fuel, or contaminated materials resulting from a spill, the actual cost of removal and disposal at an authorized location. (Ord. 2019-21, S2(D), Aug. 20, 2019)
- E. For initial response with a fire engine, fire truck, or fire apparatus when dispatched due to intentional misconduct of a person which violates a clearly delineated rule or regulation or prohibition of the property owner (i.e. smoking or vaping in motel rooms; deliberately engaging a fire alarm where no fire is present; etc.) \$300.00 per incident. (Ord. 2019-21, S2(E), Aug. 20, 2019)

## Chapter 3.20

### CONFINED AIR SPACE PROGRAM

#### Sections:

- 3.20.010 Who is covered under 29CFR 1910.146?
- 3.20.020 Definitions
- 3.20.030 Compliance Guidelines for Non-Entry Permit Required Confined Spaces
- 3.20.040 Guidelines for Permit Required Confined Space Alternate Procedures Entry
- 3.20.050 Reclassification of Permit Space to Non-Permit Space
- 3.20.060 Compliance Guidelines for Permit Required Confined Space Entry
- 3.20.070 Requirements for a Permit Required Confined Space Program
- 3.20.080 Training
- 3.20.090 Rescue and Emergency Services
- 3.20.100 Lockout/Tagout Program

#### 3.20.010 Who is covered under 29CFR 1910.146?

- (1) General Industries. Excluding agriculture, construction, and shipyard employment; Parts 1918, 1926 and 1915 respectively. (Ord. 96-3, S1, April 8, 1996)

#### 3.20.020 Definitions.

- (1) Confined space
  - A. Is large enough and so configured that an employee can bodily enter and perform assigned work; and
  - B. Has limited or restricted means for entry and exit (for example tanks, vessels, silos, storage bins, hoppers, vaults, pits); and
  - C. Is not designed for continuous employee occupancy. **MUST MEET ALL THREE REQUIREMENTS!** (Ord. 96-3, S2, April 8, 1996)
- (2) Non-permit Required Confined Space
  - A. A Confined Space that does not contain or, with respect to atmospheric hazards, have the potential to contain any hazard capable of causing death or serious physical harm (for example, vented vaults, motor control cabinets, and dropped ceilings). (Ord. 96-3, S2, April 8, 1996)
- (3) Permit Required Confined Space. A Confined Space that has one or more of the following characteristics:
  - A. Contains or has potential to contain a hazardous atmosphere;
  - B. Contains a material that has the potential for engulfment of an entrant;

- C. Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly conveying walls or by a floor which slopes downward and tapers to a smaller cross-section; or
  - D. Contains any other recognized serious or health hazard. (Ord. 96-3, S2, April 8, 1996)
- (4) Hazards Atmosphere. An atmosphere that may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue (that is, escape unaided from a permit space), injury, or acute illness from one or more of the following causes:
- A. Flammable gas, vapors, or mist in excess of 10 percent of it's lower flammable limit (LFL);
  - B. Airborne combustible dust at a concentration that meets or exceeds it's LFL;
  - C. Atmospheric oxygen concentration below 19.5 percent or above 23.5 percent;
  - D. Atmospheric concentration of any substance for which a dose or a permissible exposure limit is published in Subpart G, Occupational Health and Environmental Control, or in Subpart Z, Toxic and Hazardous Substances, of this part which could result in employee exposure in excess of it's dose or permissible exposure limit;
  - E. Any other atmospheric condition that is immediately dangerous to life or health. (Ord. 96-3, S2, April 8, 1996)

**3.20.030 Compliance Guidelines for Non-Entry Permit Required Confined Spaces.**

- (1) Procedures:
- A. An evaluating survey of the workspace area must be completed to determine if Permit Required Confined Spaces (PRCS) are present.
  - B. All areas classified as PRCS must be posted via signs or otherwise identified to the exposed employees.
  - C. A re-evaluation of any workplace areas classified as NON-PRCS to Permit Required (PR) may be necessary if the changes to the spaces are significant.
  - D. Employees used from other employers (outside contractors) to perform work that involves permit space entry must be informed of the hazards associated with the space and that entry can only be allowed through compliance with an entry permit program.
  - E. Precaution and procedures must be coordinated between contractors entering the PRCS and the host employees working near the PRCS to provide protection for all personnel.

- F. Any hazards confronted or created by the contractor during the permit space entry must be discussed to prevent future confrontation during entry.
- G. Any person violating any safety rules shall be disciplined as follows:
  - 1. Regular Employees violating any safety rules shall be disciplined as follows:
    - (a) First time verbal warning;
    - (b) Second time written warning;
    - (c) Third time one day off without pay;
    - (d) Fourth time three days off without pay;
    - (e) Fifth time taken to Town Council for dismissal.
  - 2. Contractor's Employees violating any safety rules shall be disciplined as follows:
    - (a) First time verbal warning;
    - (b) Second time written warning;
    - (c) Third time removed from the job site. (Ord. 96-3, S3, April 8, 1996)

### **3.20.040 Guidelines for Permit Required Confined Space Alternate Procedures Entry.**

- (1) Verification Procedure:
  - A. An evaluating survey of the workplace area must be completed to determine if Permit Required Confined Spaces (PRCS) are present.
  - B. All areas classified as PRCS must be posted via sign or otherwise identified to the exposed employees.
  - C. A written Permit Space Program must be completed and made available to all employees and their authorized representatives. When using the alternate procedures to enter PRCS, the Permit Space Program will contain documentation (ventilation and monitoring data) supporting the employee's decision to enter the space through non-permit procedures.
  - D. Verify that the only hazard posed by the permit space is an actual or potential atmospheric hazard. Verification must be obtained through monitoring and inspection data and properly documented for entry personnel.

- E. Verify through documentation that continuous forced air ventilation alone is enough to maintain the permit space safe for entry. OSHA interprets safe in this case as 50% of the conditions set for a hazardous atmosphere. (Example: If methane has a LFL of 5 then the criteria of a hazardous atmosphere at 10% LFL would be .5. In using alternate procedures safe would be 50% of .5 or .25. This is to allow for the possibility of ventilation being cut off.) Documentation must be made available to entry personnel. (Ord. 96-3, S4, April 8, 1996)
- (2) Entry Procedures:
- A. Guard openings with barriers to prevent accidental fall through or penetration of foreign objects.
  - B. Initial testing of the internal atmosphere spaces must be completed before entry is made. The testing will be completed using a calibrated direct reading instrument monitoring for oxygen, flammability and potential toxic air contaminants respectively.
  - C. Clean forced air ventilation must be used before entry is made to eliminate any hazardous atmosphere and continue until all entrants have left the space.
  - D. Continuous atmosphere testing will be done to ensure that the continuous forced air ventilation is preventing the accumulation of a hazardous atmosphere.
  - E. Evacuation of entrants from the space will occur immediately when a hazardous atmosphere is detected. Measures will be implemented to protect entrants from the hazardous atmosphere before any subsequent entry takes place.
  - F. Verification that the space is safe for entry is required through written certification containing the date, location and signature of the person providing the certification. This certification must be completed before entry and made available to all entrants.
  - G. Re-evaluate the space if any changes occur in its use or configuration. (Ord. 96-3, S4, April 8, 1996)

### **3.20.050 Reclassification of Permit Space to Non-Permit Space.**

- (1) Space may be reclassified if:
  - A. No actual or potential atmospheric hazards are present (control of atmospheric hazards through continuous ventilation does not constitute elimination of hazard).
  - B. All other hazards within the space are eliminated without entry into the space.

- C. The employer shall document the basis for determining that all hazards have been eliminated, through a certification that contains the date, the location of the space, and the signature of the person making the determination. The certification shall be made available to each employee entering the space.
- D. Re-evaluate space if changes in use or configuration occur.

Note: IF ENTRY IS NECESSARY TO ELIMINATE HAZARDS OR PERFORM TESTING, IT MUST BE COMPLETED THROUGH THE PERMIT PROGRAM. (Ord. 96-3, S5, April 8, 1996)

### **3.20.060 Compliance Guidelines for Permit Required Confined Space Entry.**

- (1) Procedures:
  - A. An evaluating survey of the workplace area must be completed to determine if Permit Required Confined Spaces (PRCS) are present.
  - B. All areas classified as PRCS must be posted via signs or otherwise identified to all potentially exposed employees.
  - C. A written permit space entry program shall be implemented.
  - D. Develop an entry permit system that documents completion of all measures required to ensure safe entry into PRCS.
  - E. Provide training for all affected employees and certify they have the understanding, knowledge, and skills to safely perform PRCS entry procedures.
  - F. Provide rescue and emergency services during entry into PRCS.
  - G. Review written PRCS Entry Program at least once a year. (Ord. 96-3, S6, April 8, 1996)

### **3.20.070 Requirements for a Permit Required Confined Space Program.**

- (1) Permit Required Confined Space Program. Under the Permit-Required Confined Space Program the employer shall:
  - A. Implement the measures necessary to prevent unauthorized entry;
  - B. Identify and evaluate the hazards of permitted spaces before employees enter them;
  - C. Develop and implement the means, procedures, and practices necessary for safe permit space entry operations, including, but not limited to, the following:
    - 1. Specifying acceptable entry conditions;

2. Isolating the permit space;
  3. Purging, inerting, flushing, or ventilating the permit space as necessary to eliminate or control atmospheric hazards;
  4. Providing pedestrian, vehicle, or other barriers as necessary to protect entrants from external hazards; and
  5. Verifying that conditions in the permit space are acceptable for entry throughout the duration of an authorized entry.
- D. Provide the following equipment at no cost to employees, maintain that equipment properly, and ensure that employees use that equipment properly:
1. Testing and monitoring equipment needed to assure the space is safe for entry and work;
  2. Ventilating equipment needed to obtain acceptable entry conditions;
  3. Communications equipment;
  4. Personal protective equipment insofar as feasible engineering and work practice controls do not adequately protect employees;
  5. Lighting equipment needed to enable employees to see well enough to work safely and to exit the space quickly in an emergency;
  6. Barriers and shields required to protect entrants from external hazards;
  7. Equipment, such as ladders, needed for safe entry and egress by authorized entrants;
  8. Rescue and emergency equipment, except to extent that the equipment is provided by rescue services; and
  9. Any other equipment necessary for safe entry into and rescue from permit spaces.
- E. Evaluate permit space conditions as follows when entry operations are conducted:
1. After isolating the space, test conditions in the permit space to determine if acceptable entry conditions exist before entry is authorized to begin. If isolation of the space is infeasible because the space is large or is part of a continuous system (such as sewer), entry conditions shall be continuously monitored in the areas where authorized entrants are working;

2. Test or monitor the permit space as necessary to determine if acceptable entry conditions are being maintained during the course of entry operations; and
  3. When testing for atmospheric hazards, test first for oxygen, then for combustible gases and vapors, and then for toxic gases and vapors.
- F. Provide at least one attendant outside the permit space into which entry is authorized for the duration of entry operations;
  - G. Designate the persons who are to have active roles (as, for example, authorized entrants, attendants, entry supervisors, or persons who test or monitor the atmosphere in a permit space) in entry operations, identify the duties of each such employee, and provide each such employee with the training required;
  - H. Develop and implement procedures for summoning rescue and emergency services, for rescuing entrants from permit spaces, for providing necessary emergency services to rescued employees, and from preventing unauthorized persons from attempting a rescue;
  - I. Develop and implement a system for the preparation, issuance, use, and cancellation of entry permits as required by this section;
  - J. Develop and implement procedures to coordinate entry operations when employees of another employer are working simultaneously with the company's authorized entrants in a permit space;
  - K. Develop and implement procedures (such as closing off a permit space and canceling the permit) necessary for concluding the entry after entry operations have been completed;
  - L. Review entry operations when the employer has reason to believe the measures taken under the permit space program may not protect employees. Revise the program to correct deficiencies found to exist before subsequent entries are authorized; and
  - M. Review the permit-required confined space program, using the canceled permits, within 1 year after each entry. Revise the program as necessary, to ensure that employees participating in entry operations are protected from permit space hazards.

