

TOWN OF NORTH BRENTWOOD

RESOLUTION NO. 2017 - 06

Introduced by: Councilmember Aaron Baynes
Seconded by: Councilmember Charles Wiley
Date of Introduction: October 2, 2017

A Resolution establishing a substance abuse policy and further mandating substantial compliance with the applicable provisions of Federal, and State laws regarding discrimination and equal opportunity in employment, housing, and credit practices, and generally relating to employment matters and fair practices.

WHEREAS, the Charter of the Town of North Brentwood, Section 602(18) empowers the Town to pass ordinances to allow the acceptance of gifts and grants of Federal or State funds from the Federal or State governments or any agency thereof, and to expend the same for any lawful public purpose; and

WHEREAS, the Maryland Department of Housing and Community Development (“DHCD”) and in particular Maryland Town Manager Circuit Rider Grant Program as a condition to participation in said program requires the Town to certify its compliance with certain federal and state laws and to comply with the Governor’s Executive Order regarding a Drug and Alcohol Free Work Place policy; and

WHEREAS, the Mayor and Council finds that one of the greatest problems facing society today is drug and alcohol abuse and is in the best interest of the Town to adopt the previously referenced policies.

NOW THEREFORE BE IT RESOLVED, by the Council of the Town of North Brentwood that the Town Government and its employees, as well as its appointed and elected officials shall comply with the following Town of North Brentwood Substance Abuse Policy, and any applicable and more stringent provisions of the Governor’s most recent executive order (Executive Order 01.01.1991.16, as amended) regarding a drug and alcohol-free workplace and any regulations promulgated thereunder:

TOWN OF NORTH BRENTWOOD SUBSTANCE ABUSE POLICY

A. Definitions. In this Town of North Brentwood (“Town”) Substance Abuse Policy, the following words have the meanings indicated:

- (1) “Substance” means alcohol or drugs.
- (2) “Alcohol” means ethyl alcohol or ethanol.
- (3) “Drug” means:
 - (a) A controlled dangerous substance;
 - (b) Any other substance which must be dispensed by a licensed health care professional;
 - or
 - (c) An over-the-counter drug.
- (4) “Abuse” means:
 - (a) The use of an illegal drug;
 - (b) The intentional misuse of an over-the-counter drug, if the misuse impairs the job performance of the Town employee or could impair the job performance of an applicant for Town employment;

- (c) The intentional use of any prescription drug in a manner inconsistent with its medically prescribed intended use, or under circumstances where its use is not permitted, if it impairs the job performance of a Town employee or could impair the job performance of an applicant for State employment; or
- (d) The use of alcohol if it impairs job performance of the Town employee or could impair the job performance of an applicant for Town employment.
- (5) "Workplace" means any place where an employee is performing work for the Town.
- (6) "Employee" means:
 - (a) A contractual, key employee, or other employee or official of the Town;
 - (b) A volunteer who provides a service to or for the Town; or
 - (c) A member of a Board, Committee or Commission of the Town.
- (7) "Sensitive Employee" means an employee whose classification or position having safety-sensitive duties like operating machinery, has been designated sensitive in writing by the Mayor to the Council and the affected employee.
- (8) "Conviction" means:
 - (a) A judgment of conviction, whether entered upon a finding of guilt or acceptance of a plea of nolo contendere, and the imposition of sentence; or
 - (b) The staying of the entry of judgment and the placing of the defendant on probation after a finding of guilty or the acceptance of a plea of nolo contendere.
- (9) "Alcohol Driving Offense" means:
 - (a) Driving or attempting to drive while:
 - (i) Intoxicated; or
 - (ii) Under the influence of alcohol; or
 - (b) Operating or attempting to operate a vessel while:
 - (i) Intoxicated; or
 - (ii) Under the influence of alcohol.
- (10) "Controlled Dangerous Substance Offense" means:
 - (a) A controlled dangerous substance violation, under the Criminal Law Article of the Annotated Code of Maryland;
 - (b) An offense of the law of any other jurisdiction if the prohibited conduct would be a controlled dangerous substance violation if committed in this State;
 - (c) Driving or attempting to drive while:
 - (i) Under the influence of drugs or drugs and alcohol; or
 - (ii) Under the influence of a controlled dangerous substance; or
 - (d) Operating or attempting to operate a vessel while:
 - (i) Under the influence of drugs or drugs and alcohol; or
 - (ii) Under the influence of a controlled dangerous substance.

