

Introduced by: Council Present

AN ORDINANCE OF THE CITY OF BERKELEY AMENDING THE EMPLOYEE HANDBOOK OF PERSONNEL RULES AND REGULATIONS, POLICIES, AND BENEFITS IN RULE NUMBER 21.00 DRUG & ALCOHOL (SAFETY SENSITIVE POSITIONS) BY ADDING A DRUG & ALCOHOL POLICY ADDENDUM EFFECTIVE JANUARY 1, 2018

Now, Therefore, Be it ordained by the City Council of the City of Berkeley, Missouri, as follows:

Section 1 Section 21 of the Employee Handbook of Personnel Rules & Regulations for the City of Berkeley is hereby amended to include the following:

Purpose

The purpose of this policy is to assure worker fitness for duty and to protect our employees, passengers, and the public from the risk posed by the misuse of alcohol and abuse of prohibited drugs. This policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. The Federal Transit Administration (FTA) of the U.S. Department of Transportation (US DOT) has published 49 CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions and prohibits performance of safety-sensitive functions when there is a positive test result. US DOT has published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens. This policy incorporates those requirements for safety-sensitive employees and others when so noted. Part 40 is available on-line at <http://www.dot.gov/ost/dapc/index.html>.

WHEREAS

The United States Department of Transportation (USDOT) – Office of Drug and Alcohol Policy and Compliance (ODAPC) has updated the USDOT’s drug and alcohol testing regulation (49 CFR Part 40) that sets standards for the collection and testing of urine and breath specimens. The new regulation has been revised and the changes (summarized below) will become effective on January 1, 2018. Therefore, the City of Berkeley, Missouri drug and alcohol testing policy is amended as follows:

1. CHANGES TO THE DRUG TESTING PANEL

a. Four new opioids added to the drug testing panel –

- i. The USDOT drug test remains a “5-panel” drug test; however, the list of opioids for which are tested will expand from three to seven opioids.**
- ii. The “opioid” category will continue to test for codeine, morphine, and heroin; however, the “opioid” testing panel will now be expanded to include four (4) new semi-synthetic opioids:**

- 1. (1) Hydrocodone, (2) Hydromorphone, (3) Oxycodone, and (4)**

Oxymorphone.

2. Common brand names for these semi-synthetic opioids include, but may not be limited to: OxyContin®, Percodan®, Percocet®, Vicodin®, Lortab®, Norco®, Dilaudid®, and Exalgo®.

- b. 'MDA' will be tested as an initial test analyte
- c. 'MDEA' will no longer be tested for under the "amphetamines" category.

2. BLIND SPECIMEN TESTING

- a. The USDOT no longer requires blind specimens to be submitted to laboratories.

3. ADDITIONS TO THE LIST OF "FATAL FLAWS"

- a. The following three circumstances have been added to the list of "fatal flaws":
 - i. No CCF received by the laboratory with the urine specimen.
 - ii. In cases where a specimen has been collected, there was no specimen submitted with the CCF to the laboratory.
 - iii. Two separate collections are performed using one CCF.

4. MRO VERIFICATION OF PRESCRIPTIONS

- a. When a tested employee is taking a prescribed medication, after verifying the prescription and immediately notifying the employer of a verified negative result, the MRO must then (after notifying the employee) wait five (5) business days to be contacted by the employee's prescribing physician before notifying the employer of a medical qualification issue or significant safety risk.
 - i. Specifically, in cases where an MRO verifies a prescription is consistent with the Controlled Substances Act, but that the MRO has still made a determination that the prescription may disqualify the employee under other USDOT medical qualification requirements, or that the prescription poses a significant safety-risk, the MRO must advise the employee that they will have five (5) business days from the date the MRO reports the verified negative result to the employer for the employee to have their prescribing physician contact the MRO. The prescribing physician will need to contact the MRO to assist the MRO in determining if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk. If in the MRO's reasonable medical judgment, a medical qualification issue or a significant safety risk still remains after the MRO communicates with the employee's prescribing physician, or after five (5) business days, whichever is shorter, the MRO must communicate this issue to the employer consistent with 49 CFR Part 40.327.

5. DEFINITIONS

- a. The term “**DOT, the Department, DOT Agency**”
 - i. Modified to encompass all DOT agencies, including, but not limited to, FAA, FRA, FMCSA, FTA, PHMSA, NHTSA, Office of the Secretary (OST), and any designee of a DOT agency.
 - ii. For the purposes of testing under 49 CFR Part 40, the USCG (in the Department of Homeland Security) is considered to be a DOT agency for drug testing purposes.
- b. The term “**Opiate**” is replaced with the term “**Opioid**” in all points of reference.
- c. The definition of “**Alcohol Screening Device (ASD)**” is modified to include reference to the list of approved devices as listed on ODAPC’s website.
- d. , state-licensed or certified marriage and family therapist, or drug and alcohol counselor (certified by an organization listed at [https](https://www.transportation.gov/odapc). The definition of “**Evidential Breath Testing Device (EBT)**” is modified to include reference to the list of approved devices as listed on ODAPC’s website.
- e. The definition of “**Substance Abuse Professional (SAP)**” will be modified to include reference to ODAPC’s website. The fully revised definition includes:
 - i. A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional://www.transportation.gov/odapc/sap) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

NOTE: The revisions listed in this addendum include only those revisions to 49 CFR Part 40 which may be referenced in our drug & alcohol testing policy. A list of all the revisions made to 49 CFR Part 40 can be found at <https://www.transportation.gov/odapc>. This policy incorporates those requirements for safety-sensitive employees and others when so noted. Part 40 is available on-line at <http://www.dot.gov/ost/dapc/index.html>.

Section 2 All Ordinances and parts of ordinances in conflict shall be replaced.

Section 3 This Ordinance shall be in full force and effect from and after its passage.

1st Reading this _____ day of _____ 2018

2nd Reading this _____ day of _____ 2018