NOTE: Examples of circumstances requiring the review of the permit-required confined space program are: any unauthorized entry of permit space, the detection of a permit space hazard not covered by the permit, the detection of a condition prohibited by the permit, the occurrence of an injury or near-miss during entry, a change in the use or configuration of a permit space, and employee complaints about the effectiveness of the program.



NOTE: Employers must perform a single annual review covering all entries performed during a 12-month period. If no entry is performed during a 12-month period, no review is necessary. (Ord. 96-3, S7, April 8, 1996)

- (2) Permit System Procedures:
  - A. Before entry is authorized, the entry supervisor shall document the completion of means, procedures and practices necessary for safe permit space entry by preparing an entry permit.
  - B. Before entry begins, the entry supervisor identified on the permit shall sign the entry permit to authorized entry.
  - C. The completed permit shall be made available at the time of entry to all authorized entrants, by posting it at the entry portal or by any other equally effective means, so that the entrants can confirm that pre-entry preparations have been completed.
  - D. The duration of the permit may not exceed the time required to complete the assigned task or job identified on the permit.
  - E. The entry supervisor shall terminate entry and cancel the entry permit when:
    - 1. The operations covered by the entry permit have been completed; or
    - 2. A condition that is not allowed under the entry permit arises in or near the permit space.
  - F. The employer shall retain each canceled entry permit for at least 1 year to facilitate review of the permit-required confined space program. Any problems encountered during an entry operation shall be noted on the pertinent permit so that appropriate revisions to the permit space program can be made. (Ord. 96-3, S7, April 8, 1996)
  
- (3) Entry Permit. The Entry Permit that documents compliance with the PRCSE program's requirements and authorized entry to a permit space shall identify:
  - A. The permit space to be entered;
  - B. The purpose of the entry;
  - C. The date and the authorized duration of the entry permit;
  - D. The authorized entrants within the permit space. This may be accomplished by listing their names or by other means (for example, through the use of rosters or tracking systems) as will enable the attendant to determined quickly and accurately, for the duration of the permit, which authorized entrants are inside the permit space;
  - E. The personnel, by name, currently serving as the attendants;

- F. The individual, by name, currently serving as entry supervisor, with a space for the signature or initials of the entry supervisor who originally authorized entry;
- G. The hazards of the permit space to be entered;
- H. The measures used to isolate the permit space and to eliminate or control permit space hazards before entry;

NOTE: Those measures can include the lockout or tagging of equipment and procedures for purging, inerting, ventilating, and flushing permit spaces.

- I. The acceptable entry conditions;
- J. The results of initial and periodic test performed, accompanied by the names or initials of the testers and by an indication of when the test was performed;
- K. The rescue and emergency services that can be summoned and the means (such as the equipment to use and the numbers to call) for summoning those services;
- L. The communication procedures used by authorized entrants and attendants to maintain contact during the entry;
- M. Equipment, such as personal protective equipment, testing equipment, communications equipment, alarm systems, and rescue equipment, to be provided for compliance with this section;
- N. Any other information whose inclusion is necessary, given the circumstances of the particular confined space to ensure employee safety, and
- O. Any additional permits, such as for hot work, that have been issued to authorize work in the permit space. (Ord. 96-3, S7, April 8, 1996)

TOWN OF FERDINAND  
CONFINED SPACE ENTRY PERMIT  
(This Permit Must be posted at Job Site)

Date & Time Issued : \_\_\_/\_\_\_/\_\_\_, \_\_\_:\_\_\_:\_\_\_ m AUTHORIZE  
Date & Time Expire : \_\_\_/\_\_\_/\_\_\_, \_\_\_:\_\_\_:\_\_\_ m ENTRANTS: \_\_\_\_\_

Job Site : \_\_\_\_\_

AUTHORIZED

Work TO BE PERFORMED : \_\_\_\_\_ ATTENDANTS: \_\_\_\_\_  
\_\_\_\_\_

Pre-Entry Check List :

1. Gas Monitor Calibrated : Date : \_\_\_\_\_ Time : \_\_\_\_\_

By (Signature) \_\_\_\_\_

2. Mechanical Ventilation : Yes NO

3. Atmospheric Test Results : Limits:  
OXYGEN % \_\_\_\_\_ > 19.5 and < 23.5 %  
EXPLOSIVE % \_\_\_\_\_ < 10 %  
TOXIC ppm \_\_\_\_\_ < 10 ppm Hydrogen Sulfide  
TOXIC ppm \_\_\_\_\_ < 50 ppm Carbon Monoxide

4. ATTENDANT to ENTRANT COMMUNICATION :  
Voice ( ) Radio ( )

5. Lockout or Tagout Needed Yes NO

Complete and post this Permit:

If pre-entry gas monitoring is not in compliance with the above requirements, DO NOT ENTER . Contact your department superintendent.

Leaving the job site voids this permit. Prior to re-entry another permit must be issued.

**TOWN OF FERDINAND**  
**Confined Space Entry Permit (1)**  
(This Permit Must be posted at job site)

\_\_\_ Tank Entry                      Time: IN \_\_\_:\_\_\_ AM/PM      OUT \_\_\_:\_\_\_ AM/PM  
\_\_\_ Manhole  
\_\_\_ Other \_\_\_\_\_

Location: \_\_\_\_\_ DATE: \_\_\_\_\_  
Purpose of Entry \_\_\_\_\_  
SUPERVISOR: \_\_\_\_\_

**Test to be taken:**

<p>Personnel: conducting test (signature) _____</p> <p>Monitor Used for Test: _____</p> <p>% of Oxygen 19.5--21% _____</p> <p>% of LEL under 10% _____</p> <p>Hydrogen Sulfide under 10 PPM _____</p> <p>Other: _____</p> <p><b>ENTRANTS:</b> _____</p> <p>_____</p> <p>_____</p> <p><b>ATTENDANTS:</b> _____</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p><b>Special Requirements: (Check Equipment Used)</b></p> <p>Communication Equipment</p> <p>Hard Hat</p> <p>Gloves</p> <p>Protective Clothing</p> <p>Harness</p> <p>First Aid Kit</p> <p>Boots</p> <p>Safety Line/Rope</p> <p>Fire Extinguisher</p> <p>Traffic Control Equipment</p> <p>SCBA</p> <p>Tri-Pod</p> <p>Explosive Proof Lights</p> <p>Lockout/Tagout Needed</p> <p>Emergency Escape Air</p> <p>12 Volt Lighting</p> <p>Eye Protection</p> <p>Ventilation Equipment</p> <p>Other (List)</p>
--	--

**Note:** The testing of the atmosphere in the confined space will be conducted and the monitor readings must be documented **BEFORE THE ENTRY** of the employee. The atmospheric testing must be continuous until the **LAST** employee has exited the confined space.

In the event of an **EMERGENCY**, contact the police or main office by radio and declare a 911 emergency for assistance. Give location and state the emergency you have. (USE CH. #2)

This Permit is valid for one shift and job site only.  
This Permit is to be retained by the supervisor for a minimum of one year.

### 3.20.080 Training.

- (1) Procedures:
  - A. The employer shall provide training so that all employees whose work is regulated by this section acquire the understanding, knowledge, and skills necessary for the safe performance of the duties assigned under this section.
  - B. Training shall be provided to each affected employee:
    1. Before the employee is assigned duties under this section;
    2. Before there is a change in assigned duties;
    3. Whenever there is a change in permit space operations that presents a hazard about which an employee has not previously been trained;
    4. Whenever the employer has reason to believe either that there are deviations from the permit space entry procedures or that there are inadequacies in the employee's knowledge or use of these procedures.
  - C. The training shall establish employee proficiency in the duties required by this program and shall introduce new or revised procedures, as necessary, for compliance with this section.
  - D. The employer shall certify that the training required has been accomplished. The certification shall contain each employee's name, the signatures or initials of the trainers, and the dates of the training. The certification shall be available for inspection by employees and their authorized representatives.
  - E. No employee shall enter any confined space until properly trained. (Ord. 96-3, S8, 1996)
- (2) Duties of Attendants. The employer shall ensure that each attendant:
  - A. Knows the hazards that may be faced during entry, including information on the mode, signs, or symptoms, and the consequences of the exposure;
  - B. Is aware of possible behavioral effects of hazard exposure in authorized entrants;
  - C. Continuously maintains an accurate count of authorized entrants in the permit space and ensures that the means used to identify authorized entrants accurately identifies who is in the permit space;
  - D. Remains outside the permitted space during entry operations until relieved by another attendant;

NOTE: When the employer's permit entry program allows attendant entry for rescue, attendants may enter a permitted space to attempt a rescue

if they have been trained and equipped for rescuer operations and if they have been relieved by another attendant.