B. General Policy. The Council establishes and adopts the following substance abuse policy for the Town Government:

- (1) The Town is committed to making good faith efforts to insure a safe, secure, and drug-free workplace for its employees consistent with the Drug-Free Workplace Act as enacted by Congress, and by Executive Order of the Governor.
- (2) All employees in the workplace must be capable of performing their duties.
- (3) Employees experiencing substance abuse problems are encouraged to seek assistance through:
 - (a) Their employer;
 - (b) Self-referral to the employer's Employee Assistance Program; or
 - (c) Self-referral to an alternative certified rehabilitation program.
- (4) An appointing authority may not hire anyone whom it knows currently abuses drugs

or alcohol.

- (5) Employees are prohibited from:
 - (a) Abusing alcohol or drugs;
 - (b) Committing a controlled dangerous substance offense; or
 - (c) Committing an alcohol driving offense.

C. Alcohol Abuse Policy.

- (1) Working under the influence of alcohol is a violation of this policy and shall subject the employee to disciplinary action.
- (2) An employee charged with an alcohol driving offense must report a finding of guilty, an acceptance of a plea of nolo contendere, or a probation before judgment to the employee's supervisor within 5 work days.
- (3) A sensitive employee shall be suspended for 15 days and required to successfully participate in an alcohol treatment program designated by an employee assistance program the first time the employee is:
 - (a) Convicted of an at-the-workplace alcohol driving offense; or
 - (b) Found under the influence of alcohol while at-the-workplace.
- (4) A sensitive employee convicted of an off-the-workplace alcohol driving offense, and a non-sensitive employee convicted of any alcohol driving offense shall:
 - (a) On the first conviction, be referred to an employee assistance program, and in addition, be subject to any other appropriate disciplinary actions;
 - (b) On the second conviction, at a minimum, be suspended for at least 5 days, be referred to an employee assistance program, be required to participate successfully in a treatment program, and in addition, be subject to any other appropriate disciplinary actions, up to and including termination;
 - (c) On the third conviction, be terminated.

D. Drug Abuse Policy.

- (1) Working under the inappropriate influence of prescription drugs or over-the-counter drugs is a violation of this policy and shall subject the employee to disciplinary action.
- (2) Working under the influence of a controlled dangerous substance is a violation of this policy and shall subject the employee to disciplinary action.
- (3) An employee charged with a controlled dangerous substance offense shall report a finding of guilty, an acceptance of a plea of nolo contendere, or a probation before judgment to the appointing authority within 5 work days.
- (4) A sensitive employee convicted of any controlled dangerous substance offense shall be terminated.
- (5) A sensitive employee who tests positive for a controlled dangerous substance as a result of a random drug test shall be suspended for 15 work days and be required to successfully participate in a drug treatment program designated by an employee assistance program, or similar benefit, as provided for by the Town's drug testing protocol.
- (6) A sensitive employee who abuses a legally prescribed drug or an over-the-counter drug shall, on the first offense:
 - (a) Be suspended for 5 work days; and
 - (b) Be required to participate successfully in a drug treatment program designated by an employee assistance program or fringe benefit, if one exists for the Town.

E. General Sanctions. Any employee otherwise in violation of this Policy shall be subject to appropriate progressive disciplinary actions up to and including termination.

F. Law Enforcement.

- (1) When a supervisor or the Mayor learns or, based on observation or reliable information, suspects that an employee has committed a controlled dangerous substance or alcohol offense at the workplace, the supervisor or the Mayor shall refer the matter to an appropriate law enforcement authority for further investigation and prosecution.
- (2) All employees shall cooperate fully with law enforcement authorities in the investigation and prosecution of suspected criminal violations.

G. Employee Education. All supervisors shall educate and inform their employees about:

- (1) The dangers of drug and alcohol abuse in the workplace and the community at large;
- (2) The Town's policy of maintaining a drug-free workplace;
- (3) Any drug and alcohol abuse counseling, rehabilitation, and employee assistance program that is available; and
- (4) The penalties that may be imposed upon employees for violations of this Policy.