- E. Communicates with authorized entrants as necessary to monitor entrant status and to alert entrants of the need to evacuate the space;
  - F. Monitors activities inside and outside the space to determine if it is safe for entrants to remain in the space and orders the authorized entrants to evacuate the permit space immediately under any of the following conditions:
    - 1. If the attendant detects a prohibited condition;
    - 2. If the attendant detects the behavioral effects of hazard exposure in an authorized entrant;
    - 3. If the attendant detects a situation outside the space that could endanger the authorized entrant; or
    - 4. If the attendant cannot effectively and safely perform all the duties.
  - G. Summons rescue and other emergency services as soon as the attendant determines that authorized entrants may need assistance to escape from permit space hazards.
  - H. Takes the following actions when unauthorized persons approach or enter a permit spaces while entry is underway:
    - 1. Warn the unauthorized persons that they must stay away from the permitted space;
    - 2. Advise the unauthorized persons that they must exit immediately if they have entered the permit space; and
    - 3. Inform the authorized entrants and the entry supervisor if unauthorized persons have entered the permit space.
  - I. Performs non-entry rescues;
  - J. Performs no duties that might interfere with the attendant's primary duty to monitor and protect the authorized entrants. (Ord. 96-3, S8, 1996)
- (3) Duties of Authorized Entrants. The employer shall ensure that all authorized entrants:
- A. Know the hazards that may be faced during entry, including information on the mode, signs of symptoms, and consequences of the exposure;
  - B. Properly use equipment as required for safe entry;

- C. Communicate with the attendant as necessary to enable the attendant to monitor entrant status and to enable the attendant to alert entrants of the need to evacuate the space;
  - D. Alert the attendant whenever:
    - 1. The entrant recognizes any warning sign or symptom of exposure to a dangerous situation, or
    - 2. The entrant detects a prohibited condition; and
  - E. Exit from the permit space as quickly as possible whenever:
    - 1. An order to evacuate is given by the attendant or the entry supervisor;
    - 2. The entrant recognizes any warning sign or symptom of exposure to a dangerous situation;
    - 3. The entrant detects a prohibited condition; or
    - 4. An evacuation alarm is activated. (Ord. 96-3, S8, 1996)
- (4) Duties of Entry Supervisors. The employer shall ensure that each entry supervisor:
- A. Knows the hazards that may be faced during entry, including information on the mode, signs, or symptoms, and the consequences of the exposures;
  - B. Verifies, by checking that the appropriate entries have been made on the permit, that all test specified by the permit have been conducted, and that all procedures and equipment specified by the permit are in place before endorsing the permit and allowing entry to begin;
  - C. Terminates the entry and cancels the permit as required;
  - D. Verifies that rescue services are available and that the means for summoning them are operable;
  - E. Removes unauthorized individuals who enter or who attempt to enter the permit space during entry operations; and
  - F. Determines whenever permitted entry operation is transferred or that is dictated by the hazards and operations performed within the space. Also, that entry operations remain consistent with the terms of the entry permit, and that acceptable entry conditions are maintained. (Ord. 96-3, S8, 1996)

### 3.20.090 Rescue and Emergency Services.

- (1) Rescue and Emergency Services provided by the Employer. The following requirements apply to employers who have employees entering permit spaces to perform rescue services:
  - A. The employer shall ensure that members of the rescue service are provided with, and are trained to use properly, the personal protective equipment and rescue equipment necessary for making rescues from permitted spaces;
  - B. Members of the rescue service shall be trained to perform the assigned rescue duties. Members of the rescue service shall also receive the training required of authorized entrants;
  - C. Members of the rescue service shall practice making permit space rescues at least once every 12 months, by means of simulated rescue operations in which they remove dummies, mannequins, or actual persons from the actual permit spaces or from representative permit spaces. Representative permit spaces shall, with respect to opening size, configuration, and accessibility, simulate the types of permit spaces from which rescue is to be performed;
  - D. Members of the rescue service shall be trained in basic first-aid and in cardiopulmonary resuscitation (CPR). At least one member of the rescue service holding current certification in first-aid and in CPR shall be available.
    1. To facilitate non-entry rescue, retrieval systems or methods shall be used whenever an authorized entrant enters a permit space, unless the retrieval equipment would increase the overall risk of entry or would not contribute to the rescue of the entrant. Retrieval systems shall meet the following requirements:
      - (a) Each authorized entrant shall use a full body harness, with a retrieval line attached at the center of the entrants back near shoulder level, or above the entrant's head. Wristlets may be used in lieu of the full body harness if the employer can demonstrate that the use of a full body harness is infeasible or creates a greater hazard and that the use of wristlets is the safest and most effective alternate;
      - (b) The other end of the retrieval line shall be attached to a mechanical device or fixed point outside the permit space in such a manner that rescue can begin as soon as the rescuer becomes aware that a rescue is necessary. A mechanical device shall be available to retrieve personnel from vertical type permit spaces more than 5 feet deep.

If an injured entrant is exposed to a substance for which a Material Safety Data Sheet (MSDS) or other similar written information is required to be kept at the worksite, that MSDS or written information shall be made available to the medical facility treating the exposed entrant. Emergency response



will be provided by the local fire department. In the event of an emergency, contact the following by radio and declare a 911 emergency for assistance

Call for Car 29, on CH 2. Give location and state what kind of emergency you have. If you can't reach Car 29, call for the City Office (sic) on CH 1 and give location and what kind of emergency you have. (Ord. 96-3, S9, 1996)

- (2) Rescue and Emergency Services provided by Outside Service. When an employer (host employer) arranges to have persons other than the host employer's employees perform permit space rescue, the host employer shall:
  - A. Inform the rescue service of the hazards they may confront when called on to perform rescue at the host employer's facility; and
  - B. Provide the rescue service with access to all permit spaces from which rescue may be necessary so that the rescue service can develop appropriate rescue plans and practice rescue operations. (Ord. 96-3, S9, 1996)

**3.20.100 Lockout/Tagout Program.** Town of Ferdinand; Electric Department; Fire Department; Parks Department, Police Department; Street Department; Wastewater Department; Water Department.

- (1) General. Lockout is the preferred method of isolating machines or equipment from energy sources.
- (2) Purpose. This procedure establishes the minimum requirements for the lockout or tagout of energy isolating devices. It shall be used to ensure that the machine or equipment is isolated from all potentially hazardous energy, and locked out or tagged out before employees perform any servicing or maintenance activities where the unexpected energization, startup or release of stored energy could cause injury.
- (3) Responsibility. All employees shall be instructed in the safety significance of the lockout/tagout procedure. Each new or transferred affected employee and other employees whose work operations are, or may be in the area, shall be instructed in the purpose and use of the lockout/tagout procedure by the department superintendent.
- (4) Preparation for Lockout/Tagout. Before work is to begin on any machines or equipment, each employee shall make certain which switch(s), valve(s), or other energy isolating devices apply to the equipment to be locked or tagged out. More than one energy source may be involved. All energy sources shall be locked or tagged out.
- (5) Sequence of Lockout/Tagout Procedure.
  - A. Notify all affected employees that a lockout/tagout system is going to be utilized and the reason therefore. The authorized employee shall know the type and magnitude of energy that the machine or equipment utilizes and shall understand the hazards thereof.

- B. If the machine or equipment is operating, shut it down by the normal stopping procedure.
  - C. Operate the switch, valve, or other energy isolating device(s) so that the equipment is isolated from its energy source(s). Stored energy (such as that in springs, elevated machine members, rotating flywheels, hydraulic systems, and air, gas, steam, or water pressure, etc.) must be dissipated or restrained by methods such as repositioning, blocking, bleeding down, etc..
  - D. Lockout and/or tagout the energy isolating devices with assigned individual lock(s) or tag(s) method(s) selected.
  - E. After ensuring that no personnel are exposed, and as a check on having disconnected the energy sources, operate the push button or other normal operating controls to make certain the equipment will not operate. CAUTION: Return operating control(s) to the "neutral" or "off" position after the test.
- (6) Restoring Machines or Equipment to Normal Production Operations.
- A. After the servicing and/or maintenance is complete and equipment is ready for normal production operations, check the area around the machine or equipment to ensure that no one is exposed.
  - B. After all tools have been removed from the machine or equipment, guards have been reinstalled and employees are in the clear, remove all lockout/tagout devices. Operate the energy isolating devices to restore energy to the machines or equipment.
- (7) Procedure Involving more than One Person. In the preceding steps, if more than one individual is required to lockout or tagout equipment, each shall place his/her own personal lockout/tagout device on the energy isolating device(s). When an energy isolating device cannot accept multiple locks or tags, a multiple lockout/tagout device (hasp) may be used. If lockout is used, a single lock may be used to lockout the machine or equipment with the key being placed in a lockout box or cabinet which allows the use of multiple locks to secure it. Each employee will then use his/her own lock to secure the box or cabinet. As each person no longer needs to maintain his/her lockout protection, that person will remove his/her lock from the box or cabinet.
- (8) Basic Rules for Using Lockout/Tagout System Procedure. All Equipment shall be locked out or tagged out to protect against accidental or inadvertent operation when such operation could cause injury to personnel. Do not attempt to operate any switch, valve, or other energy isolating device where it is locked or tagged out.
- (9) Lockout/Tagout Forms. Any employee using the lockout/tagout procedure must also fill out the lockout/tagout form before starting. (Ord. 96-3, S10, April 8, 1996)

LOCKOUT/TAGOUT PROCEDURE FORM  
TOWN OF FERINAND

1. DEPT: Electric, Fire, Parks, Police, Street,  
Wastewater and Water (Circle dept.(s) affected)
2. TYPE OF ENERGY: \_\_\_\_\_
3. TYPE OF HAZARD: \_\_\_\_\_
4. NAME(S) OF AFFECTED EMPLOYEE(S): \_\_\_\_\_  
\_\_\_\_\_
5. NAME(S) OF EMPLOYEE(S) AUTHORIZED TO LOCKOUT/TAGOUT  
PROCEDURE: \_\_\_\_\_  
\_\_\_\_\_
6. TYPE(S) AND LOCATION OF ENERGY ISOLATING MEANS:  
\_\_\_\_\_
7. TYPE(S) OF STORED ENERGY METHODS TO DISSIPATE OR  
RESTRAIN: \_\_\_\_\_  
\_\_\_\_\_
8. METHOD(S) SELECTED: Locks, Tags, Other \_\_\_\_\_  
\_\_\_\_\_  
(circle appropriate method)
9. NAMES OF EMPLOYEES AUTHORIZED FOR GROUP  
LOCKOUT/TAGOUT PROCEDURE: \_\_\_\_\_  
\_\_\_\_\_

**Chapter 3.25**

**ADOPTING EMPLOYEE HANDBOOK**

**Sections:**

**3.25.010 Ordinance No. 2020-18, Dec. 15, 2020**

**3.25.010 Ordinance No. 2020-18, Dec. 15, 2020.**

ORDINANCE No. 2020-18

AN ORDINANCE ADOPTING EMPLOYEE HANDBOOK TO BE CODIFIED AS THE REPLACEMENT CHAPTER 3.25, PERSONNEL POLICY, OF THE MUNICIPAL CODE OF THE TOWN OF FERDINAND, INDIANA

WHEREAS, the Town of Ferdinand has determined that it is in the best interest of the Town of Ferdinand that an employee handbook be developed and has sought and received the services of New Focus to act as its consultant and prepare a new personnel policy/employee handbook for the Town of Ferdinand, and

WHEREAS, the Town Council of the Town of Ferdinand finds that it is in the best interest of the Town of Ferdinand to adopt said new personnel policy as its employee handbook.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FERDINAND, INDIANA:

1. That it hereby modifies Chapter 3.25 (Personnel Policy) of the Ferdinand Municipal Code, and adopts and incorporates by reference Exhibit A, attached hereto and made a part hereof, as the Personnel Policy of the Town of Ferdinand, Indiana and authorizes its use as its employee handbook and Chapter 3.25 of the Ferdinand Municipal Code shall be amended in such a fashion that the language in the attached employee handbook shall replace the language in Chapter 3.25 of the Ferdinand Municipal Code.

DULY ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FERDINAND, INDIANA, this 15<sup>th</sup> day of December, 2020.

TOWN COUNCIL OF THE  
TOWN OF FERDINAND, INDIANA

(Ord. 2023-24, Dec. 13, 2023)

(Ord. 2023-03, Feb. 21, 2023)

(Ord. 2022-31, Sept. 20, 2022)

(Ord. 2022-07, Feb. 15, 2022)

**TOWN OF FERDINAND, INDIANA**

**DRUG AND ALCOHOL  
SUBSTANCE ABUSE POLICY**

**FOR**

**Employees with Commercial Drivers License for  
Compliance with 49 CFR Part 382.601 & 49 CFR Part 40**

**&**

**Non-Regulated Employees**

**Revisions Effective: December 20, 2022**

**Approved By: Ordinance No. 2022-46**

**Previous Ordinances:**

**(Ord. 04-05, May 12, 2004)  
(Ord. 2003-11, Sept. 10, 2003)  
(Ord. 2001-8, June 13, 2001)  
(Ord. 1999-6, July 13, 1999)  
(Ord. 1996-5, Apr. 23, 1996)**

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## STATEMENT OF PURPOSE AND POLICY

Employees are an extremely valuable resource for the Town of Ferdinand, Indiana. Their health and safety is a serious concern of the Town of Ferdinand. Drug or alcohol use may pose a serious threat to employee health and safety. It is therefore, the policy of the Town of Ferdinand (hereafter referred to as the "Town") to prevent substance use or abuse from having an adverse effect on our employees. The Town maintains that the work environment is safer and more productive without the presence of alcohol, illegal or inappropriate drugs in the body or on the Town's property. Furthermore, employees have a right to work in an alcohol and drug-free environment and to work with employees free from the effects of alcohol and drugs. Employees who abuse alcohol or use drugs are a danger to themselves, their coworkers and the Town's assets.

The adverse impact of substance abuse by employees has been recognized by the federal government. The Federal Motor Carrier Safety Administration ("FMCSA") has issued regulations which require the Town to implement a controlled substance testing program. The Town will comply with these regulations and is committed to maintaining a drug-free workplace. All employees are advised that remaining drug-free and medically qualified to drive or able to work are conditions of continued employment with the Town.

Specifically, it is the policy of the Town that the use, sale, purchase, transfer, possession or presence in one's system of any controlled substance (except medically prescribed drugs) by any employee while on the Town premises, engaged in Town business, while operating Town equipment, or while under the authority of the Town is strictly prohibited. FMCSA states that mandatory testing must apply to every person who operates a commercial motor vehicle in interstate or intrastate commerce and is subject to the CDL licensing requirement.

The execution and enforcement of this policy will follow set procedures to screen body fluids (urinalysis), conduct breath testing, and or search all employee applicants for alcohol and drug use, and those employees suspected of violating this policy. Employees to be tested pursuant to these procedures include (1) those who hold CDL's and are subject to the requirements of the U.S. Department of Transportation ("DOT") and (2) all other non-regulated employees described under A. Applicability of this policy who are subject to the mandates of this Policy. These procedures are designed not only to detect violations of this policy, but to ensure fairness to each employee. Every effort will be made to maintain the dignity of employees or applicants involved. Disciplinary action will, however, be taken as necessary.

Neither this policy nor any of its terms are intended to create a contract of employment or to contain the terms of any contract of employment. The Town retains the sole right to change, amend or modify any term or provision of this policy without notice. This policy is effective upon passage of the accompanying Ordinance, and will supersede all prior policies and statements relating to alcohol or drugs.

I. Purpose

The purpose of this administrative guide is to set forth the procedures for the implementation of controlled substance and alcohol use and testing of employee applicants, current employees and employees subject to the Town's Drug and Alcohol Substance Abuse Policy. These procedures are intended as a guide only, and are in no way intended to alter any existing relationship between the Town and any employee.

The Town's substance abuse program DER (designated employer representative) that is designated to monitor, facilitate, and answer questions pertaining to these procedures is the Town Manager, Chris James, with Kerri Blessinger serving as the backup DER after the retirement of Steve Lechner and after receiving appropriate training. (Ord. 2022-46, S1, Dec. 20, 2022) (Ord. 2020-02, S1, Feb. 18, 2020) (Ord. 2004-19, S1, Dec. 8, 2004) (Ord. 2004-05, S1, May 12, 2004)

II. Provisions

A. Applicability

This policy applies to all Town employees that utilize a Commercial Drivers License (CDL) in the course of their employment. A valid CDL is required to operate the type of equipment listed below:

1. A vehicle designed to transport 16 or more passengers, including the driver.
2. A vehicle having a Gross Vehicle Rating (GVWR) as assigned by the manufacturer of 26,001 pounds or more; or
3. A combination vehicle having a Gross Combination Weight Rating of 26,001 pounds or more.

This policy also applies to all other Town employees that:

- μ drive any type of Town vehicle
- μ hold "safety-sensitive" positions
- μ hold "safety-impact" positions
- μ hold hourly or salaried positions
- μ are not otherwise specifically exempted from coverage or from certain types of testing under this Policy.

B. Prohibited Conduct

The following shall be considered "prohibited conduct" for purposes of this procedure for all employees covered in this policy.

1. No employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcoholic concentration of .04 or greater. A employee is considered to be performing a safety-sensitive function if he/she is actually performing, ready to perform, or immediately available to perform any of the following on-duty functions:
  - a. Waiting to be dispatched;
  - b. Inspecting, servicing, or conducting any commercial motor vehicle or Town vehicle at any time;
  - c. Driving, which includes all time spent at the driving controls of a commercial vehicle in operation or a Town vehicle;
  - d. Spending time, other than driving time, in or upon any commercial vehicle or Town vehicle;
  - e. Loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
  - f. Repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.



2. No employee shall be on duty or operate a commercial vehicle or Town vehicle while the employee possesses alcohol.
3. No employee shall use alcohol while performing safety-sensitive functions.
4. No employee shall perform safety-sensitive functions within four (4) hours after using alcohol.
5. No employee required to take a post-accident test shall use alcohol for eight (8) hours following the accident or until he or she undergoes a post-accident test, whichever occurs first.
6. No employee shall refuse to submit to a post-accident, random, reasonable suspicion, return-to-duty, or follow-up alcohol or drug test.
7. No employee shall report for duty or remain on duty when the employee uses any controlled substance, except when use is pursuant to the written instructions of a physician who has advised the employee and the Town that the substance does not adversely affect the employee's ability to operate a commercial motor vehicle or Town vehicle.
8. Any employee who becomes unqualified or engages in prohibited conduct as set forth herein may be subject to discipline up to and including termination of employment. Return to Duty testing is mandatory. See full discussion of Disciplinary Procedures in this Policy.
9. Off-Duty Conduct Rendering An Employee Unfit to Report
  - A. An off-duty employee who is called in to work outside regular working hours or on an otherwise off-duty work shift, who has consumed alcohol within eight (8) hours prior to reporting for work, and is unaware or unsure of his/her blood alcohol level shall resolve any doubt by informing his or her Supervisor (or if there is no immediate Supervisor, an elected official of the Town of Ferdinand) that he or she is, at this time, unfit to report to work.
  - B. Off-Duty Standards For Police Officers
    - (1) While off-duty, an officer with alcohol in his/her blood shall not perform any law enforcement function. "Law enforcement function" as used here includes:
      - (a) stopping or detaining a person or vehicle;
      - (b) participating in a pursuit by driving a vehicle;
      - (c) making an arrest;
      - (d) using physical force capable of causing bodily injury, including deadly force, against any other person;
      - (e) handling a firearm.
    - (2) Exemptions to (B)(1)(a) through (e) are exceptions as necessary to:
      - (a) prevent injury to the officer or another person;
      - (b) prevent escape of a person who could be prevented from escaping by the use of deadly force; or
      - (c) prevent the destruction of evidence of a crime;
    - (3) Officers off duty shall not operate a Town owned vehicle with a blood alcohol level of 0.02% by weight or greater. An officer who is unaware or unsure of his/her blood alcohol level shall resolve any doubt by not operating a Town owned vehicle.

C. Off-Duty Standards For Reservists

- (1) A reservist with alcohol in his/her blood shall not perform any law enforcement function. "Law enforcement function" as used here includes:
  - (a) stopping or detaining a person or vehicle;
  - (b) participating in a pursuit by driving a vehicle;
  - (c) making an arrest;
  - (d) using physical force capable of causing bodily injury, including deadly force, against any other person;
  - (e) handling a firearm.
- (2) Exemptions to (C)(1)(a) through (e) are exceptions as necessary to:
  - (a) prevent injury to the officer or another person;
  - (b) prevent escape of a person who could be prevented from escaping by the use of deadly force; or
  - (c) prevent the destruction of evidence of a crime;
- (3) Reservists shall not operate a Town owned vehicle with a blood alcohol level of 0.02% by weight or greater. A reservist who is unaware or unsure of his/her blood alcohol level shall resolve any doubt by not operating a Town owned vehicle.

C. Refusal to Test

Refusal to submit to the types of drug and alcohol tests employed by the Town will be grounds for refusal to hire employee/applicant(s) and to discipline existing CDL or non-regulated employees covered by this policy. A refusal to test would include any of the following situations:

1. Failing to appear for any test within a reasonable time after being directed to do so.
2. Failing to remain at the testing site until the testing process is completed.
3. Failure to provide a breath sample, saliva sample or urine sample as directed.
4. Failure to permit, if the situation requires, the observation or monitoring of providing a urine specimen.
5. Failure to provide a urine, breath or saliva specimen within required time frames may be considered a refusal. If an employee cannot provide a sufficient quantity of urine or breath, he/she will be directed to be evaluated by a physician of the Town's choice. If the physician cannot find a legitimate medical explanation for the inability to provide a specimen (either breath or urine), it will be considered a refusal to test. In that circumstance the employee has violated one of the prohibitions of the federal regulations and this policy.
6. Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of a "shy bladder" or "insufficient breath" situation.
7. Failing or declining to take a second test as required by DOT regulations.
8. Failure to cooperate with any part of the testing process and/or conduct that would obstruct the proper administration of a test. (e.g., refusing to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process)
9. Refusing to sign step two (2) of the alcohol testing form.
10. A report from the MRO that the employee has a verified adulterated or substituted test result.

D. Types of Tests

All employees subject to this policy will also be tested for drugs and/or alcohol, if applicable, for the following reasons: pre-employment, post-accident, random (except those who are specifically exempt from random testing), reasonable suspicion, return-to-duty, and follow-up testing as described below.

1. Pre-employment Testing

This applies to all applicants applying for a CDL position and to all applicants applying for any other position defined under Section A. Applicability.

All applicants applying for a CDL covered position will be required to provide their written consent for the Town to obtain from all previous employers (within the past two (2) years) all drug and alcohol testing records as the DOT regulations require. DOT regulations require this information be obtained within thirty (30) days of the employee performing a safety-sensitive function.