H. Consent to drug or alcohol test

- (1) Before a drug or alcohol test is administered, employees and job applicants will be asked to sign a consent form authorizing the test and releasing the results of the test to the Town Manager or Mayor.
- (2) All new applicants shall, as a condition of employment with the Town, sign a consent to a drug or alcohol test.

I. Testing of employees

- (1) All persons employed by the Town shall be subject to drug or alcohol testing if there is reasonable suspicion that the employee has been using drugs or alcohol on the job site or reports to work in an unfit condition which appears either drug or alcohol related. If reasonable suspicion exists, the Town Manager or Mayor may immediately order that the employee be tested for the presence of drugs or alcohol.
- (2) "Reasonable suspicion" means a belief based on specific facts and reasonable inferences drawn from those facts that an employee is under the influence of drugs or alcohol. The Town Manager or Mayor shall document, in writing, the specific facts, symptoms or observations which favor the basis for the determination that reasonable suspicion exists to warrant the testing of an employee.
- (3) An employee tested for reasonable suspicion shall be suspended with pay for 48 hours after the test to allow for the receipt of the test results.
- (4) Any applicant for employment with the Town shall be subject to a drug or alcohol test at the discretion of the Town Manager or Mayor without reasonable suspicion.
- (5) Any employee tested for drugs shall receive a copy of the laboratory test results within 30 days after the test was performed. The results shall be delivered either in person or by certified mail. A copy shall be placed in the employee's personnel record.

J. Employee treatment

Employees who voluntarily seek assistance for a drug or alcohol abuse problem will not be terminated if that assistance is sought prior to action being taken under this article. If, however, the employee continues to use illegal drugs or abuse alcohol in such a manner that it affects the employee's job performance, he/she shall be subject to the penalties imposed in § K of this resolution.

K. Enforcement

(1) Any employee who fails to consent to a test upon a finding of reasonable suspicion shall be terminated from employment with the Town and shall not be subject to rehiring by the Town.

(2) Any applicant who fails to sign the consent to drug or alcohol testing or who, at the request of the Town Manager or Mayor, refuses to be tested shall not be considered for employment with the Town and shall not be eligible to apply for any other position with the Town for 18 months.

(3) Any employee who fails to report a charge or conviction under this resolution shall be subject to immediate termination from employment with the Town and shall not be subject to rehiring by the Town.

L. Implementation.

(1) The Mayor shall adopt such policies and regulations as are necessary or desirable for the implementation of this Policy.

(2) All supervisors are responsible for implementing and enforcing and monitoring compliance with the requirements of this Policy.

(3) All employees are required to acknowledge receipt of a copy of this Policy by returning an acknowledgement of receipt to their supervisor for insertion in their personnel file.

BE IT FURTHER RESOLVED, by the Council of the Town of North Brentwood that the Town Government and its employees, and appointed and elected officials shall further comply with the applicable provisions of federal, State and local laws regarding discrimination and equal opportunity in employment, housing, and credit practices including the following:

1. Titles VI (Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color or national origin) and VII (Prohibition against employers from discriminating against employees on the basis of sex, race, color, national origin, and religion. It generally applies to employers with 15 or more employees, including federal, state, and local governments) of Civil Rights Act of 1964 as amended,
2. Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex or national origin, as amended,
3. Title 20 of the State Government Article, Annotated Code of Maryland, as amended,
4. DHCD's Minority Business Enterprise Program, as amended,
5. The Governor's Executive Order 01.01.1989.18 relating to Drug and Alcohol Free Workplaces and any other Department of State regulations adopted or to be adopted to carry out the requirements of that order,
6. The Fair Housing Amendments Act of 1988, as amended, and
7. The American with Disabilities Act of 1990, as amended,

BE IT FURTHER RESOLVED, that this Resolution shall be effective immediately.

THIS RESOLUTION IS ADOPTED BY THE COUNCIL OF THE TOWN OF NORTH BRENTWOOD THIS 2 DAY OF October, 2017.

Aye: 2

Nay: 0

Absent: 0

Abstain: 0

Vacant: 1

ATTEST:



Petrella Robinson, Mayor

Date: 10/2/2017