2. Random Testing

The Town conducts random drug and alcohol testing on all employees covered by this policy with the exception of the safety impact employees who are volunteers and reservists (i.e. members of the Volunteer Fire Department; members of the Ferdinand Police Reserve Unit). A random pool will be established for DOT (those with a CDL license) employees and a separate pool will be established for all other non-regulated employees who are subject to random testing. In the event that the number of members in the non-regulated pool does not justify maintaining a pool consisting of only non-regulated Town employees, the Town reserves the option to join an employer consortium group for random draw purposes. DOT regulations do not allow non-CDL employees in a DOT pool. The Town will submit all non-exempt employees' names to a random selection system. The random selection system provides an equal chance for each employee to be selected each time random selection occurs. Random selections will be reasonably spread throughout the year. The Town will drug test, at a minimum, fifty (50) percent of the average number of employee positions in each calendar year or at a rate established by the DOT for the given year. The Town will select, at a minimum, twenty-five (25) percent of the average number of employee positions in each calendar year for random alcohol testing, or at the rate established by the DOT for the given year. Random selection by its very nature, may result in employees being selected in successive selections or more than once a calendar year.

If an employee is selected at random, for either drug or alcohol testing, a Town official will notify the employee. Once notified, the employee must proceed to the designated collection site immediately. If the employee does not go to the collection site as soon as possible after notification, such conduct may be considered a refusal to test.

With the exception of reservists and volunteers, employees in safety impact positions will be subject to random drug testing as well as any of the other types of testing mandated by this Policy. Due to the nature of their duties and the type of services provided to the Town by them, members of the Ferdinand Police Department and any other employees who hold such safety impact positions may hold the irregular shift hours. Therefore, it is imperative that the DER, upon request, have access to the current duty schedule of each employee who holds a safety impact position and be advised, as soon as feasible, of any changes in the duty schedule. This requirement is necessary in order to facilitate the random testing mandated by this Policy.

Due to the particular voluntary nature of services provided to the Town by employees who serve solely in a volunteer or reservist capacity, such employees, even though they may technically fit the policy definition of "safety impact employees", shall not be subject to random testing pursuant to this Policy. Such employees shall, however, to be subject to all pre-employment testing, reasonable suspicion testing, post-accident testing and any other follow-up testing that is mandated by this Policy.

3. Post-Accident Testing

Following any accident, the employee must contact the Town as soon as possible. **Employees holding a CDL** must submit to a drug and alcohol test any time he or she is involved in an accident while driving a commercial vehicle where 1) a fatality is involved; or 2) the employee receives a citation for a moving violation arising from the accident that involved

- μ injury requiring medical treatment away from the scene, or
- μ one or more vehicles having to be towed from the scene.

All employees subject to this policy, in addition to the testing requirements outlined above for those holding a CDL, may be post-accident tested for the following situations:

1. Any accident/incident involving injury or death.
2. Any accident/incident involving property damage.
3. Any accident/incident where the employee receives a citation under state or local law for a moving traffic violation arising from the incident.
4. Any accident/incident in which an employees involvement or actions may have contributed or cannot be completely discounted as a contributing factor to an accident/incident which results in damage over \$7,500.00 or personal injury; or
5. The incident results in a lost time injury.

The employee shall follow the instructions from the Town or its representative to complete required testing.

Any time a post-accident drug or alcohol test is required, it must be performed as soon as practical. If no alcohol test can be made within eight (8) hours, attempts to perform an alcohol test shall cease. If no urine collection can be obtained for the purpose of post-accident drug testing within thirty-two hours, attempts to make such collection shall cease. An employee is prohibited from consuming alcohol between the time of the accident and the test.

In the event that federal, state, or local officials conduct breath or blood test for the use of alcohol and/or urine tests for the use of controlled substances following an accident, employees must comply with law enforcement personnel

requests. The Town may request testing documentation from such agencies, and may ask the employee to sign a release allowing the Town to obtain such test results.

In the event an employee is so seriously injured that the employee cannot provide a sample of urine, breath or saliva at the time of the accident, the employee must provide necessary authorization for the Town to obtain hospital records or other documents that would indicate the presence of controlled substances or alcohol in the employee's system at the time of the accident.

4. Reasonable Suspicion Testing Reasonable suspicion for requiring an employee to submit to drug and/or alcohol testing shall be deemed to exist when an employee manifests physical, behavioral, speech or performance symptoms or

reactions commonly attributed to the use of controlled substances or alcohol. Such employee conduct must be witnessed by a supervisor who is trained in compliance with Part 382.603 of the Federal Motor Carrier Safety Regulations.

A supervisor observing such conditions will take the following actions immediately:

- a. Confront the employee involved, and keep under direct observation until the situation is resolved.
- b. Secure the DER's concurrence to observations. After discussing the circumstances with the DER, arrangements will be made to observe or talk with the employee. If he/she believes, after observing or talking to the employee, that the conduct or performance problem could be due to substance abuse, the employee will be immediately required to submit to a breath test or urinalysis. If the employee refuses to submit to testing for any reason, the employee will be informed that continued refusal would result in disqualification from performing any safety-sensitive function.
- c. Employees will be asked to release any evidence relating to the observation for further testing. Failure to comply may subject the employee to subsequent discipline or suspension from driving duties. All confiscated evidence will be receipted for with signatures of both the receiving supervisor, as well as the provider.
- d. The DER shall, within 24 hours or before the results of the controlled substance test are released, document in writing the particular facts related to the behavior or performance problems, that led to the reasonable suspicion test and maintain this documentation in appropriate DOT files.
- e. The DER shall remove or cause the removal of the employee from the Town-owned vehicle and ensure that the employee is transported to an appropriate collection site and thereafter to the employee's residence or, where appropriate, to a place of lodging. Under no circumstances will that employee be allowed to continue to drive a Town vehicle or his/her own vehicle until a confirmed negative test result is received.
- f. The Town shall ensure Supervisors and others designated to determine whether reasonable suspicion exists to require an employee to undergo testing receive at least sixty (60) minutes of training on alcohol misuse and receive at least sixty (60) minutes of training on controlled substance use in compliance with federal law. The training shall cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances.

5. Return-to-Duty and Follow-up Testing

A return to duty test will be required for all employees who have violated this policy (test positive or refuse to test). The employee may not return to duty until he or she passes (tests negative) a drug test and/or tests below a .02 for breath alcohol and the SAP (Substance Abuse Professional) and the Town have determined that the employee may return to duty. Any employee who has returned to work following a violation of this drug and alcohol policy will be subject to follow-up testing. At a minimum, six follow-up tests will be required within the first twelve months following an employee's return to work. Follow-up tests are separate from and in addition to other policy testing (random, post-accident or reasonable suspicion).

E. Controlled Substance Testing Protocol

1. Collection Procedures

- A. The testing procedure starts with a urine collection.
- B. Collection procedures will follow the specific guidelines set forth by the U.S. Department of Transportation as outlined in the published collection procedures guidelines.
- C. Employees will be directed to empty their pockets and display the contents to the collector.
- D. Employees will be allowed privacy during the collection process except as noted in E. below.
- E. Observed collections will be required if:
  - 1. The specimen is determined invalid and there is no medical explanation.
  - 2. The collector observes evidence of an employee's attempt to tamper with the specimen.
  - 3. The temperature of the specimen is out of range.
  - 4. The specimen appears to have been tampered with.
- F. As part of the collection process, the specimen provided will be split into two portions; a primary specimen and a secondary (split) specimen.
- G. If the employee is unable to provide 45 ml of urine, the DOT "shy bladder" rule will apply. The employee will have up to 3 hours to provide the required 45 ml, and may consume up to 40 ounces of fluids during this time period. The employee will be required to be monitored during the waiting period.
- H. After collection, the specimen will be submitted to a SAMHSA certified laboratory for testing.

2. Laboratory Testing Procedures

Drug testing will be performed through urinalysis. Urinalysis will test for the presence of drugs and/or metabolites of the following controlled substances: marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP).

The SAMHSA certified laboratory will perform initial screenings on all primary specimens. In the event that the primary specimen tests positive, a confirmation test of that specimen will automatically be performed. If the confirmatory test is positive it will be reported to the Medical Review Officer (MRO) as a positive.

3. Validity Testing at the Laboratory

All specimens will also be submitted for validity testing. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted. The following will be measured: creatinine level, specific gravity, and pH. In addition, all specimens will be tested for known adulterants. An initial validity test is performed first, followed by a confirmation test if required.

All laboratory results will be reported by the laboratory to a MRO designated by the DER or its agents.

4. MRO (Medical Review Officer) Procedures

- a. All tests results will undergo a review process by the MRO.
- b. Negative test results will be reported directly to the Town's DER.

- c. Positive, adulterated or substituted results will be handled in the following manner by the MRO:
1. Before reporting a positive, adulterated or substituted test result to the DER, the MRO will attempt to contact the employee to discuss the test result.
  2. The employee is required to discuss the result with the MRO. The employee will be allowed to explain and present medical documentation to explain any permissible use of a drug.
  3. For adulterated or substituted results, the employee must demonstrate that he or she did produce or could have produced urine, through physiological means, a specimen meeting the creatinine and specific gravity criteria of a substituted or adulterated specimen.
  4. If the MRO is unable to contact the employee directly, the MRO will contact the DER who shall, in turn, contact the employee and direct the employee to contact the MRO. Upon being so directed, the employee shall contact the MRO immediately or, if the MRO is unavailable, at the start of the MRO's next business day.
  5. If, after failing to contact the MRO within 72 hours after being instructed to do so by the DER, or if the employee cannot be contacted at all within ten (10) days, or the employee expressly declines the opportunity to discuss the test, the MRO may verify the test as positive or a refusal.
  6. In the MRO's sole discretion, a determination will be made as to whether a result is verified as positive, negative or considered a refusal.
  7. Ingestion of products that contain hemp will not be an acceptable explanation for testing positive for marijuana.
  8. After any verified positive or refusal to test determination, the employee may petition the MRO to reopen the case for reconsideration.

Medical Information Disclosure:

Pursuant to DOT regulations, if, in the MRO's opinion, any information provided may mean a medical disqualification or represent a safety hazard, such as the use of certain prescription drugs, the MRO must disclose this to the employer. Individual test results for employee applicants and employees will be released to the Town and will be kept strictly confidential unless consent for the release of the test result has been obtained. Any individual who has submitted to drug testing in compliance with this procedure is entitled to receive the results of such testing upon written request.

F. Split Specimen Testing Protocol

An employee may make a request for the "split" portion of his/her specimen to be tested at a different SAMHSA laboratory if he/she was notified by the MRO that his/her test result was positive, adulterated or substituted. The request must be made to the MRO within 72 hours of being notified of a verified positive, adulterated or substituted result. The MRO will arrange for all procedures to be done in accordance with split specimen testing procedures.

The cost of a split specimen test will be the responsibility of the employee. If the employee makes a timely request (within 72 hours) to the MRO for the split portion to be tested, the MRO shall immediately make arrangement with the laboratory to initiate the process. Notwithstanding any of the foregoing, in the event an employee or applicant requests a split specimen or retesting and falls or refuses to pay for the

retesting, the Town will pay for the split specimen testing so that it can be performed in a timely fashion and will seek payment or reimbursement of the cost of retesting from the employee or applicant.

G. Alcohol Testing Protocol

Alcohol tests will be conducted by a trained Breath Alcohol Technician (BAT) or Screening Test Technician (STT). Screening tests may be done using an evidential breath testing device (EBT) or non-evidential screening device approved by the National Highway Traffic Safety Administration. Confirmatory tests will be done by a trained BAT using an evidential breath testing device. The employee shall report to the alcohol testing site as notified by the Town. The employee shall follow all instructions given by the alcohol technician.

If the result of a screening test is a breath alcohol concentration (BAC) of less than 0.02, no further testing is authorized. Any initial test indicating a BAC of .02 or greater will be confirmed on an EBT operated by a BAT. The confirmation test will be performed no sooner than fifteen (15) minutes and no later than thirty (30) minutes following the completion of the initial test. In the event the confirmation test indicates a BAC of .020 to .039, the employee shall be removed from duty for twenty-four (24) hours or until his/her next scheduled on-duty time, whichever is longer. Employees with tests indicating a BAC of .04 or greater are considered to have engaged in prohibited conduct, which may result in disciplinary action up to and including termination. All alcohol tests shall be performed just prior to, during, or just after performing a safety sensitive function.

H. Educational Materials

The Town shall provide:

1. Educational materials will be given to DOT covered employees that explain the requirements of Part 382.601 of the Federal Motor Carrier Safety Administration regulations, consequences of violating the regulations, and the Town's policies and procedures with respect to meeting these requirements.
2. Non-regulated employees will also receive information that explains Town policy, the consequences of violating the regulations, and the Town's policies and procedures with respect to meeting these requirements.
3. Other materials concerning the effects of alcohol and controlled substances use on an individual's health, work and personal life.

Employees may be required to attend an educational meeting(s) to discuss the Town's policies and procedures and to review all materials covered by this procedure. DOT covered employees will be required to sign a statement (certificate of receipt) certifying that he or she has received a copy of the materials described in Part 382.601 of the Federal Motor Carrier Safety Administration regulations. The Town shall provide these materials to each employee prior to the start of alcohol and controlled substance testing and to each employee subsequently hired or transferred into a position requiring driving a commercial vehicle.

III. Disciplinary Procedures

Any employee testing positive for alcohol (.04 BAC or greater), or who has a positive controlled substance test, or has refused to test is considered in violation of this policy, and is not qualified to drive a commercial motor vehicle or a Town vehicle, and will be immediately removed from duty and referred to a Substance Abuse Professional (SAP).

Following are disciplinary responses which may result from a violation of this Policy:



1. Employees testing positive from a reasonable suspicion, post-accident, random, return to duty, or follow-up drug screen will be disciplined up to and including discharge. These individuals discharged will not be considered for reemployment for five (5) years after the date of termination.
2. Employees whose test results show a blood alcohol concentration of at least 0.04 will be removed from safety-sensitive functions and may be subject to discipline up to and including discharge. A blood alcohol concentration of less than 0.04 shall constitute evidence of intoxication and may, along with other evidence of job impairment, be grounds for discipline up to and including discharge. Any employee who tests at least 0.02, but less than 0.04 is prohibited from performing safety-sensitive functions by DOT regulations for at least twenty-four (24) hours.
3. Employees who sell, distribute, dispense, possess, or use an illegal drug or alcohol on the Town of Ferdinand's premises or during working time may be subject to discipline up to and including discharge.
4. Employees who switch, tamper, or attempt to switch or tamper with any screening test or sample may be subject to discipline up to and including discharge.
5. Employees who refuse to submit to a drug or alcohol test as required by this policy or to execute any relevant documentation such as consent or release of information forms may be subject to discipline up to and including discharge.
6. Any employee who is convicted of, or pleads guilty to, a drug-related offense that occurred in the workplace or elsewhere while in the Town of Ferdinand's employ may be subject to discipline up to and including discharge.
7. Any employee who is believed to be selling, distributing, dispensing, or possessing drugs or alcohol on the Town of Ferdinand's premises or while on working time may be suspended, subject to discipline up to and including discharge.
8. In addition to, but not in lieu of, the disciplinary responses referred to in the foregoing subparagraphs, a DOT covered employee's failure to take appropriate corrective action to remove a deficiency from his or her license, after being given written notice to do so within a stated time, may subject the DOT covered employee to discipline, up to and including discharge.
9. If a member of the Ferdinand Police Department or the Ferdinand Police Reserve Unit violates this policy, the member will be subject to such disciplinary action as may be appropriate pursuant to the powers granted under I.C. 36-8-3-4, et seq.

IV. Substance Abuse Evaluation, Return To Duty, and Follow Up Testing

To be able to be returned to a CDL position the employee must complete the steps outlined in Section IV. below. Employees who do not have CDL licenses but are covered by this policy must also complete the steps in Section IV below before they will be allowed to return to their position.

1. Complete an evaluation with a SAP
2. Complete any rehabilitation and/or education required by the SAP
3. Be re-evaluated by the SAP and obtain written confirmation of satisfactory completion of all recommendations
4. Complete a return to duty test that is issued with a negative result

5. As a condition of continued employment, the employee will be required to submit to a minimum of 6 unannounced follow up tests in the next 12 months after returning to work.

Follow-up testing is separate from and in addition to the Town's reasonable suspicion, post-accident, and random testing procedures. The schedule for follow-up testing shall be unannounced and in accordance with the instructions of the SAP. Follow-up testing may continue for a period of up to sixty (60) months following the employee's return to duty. No fewer than six (6) tests shall be performed in the first twelve (12) months of the follow-up testing. The cost of any SAP evaluation, prescribed treatment and follow-up testing shall be borne by the employee.

V. Responsibility

- A. Employee - All Town employees are responsible for abiding by this policy as a condition of their employment.
- B. Town Officials and Supervisors  
All supervisors and Town officials are responsible for being alert to employee conduct that raises a reasonable suspicion that an employee is using or is under the influence of alcohol or controlled substances while on duty or otherwise performing Town business.
- C. All employees of the Town who test positive for drug and/or alcohol tests will pay for tests.

This policy is not intended nor should it be construed as a contract between the Town and the employee. This policy may change at any time at the sole discretion of the Town.

## APPENDIX A Abbreviations and Terms

### Abbreviations

<b>BAT</b>	Breath Alcohol Technician	<b>CDL</b>	Commercial Drivers' License
<b>CMV</b>	Commercial Motor Vehicle	<b>DER</b>	Designated Employer Representative
<b>DHHS</b>	Dept. of Health and Human Services	<b>DOT</b>	Department of Transportation
<b>EAP</b>	Employee Assistance Program	<b>EBT</b>	Evidential Breath Testing Device
<b>MRO</b>	Medical Review Officer	<b>STT</b>	Screening Test Technician
<b>SAMHSA</b>	Substance Abuse and Mental Health Services Administration		

### Definitions

#### **Adulterated Specimen**

A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

#### **Alcohol**

Intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl and isopropyl alcohol.

#### **Alcohol Concentration (or content)**

Alcohol in a volume of breath (shown as grams of alcohol/210 liters of breath) as indicated by an evidential breath test.

#### **Alcohol Use**

Consumption of any beverage, mixture, or preparation, including medications, containing alcohol.

#### **Breath Alcohol Technician (BAT)**

An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath measurement (EBT) device.

#### **Confirmation Test**

*In alcohol testing:* a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.

*In controlled substances testing:* a second test to identify the presence of a specific drug or metabolite. In order to ensure reliability and accuracy, this test is separate from and uses a different technique and chemical principle from that of the screening test.

#### **Confirmation Validity Test**

A second test performed on a urine specimen to further support a validity test result.

#### **Controlled Substances**

In this regulation, the term 'drugs' and 'controlled substances' are interchangeable and have the same meaning. Unless otherwise provided, these terms refer to: \*marijuana, \*cocaine, \*opiates, \*phencyclidine (PCP), \*amphetamines, including methamphetamines.

#### **Designated Employer Representative (DER)**

An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer.

#### **Dilute Specimen**

A specimen with creatinine and specific gravity values that are lower than expected for human urine.

#### **EBT (or evidential breath testing device)**

An EBT approved by the National Highway Traffic Safety Association (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).

**Employee**

**DOT covered employee:** Any person who operates a commercial vehicle (CMV), including: full time, part-time, regularly employed and seasonally employed employees, casual, intermittent or occasional employees, leased employees independent, owner-operated contractors who are either directly employed by or under lease to an employer or who operates a commercial motor vehicle at the direction of or with the consent of an employer.

**Non-regulated employee:** Any person who is required to drive any type of Town vehicle, holds a "safety sensitive position", holds a "safety impact position", including: full-time, part-time, regularly employed and seasonally employed employees, casual, intermittent or occasional employees and leased employees.

**Evidential Breath Testing (EBT) Device**

A device used for alcohol breath testing that has been approved by the National Highway Traffic Safety Administration.

**Initial Validity Test**

The first test used to determine if a specimen is adulterated, diluted, or substituted.

**Initial Drug Test**

The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

**Medical Review Officer (MRO)**

A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program. The MRO must have knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an individual's confirmed positive test, medical history and other relevant biomedical information.

**Performing (a safety sensitive function)**

An employee is considered to be performing a safety-sensitive function when he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.

**Primary specimen**

The urine specimen bottle that is opened and tested first by the laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of validity testing. The primary specimen is distinguished from the split specimen, defined in this section.

**Safety Sensitive Positions**

Positions in which an employee is or may perform a safety sensitive function and specifically includes, but is not limited to, positions requiring a CDL and those which do not require a CDL, those which require performance of safety sensitive functions recognized by the DOT and those which require the performance of any of the duties specified in Section 11, B, 1.

Additionally, an employee is considered to be in a safety sensitive position if the position requires the performance of duties that may involve:

1. Operation of power tools that could cause damage to property and/or injury to self, co-workers or others, in the case of an accident resulting from negligence or substandard performance due to drug or alcohol use. Examples of these power tools include, but are not limited to, drill, saw, grinder, sander, chain saw, concrete saw, torch cutter, post hole digger, post driver and post puller.
2. Operation of machinery or light equipment that could cause damage to property and/or injury to self, co-workers or others, in the case of an accident resulting from negligence or substandard performance due to drug or alcohol use. Examples of machinery and light equipment include, but are not limited to, lawn mower, tractor, hedge trimmer, weed whip, fork lift/tow motor, snow blower, jack hammer, hydraulic jack, compaction machine, drill press, welder, power winch, scaffolding, extension ladders and other extension devices.

3. Operation of trucks and heavy equipment that could cause damage to property and/or injury to self, co-workers or others, in the case of an accident resulting from negligence or substandard performance due to drug or alcohol use. Examples of trucks and heavy equipment include, but are not limited to, dump truck, snow plow, trash truck, compaction roller, paving machine, chipping machine, backhoe, stone crusher, front-end loader and lift truck.
4. Operation of a municipally owned or leased vehicle (including emergency vehicles) at any time, or when use of a personal or private vehicle is required for the performance of the essential job duties of the position.
5. Exposure to heavy equipment, light equipment and motor vehicles during working situations, where inattentiveness, slowed reaction time, negligence or substandard performance due to drug or alcohol use may increase the possibility of danger or harm to self, co-workers or others. Examples of these types of duties include, but are not limited to, flagging traffic, laboring for or near working heavy equipment, performing repairs on vehicles, light equipment and heavy equipment.
6. Exposure to potentially dangerous situations requiring quick reaction times and fast judgment, where lack thereof may result in danger or harm to self or others. Positions specifically excluded from this definition are emergency medical personnel, since the Town is not responsible for employing them.
7. Supervision of employees who have been defined as safety sensitive according to the criteria listed herein.

**Safety Impact Positions**

Positions in which an employee has or may have a discernable effect on public safety or co-workers and specifically includes, but is not limited to, members of the Ferdinand Police Department, members of the Ferdinand Police Reserve Unit and other volunteers, including members of the volunteer fire department.

**Screening Test (initial test)**

*In alcohol testing:* a procedure to determine if an employee has a prohibited concentration of alcohol in his or her system.

*In controlled substance testing:* a screen to eliminate 'negative' urine specimens from further consideration.

**Split Specimen** means a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

**Substituted Specimen**

A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

**Substance Abuse Professional (SAP)**

A licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional or certified addiction counselor with knowledge of any and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

**Supervisor**

For the purpose of interpreting this policy, supervisor shall include an employee's immediate supervisor, manager, or department head or, if none, any elected official or other trained supervisory personnel of the Town of Ferdinand, Indiana.

FORM C

For CDL Employees

Certificate of Receipt

(Acknowledgement of receiving materials required by 49 CFR Part 382.601)

Employee Name: \_\_\_\_\_ Social Security #: \_\_\_\_\_

Employer: TOWN OF FERDINAND, INDIANA

This is to acknowledge that I have been provided educational materials that explain the requirements of 382.601 and my employer's policies and procedures with respect to meeting the requirements. This includes all items checked.

- √ The designated person to answer questions about the material.
- √ The categories of drivers subject to Part 382.
- √ Sufficient information about the safety-sensitive functions and periods of the workday that compliance is required.
- √ Specific information concerning prohibited driver conduct.
- √ Circumstances under which a driver will be tested.
- √ Test procedures, driver protection and integrity of the testing processes, and safeguarding the validity of the test.
- √ The requirements that tests are administered in accordance with Part 382.
- √ An explanation of what will be considered a refusal to submit to a test and the consequences.
- √ The consequences for Part 382 Subpart B violations including removal from safety-sensitive functions and 382.605 procedures.
- √ The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04.
- √ Information on the affects of alcohol and controlled substances use on: an individual's health, work, personal life, signs and symptoms of a problem, and available methods of intervening when a problem is suspected.
- √ A copy of my employer's substance abuse policy.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Authorized Employer Representative: \_\_\_\_\_

Employee Acknowledgement

(Of receiving drug and alcohol testing materials, policies, & procedures)

Employee Name: \_\_\_\_\_ Social Security #: \_\_\_\_\_

Employer: TOWN OF FERDINAND, INDIANA

This is to acknowledge that I have been provided educational materials that explain my employer's policies and procedures with respect to drug and alcohol testing. The following items were covered.

- √ The designated person to answer questions about the testing program.
- √ Specific information concerning prohibited employee conduct.
- √ Circumstances under which an employee will be tested.
- √ Test procedures, employee protection and integrity of the testing processes, and safeguarding the validity of the test.
- √ An explanation of what will be considered a refusal to submit to a test and the consequences.
- √ The consequences for violations of this policy.
- √ Information on the affects of alcohol and controlled substances use on: an individual's health, work, personal life, signs and symptoms of a problem, and available methods of intervening when a problem is suspected.
- √ A copy of my employer's substance abuse policy.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Authorized Employer Representative: \_\_\_\_\_

## Chapter 3.35

### NEPOTISM AND CONTRACTING WITH A UNIT BY A RELATIVE

#### Sections:

- 3.35.010 Compliance with regard to Nepotism
- 3.35.020 Implementation of “Nepotism Policy” and “Contracting with a Unit by a Relative Policy”
- 3.35.030 Effective date of “Nepotism Policy” and Indiana Code provisions
- 3.35.040 Effective date of “Contracting with a Unit by a Relative Policy” and Indiana Code provisions
- 3.35.050 More stringent or detailed requirements
- 3.35.060 Single member cannot act for the legislative body
- 3.35.070 Single member cannot act for the government body
- 3.35.080 Full cooperation with implementation
- 3.35.090 Subject to action for failure to abide with Nepotism Policy
- 3.35.100 Violation may result in further action
- 3.35.110 Actions to ensure implementation
- 3.35.120 Appendix I and II containing Indiana Code are attached
- 3.35.130 Public Inspection

**3.35.010 Compliance with regard to Nepotism.** The Town of Ferdinand finds that it is necessary and desirous to adopt a policy of conduct with regard to nepotism in the employment with the Town of Ferdinand and in contracting with the Town of Ferdinand in order to continue to be able to provide local government services to its residents and to comply with the new laws effective July 1, 2012 known as IC 36-1-20.2 and IC 36-1-21, respectively. (Ord. 12-05, S1, June 12, 2012)

**3.35.020 Implementation of “Nepotism Policy” and “Contracting with a Unit by a Relative Policy”.** On July 1, 2012 the Town of Ferdinand shall have a Nepotism and a Contracting with a Unit policy that complies with the minimum requirements of IC 36-1-20.2 (hereinafter "Nepotism Policy") and IC 36-1-21 (hereinafter "Contracting with a Unit by a Relative Policy") and implementation will begin. (Ord. 12-05, S2, June 12, 2012)

**3.35.030 Effective date of “Nepotism Policy” and Indiana Code provisions.** The Town of Ferdinand Nepotism Policy is hereby established effective July 1, 2012 by adopting the minimum requirements provisions of IC 36-1-20.2, and including all future supplements and amendments thereto which become law from time to time, and making them a part hereof as if fully set out herein. In addition a copy of IC 36-1-20.2 Nepotism in effect on July 1 is attached hereto. (Ord. 12-05, S3, June 12, 2012)

**3.35.040 Effective date of “Contracting with a Unit by a Relative Policy” and Indiana Code provisions.** The Town of Ferdinand Contracting with a Unit by a Relative Policy is hereby established effective July 1, 2012 by adopting the minimum



requirements provisions of IC 36-1-21, and including all future supplements and amendments thereto which become law from time to time, and making them a part hereof as if fully set out herein. In addition a copy of the IC 36-1-21 Nepotism in effect on July 1 is attached hereto. (Ord. 12-05, S4, June 12, 2012)

**3.35.050 More stringent or detailed requirements.** The Town of Ferdinand finds that both IC 36-1-20.2 and IC 36-1-21 specifically allow a unit to adopt requirements that are "more stringent or detailed" and that more detailed are necessary. (Ord. 12-05, S5, June 12, 2012)

**3.35.060 Single member cannot act for the legislative body.** The Town of Ferdinand further finds that a single member of the legislative body cannot act for the body to make work assignments, compensation, grievances, advancement or a performance evaluation without prior authority of a majority of the body and therefore without such authority by the majority he/ she will not be in the direct line of supervision. (Ord. 12-05, S6, June 12, 2012)

**3.35.070 Single member cannot act for the government body.** The Town of Ferdinand finds that a single member of governing bodies with authority over employees in the Town of Ferdinand cannot act for the governing body to make work assignments, compensation, grievances, advancement or a performance evaluation without prior authority of a majority of the body, when a statute provides that a majority is needed to act, and therefore, without such authority by the majority the single member will not be in the direct line of supervision. (Ord. 12-05, S7, June 12, 2012)

**3.35.080 Full cooperation with implementation.** All elected and appointed officials and employees of the Town of Ferdinand are hereby directed to cooperate fully in the implementation of the policies created by this Ordinance and demonstrating compliance with these same policies. (Ord. 12-05, S8, June 12, 2012)

**3.35.090 Subject to action for failure to abide with Nepotism Policy.** Failure to abide by or cooperate with the implementation, compliance and certifications connected with the Nepotism Policy is a violation and may result in the discipline, including termination, of an employee or a transfer from the direct line of supervision or other curative action. An elected or appointed official of the Town of Ferdinand who fails to abide by or cooperate with the implementation, with the compliance and with mandated certifications of the Nepotism Policy may be subject to action allowed by law. (Ord. 12-05, S9, June 12, 2012)

**3.35.100 Violation may result in further action.** Failure to abide by or cooperate with the implementation, compliance and certifications connected with the Contracting with Unit by a Relative Policy is a violation and may result in the discipline, including termination, of an employee or a curative action. An elected or appointed official of the Town of Ferdinand who fails to abide by or cooperate with the implementation, with the compliance and with mandated certifications of either the Nepotism Policy or the Contracting with Unit by a Relative Policy may be subject to action allowed by law. (Ord. 12-05, S10, June 12, 2012)

**3.35.110 Actions to ensure implementation.** The policies created by this Ordinance are hereby directed to be implemented by any of the following actions: a) posting a copy of this Ordinance in its entirety in at least one of the locations in the Town of Ferdinand where it posts employer posters or other notices to its employees; b) providing a copy of this Ordinance to its employees and elected and appointed officials; c) providing or posting a notice of the adoption of this Ordinance; or d) any such other action or actions that would communicate the policies established by this Ordinance to its employees and elected and appointed officials. Upon the taking of any of these actions the policies are deemed implemented by the Town of Ferdinand. (Ord. 12-05, S11, June 12, 2012)

**3.35.120 Appendix I and II containing Indiana Code are attached.** A copy of the provisions of IC 36-1-20.2 and IC 36-1-21 effective July 1, 2012 are annexed hereto. (Ord. 12-05, S12, June 12, 2012)

**3.35.130 Public Inspection.** Two (2) copies of IC 36-1-20.2 and IC 36-1-21, and as supplemented or amended, are on file in the office of the Clerk-Treasurer for the Town of Ferdinand for public inspection as maybe required by IC 36-1-5-4. (Ord. 12-05, S13, June 12, 2012)

## APPENDIX I

### Chapter 20.2. Nepotism

Sec. 1. This chapter applies to all units.

Sec. 2. An individual who is employed by a unit on July 1, 2012, is not subject to this chapter unless the individual has a break in employment with the unit. The following are not considered a break in employment with the unit:

- (1) The individual is absent from the workplace while on paid or unpaid leave, including vacation, sick, or family medical leave, or worker's compensation.
- (2) The individual's employment with the unit is terminated followed by immediate reemployment by the unit, without loss of payroll time.

Sec. 3. For purposes of this chapter, the performance of the duties of:

- (1) a precinct election officer (as defined in IC 3-5-2-40.1) that are imposed by IC 3; or
- (2) a volunteer firefighter;

is not considered employment by a unit.

Sec. 4. As used in this chapter, "direct line of supervision" means an elected officer or employee who is in a position to affect the terms and conditions of another individual's employment, including making decisions about work assignments, compensation, grievances, advancement, or performance evaluation. The term does not include the responsibilities of the executive, legislative body, or fiscal body of a unit, as provided by law, to make decisions regarding salary ordinances, budgets, or personnel policies of the unit.

Sec. 5. As used in this chapter, "employed" means an individual who is employed by a unit on a full-time, part-time, temporary, intermittent, or hourly basis. The term does not include an individual who holds only an elected office. The term includes an individual who is a party to an employment contract with the unit.

Sec. 6. As used in this chapter, "member of the fire department" means the fire chief or a firefighter appointed to the department.

Sec. 7. As used in this chapter, "member of the police department" means the police chief or a police officer appointed to the department.

Sec. 8. (a) As used in this chapter, "relative" means any of the following:

- (1) A spouse.

- (2) A parent or stepparent.
  - (3) A child or stepchild.
  - (4) A brother, sister, stepbrother, or stepsister.
  - (5) A niece or nephew.
  - (6) An aunt or uncle.
  - (7) A daughter-in-law or son-in-law.
- (b) For purposes of this section, an adopted child of an individual is treated as a natural child of the individual.
  - (c) For purposes of this section, the terms "brother" and "sister" include a brother or sister by the half blood.

Sec. 9. (a) This chapter establishes minimum requirements regarding employment of relatives. The legislative body of the unit shall adopt a policy that includes, at a minimum, the requirements set forth in this chapter. However, the policy may:

- (1) include requirements that are more stringent or detailed than any provision in this chapter; and
- (2) apply to individuals who are exempted or excluded from the application of this chapter.

The unit may prohibit the employment of a relative that is not otherwise prohibited by this chapter.

- (b) The annual report filed by a unit with the state board of accounts under IC 5- 11-13-1 must include a statement by the executive of the unit stating whether the unit has implemented a policy under this chapter.

Sec. 10. Individuals who are relatives may not be employed by a unit in a position that results in one (1) relative being in the direct line of supervision of the other relative.

Sec. 11. (a) This section applies to an individual who:

- (1) is employed by a unit on the date the individual's relative begins serving a term of an elected office of the unit; and
  - (2) is not exempt from the application of this chapter under Section 2 of this chapter.
- (b) Unless a policy adopted under Section 9 of this chapter provides

otherwise, an individual may remain employed by a unit and maintain the individual's position or rank even if the individual's employment would violate Section 10 of this chapter.

(c) Unless a policy adopted under Section 9 of this chapter provides otherwise, an individual described in subsection (b) may not:

- (1) be promoted to a position; or
- (2) be promoted to a position that is not within the merit ranks, in the case of an individual who is a member of a merit police department or merit fire department;

if the new position would violate Section 10 of this chapter.

Sec. 12. This chapter does not abrogate or affect an employment contract with a unit that:

- (1) an individual is a party to; and
- (2) is in effect on the date the individual's relative begins serving a term of an elected office of the unit.

Sec. 13. Unless the policy adopted under section 9 of this chapter provides otherwise, a sheriffs spouse may be employed as prison matron for the county under IC 36-8-10-5 and the spouse may be in the sheriffs direct line of supervision.

Sec. 14. Unless the policy adopted under Section 9 of this chapter provides otherwise, an individual:

- (1) who served as coroner;
- (2) who is currently ineligible to serve as coroner under Article 6, Section 2(b) of the Constitution of the State of Indiana;
- (3) who, as coroner, received certification under IC 36-2-14-22.3; and
- (4) whose successor in the office of coroner is a relative of the individual;

may be hired in the position of deputy coroner and be in the coroner's direct line of supervision.

Sec. 15. If the township trustee's office is located in the township trustee's personal residence, unless the policy adopted under Section 9 of this chapter provides otherwise the township trustee may hire only one (1) employee who is a relative. The employee:

- (1) may be hired to work only in the township trustee's office;

- (2) may be in the township trustee's direct line of supervision; and
- (3) may not receive total salary, benefits, and compensation that exceed five thousand dollars (\$5,000) per year.

Sec. 16. Each elected officer of the unit shall annually certify in writing, subject to the penalties for perjury, that the officer has not violated this chapter. An officer shall submit the certification to the executive of the unit not later than December 31 of each year.

Sec. 17. If the state board of accounts finds that a unit has not implemented a policy under this chapter, the state board of accounts shall forward the information to the department of local government finance.

Sec. 18. If a unit has not implemented a policy under this chapter, the department of local government finance may not approve:

- (1) the unit's budget; or
- (2) any additional appropriations for the unit;

for the ensuing calendar year until the state board of accounts certifies to the department of local government finance that the unit is in compliance with this chapter.

## **APPENDIX II**

### Chapter 21. Contracting With a Unit

Sec. 1. This chapter applies only to a unit.

Sec. 2. As used in this chapter, "elected official" means:

- (1) the executive or a member of the executive body of the unit;
- (2) a member of the legislative body of the unit; or
- (3) a member of the fiscal body of the unit.

Sec. 3. (a) As used in this chapter, "relative" means any of the following:

- (1) A spouse.
  - (2) A parent or stepparent.
  - (3) A child or stepchild.
  - (4) A brother, sister, stepbrother, or stepsister.
  - (5) A niece or nephew.
  - (6) An aunt or uncle.
  - (7) A daughter-in-law or son-in-law.
- (b) For purposes of this section, an adopted child of an individual is treated as a natural child of the individual.
- (c) For purposes of this section, the terms "brother" and "sister" include a brother or sister by the half blood.

Sec. 4. (a) This chapter establishes minimum requirements regarding contracting with a unit. The legislative body of the unit shall adopt a policy that includes, at a minimum, the requirements set forth in this chapter. However, the policy may:

- (1) include requirements that are more stringent or detailed than any provision in this chapter; and
- (2) apply to individuals who are exempted or excluded from the application of this chapter.

The unit may prohibit or restrict an individual from entering into a contract with the unit that is not otherwise prohibited or restricted by this chapter.

- (b) The annual report filed by a unit with the state board of accounts under IC 5- 11-13-1 must include a statement by the executive of the unit stating whether the unit has implemented a policy under this chapter.

Sec. 5. (a) A unit may enter into a contract or renew a contract for the procurement of goods and services or a contract for public works with:

- (1) an individual who is a relative of an elected official; or
- (2) a business entity that is wholly or partially owned by a relative of an elected official;

only if the requirements of this section are satisfied and the elected official does not violate IC 35-44-1-3.

- (b) A unit may enter into a contract or renew a contract with an individual or business entity described in subsection (a) if:

- (1) the elected official files with the unit a full disclosure, which must:
  - (A) be in writing;
  - (B) describe the contract or purchase to be made by the unit;
  - (C) describe the relationship that the elected official has to the individual or business entity that contracts or purchases;
  - (D) be affirmed under penalty of perjury;
  - (E) be submitted to the legislative body of the unit and be accepted by the legislative body in a public meeting of the unit prior to final action on the contract or purchase; and
  - (F) be filed, not later than fifteen (15) days after final action on the contract or purchase, with:
    - i. the state board of accounts; and
    - ii. the clerk of the circuit court in the county where the unit takes final action on the contract or purchase;
- (2) the appropriate agency of the unit:
  - (A) makes a certified statement that the contract amount or purchase price was the lowest amount or price bid or offered; or
  - (B) makes a certified statement of the reasons why the vendor or contractor was selected; and



- (3) the unit satisfies any other requirements under IC 5-22 or IC 36-1-12.
  - (c) An elected official shall also comply with the disclosure provisions of IC 35- 44-1-3, if applicable.
  - (d) This section does not affect the initial term of a contract in existence at the time the term of office of the elected official of the unit begins.

Sec. 6. Each elected officer of the unit shall annually certify in writing, subject to the penalties for perjury, that the officer is in compliance with this chapter. An officer shall submit the certification to the executive of the unit not later than December 31 of each year.

Sec. 7. If the state board of accounts finds that a unit has not implemented a policy under this chapter, the state board of accounts shall forward the information to the department of local government finance.

Sec. 8. If a unit has not implemented a policy under this chapter, the department of local government finance may not approve:

- (1) the unit's budget; or
- (2) any additional appropriations for the unit;

for the ensuing calendar year until the state board of accounts certifies to the department of local government finance that the unit has adopted a policy under this chapter.

## Chapter 3.40

### CONFLICT OF INTEREST POLICY

#### Sections:

- 3.40.010 Purpose
- 3.40.020 Definitions
- 3.40.030 Procedures
- 3.40.040 Records of Proceedings
- 3.40.050 Compensation
- 3.40.060 Annual Statements
- 3.40.070 Periodic Reviews
- 3.40.080 Use of Outside Experts

**3.40.010 Purpose.** The purpose of the conflict of interest policy is to protect this tax-exempt organization's (Organization) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations. (Ord. 2015-12, Art. I, Dec. 15, 2015)

#### **3.40.020 Definitions.**

- (1) Interested Person. Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.
- (2) Financial Interest. A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:
  - A. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,
  - B. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or
  - C. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under 3.40.030(2), a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists. (Ord. 2015-12, Art. II, Dec. 15, 2015)

### **3.40.030 Procedures.**

- (1) **Duty to Disclose.** In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.
- (2) **Determining Whether a Conflict of Interest Exists.** After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.
- (3) **Procedures for Addressing the Conflict of Interest.**
  - A. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
  - B. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
  - C. After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
  - D. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

- (4) Violations of the Conflicts of Interest Policy.
  - A. If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
  - B. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action. (Ord. 2015-12, Art. III, Dec. 15, 2015)

#### **3.40.040 Records of Proceedings.**

- (1) The minutes of the governing board and all committees with board delegated powers shall contain:
  - A. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing boards or committee's decision as to whether a conflict of interest in fact existed.
  - B. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings. (Ord. 2015-12, Art. IV, Dec. 15, 2015)

#### **3.40.050 Compensation.**

- (1) A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- (2) A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- (3) No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation. (Ord. 2015-12, Art. V, Dec. 15, 2015)

### **3.40.060 Annual Statements.**

- (1) Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:
  - A. Has received a copy of the conflicts of interest policy,
  - B. Has read and understands the policy,
  - C. Has agreed to comply with the policy, and
  - D. Understands the Organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes. (Ord. 2015-12, Art. VI, Dec. 15, 2015)

### **3.40.070 Periodic Reviews.**

- (1) To ensure the Organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:
  - A. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
  - B. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction. (Ord. 2015-12, Art. VII, Dec. 15, 2015)

**3.40.080 Use of Outside Experts.** When conducting the periodic reviews as provided for in 3.40.070, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted. (Ord. 2015-12, Art. VIII, Dec. 15, 2015)