

MEMORANDUM



July 15, 2019

TO: Fellow City Employees

FROM: Shelley Dickstein
City Manager

A handwritten signature in black ink, appearing to read "Shelley Dickstein", written over the printed name.

SUBJECT: Tobacco and Nicotine Free Hiring Policy


The City has an interest in maintaining a healthy and safe environment for its employees and visitors. We have worked with our labor organizations and Civil Service to adopt a tobacco and nicotine free hiring policy (attached). Effective July 15, 2019, prospective employees must be tobacco and nicotine free at time of original appointment and remain so during their career with the City. Any applicant on a current eligibility list for hire as of July 14, 2019, will have to be and remain tobacco and nicotine free prior to the conclusion of their probation. This policy does not impact or apply to current city employees.

At the start of our employee wellness initiative in 2012, a five year strategic plan envisioned a path to promote and advance healthy lifestyles. One recommendation of the plan included establishing a tobacco and nicotine free work place and hiring practices. In an effort to assist employees in improving any aspect of their health, we have and will continue investing in free screenings at our annual Health & Safety Fair, The DOC, EmployeeCare and the myriad of supportive health and fitness programming.

Our human capital is the greatest resource in our organization. Quality of life for you and your families is greatly impacted by your state of health. We remain committed to helping you achieve healthy outcomes.

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Attachments

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	RESPONSIBLE DEPARTMENT Human Resources		SUPERCEDES ISSUE DATED New
	SUBJECT Tobacco and Nicotine Free Hiring Policy		

1.0 PURPOSE

- 1.1 The City of Dayton (City) has a vital interest in maintaining a healthy and safe environment for its employees and visitors, while respecting an employee's individual choice. Consistent with these concerns and with Ohio law, the following policy has been established to foster a healthier workplace and environment by encouraging employees to promote a healthy lifestyle.
- 1.2 The City hereby restricts smoking, tobacco, and nicotine use in most areas and provides procedures for future hiring of employees that will allow for a smoke, tobacco and nicotine free workplace.
- 1.3 Current employees are strongly encouraged to participate in smoking, tobacco, and nicotine use cessation programs sponsored by the City or other approved programs.

2.0 APPLICABILITY

- 2.1 This policy applies to all City employees *newly hired after July 15, 2019*.

3.0 DEFINITION


- 3.1 Tobacco and nicotine use generally means inhaling, exhaling, burning, vaping, any lighted cigar, cigarette, and e-cigarette or pipe, chewing or any other type of tobacco use.


4.0 POLICY

- 4.1 It is the policy of the City to provide a safe, healthy, smoke-free and tobacco-free work environment for all employees and citizens visiting our facilities.
- 4.2 Effective July 15, 2019, the City will only hire tobacco and nicotine free employees.

5.0 PROCEDURE FOR APPLICANTS WHO ARE ON A PROMULGATED DAYTON CIVIL SERVICE BOARD ELIGIBILITY LIST THAT WAS ISSUED AND EFFECTIVE ON OR BEFORE JULY 15, 2019

- 5.1 All applicants will be screened for tobacco and/or nicotine use during their pre-employment hiring process.
- 5.2 If the applicant tests negative for tobacco and/or nicotine use during their pre-hiring screening, and the applicant successfully completes the other parts of the pre-employment application screening process; the applicant will be hired and will be required to remain tobacco and/or nicotine free during the duration of their employment with the City.
- 5.3 If the applicant tests positive for tobacco and/or nicotine use during their pre-hiring screening, the applicant will be hired and required to undergo tobacco and/or nicotine cessation activities/classes during the employee's probationary period.
 - 5.3.1 The applicant will be re-tested near the end of their probationary period for tobacco and/or nicotine use.

APPROVED BY 	DATE JULY 15, 2019
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5.3.2 If the applicant tests negative for tobacco and/or nicotine use during this re-test, the employee will be required to remain tobacco and/or nicotine free during the duration of their employment with the City.

5.3.3 If the applicant tests positive for tobacco and/or nicotine use, the employee will be probationarily discharged.

6.0 PROCEDURE FOR EMPLOYEES HIRED ON OR AFTER JULY 15, 2019, WHO WERE NOT ON A DAYTON CIVIL SERVICE PROMUGATED ELIGILITY LIST ISSUED AND EFFECTIVE BEFORE JULY 15, 2019

6.1 The City will implement the practice of hiring only tobacco and nicotine free employees, effective July 15, 2019.

6.2 After July 15, 2019, the City's job application will ask candidates about their tobacco or nicotine use.

6.3 If an applicant asserts that they do not use tobacco or nicotine, they will be considered for potential employment upon completion of the normal City pre-employment applicant screening process.

6.3.1 After a tentative offer of employment, the City will conduct a screening for tobacco or nicotine use as part of the pre-employment drug test.

6.3.2 If the screening test is positive for tobacco or nicotine use, the applicant will not be hired.

6.3.3 If the screening test is negative for tobacco or nicotine use, the applicant may be hired; provided that, the applicant successfully completes the other parts of the pre-employment applicant screening process.

6.4 Employees hired after July 15, 2019 shall not use nicotine or tobacco products at any time, on or off-duty, during the duration of their employment with City.

7.0 REASONABLE SUSPICION TOBACCO AND NICOTINE USE TESTING


7.1 Tobacco and nicotine use testing will not be considered as drug and/or alcohol testing as defined in City policy or collective bargaining agreements.

7.2 Upon reasonable suspicion that an employee hired after July 15, 2019 is engaging in tobacco and nicotine use, said employee will be subject to reasonable suspicion tobacco and nicotine use testing. The City will not engage in any random testing of any City employee for tobacco and nicotine use. The Department of Human Resources will be responsible and oversee all reasonable suspicion tobacco and nicotine use testing of City employees.

7.3 Employees will be subjected to reasonable suspicion testing when there is a belief based on objective facts that the employee is engaged in tobacco and nicotine use. Examples of conduct that may constitute reasonable suspicion include, but are not limited to:

7.3.1 Tobacco odor on breath;

The original signed policy document is on file in the Department of Human Resources.

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7.3.2 Information obtained from a reliable person with personal knowledge. The City will not submit an employee to reasonable suspicion tobacco or nicotine use testing based upon an anonymous complaint.

7.4 Although the City representative (supervisor or other City employee designated by the Director of HR) is not authorized to reach a conclusion that an employee is using tobacco or nicotine products, the City representative is authorized to observe and document those factors consistent with reasonable suspicion characteristics and to require a reasonable suspicion test.

7.5 The City representative must make a written record of the observations leading to a reasonable suspicion test for tobacco and nicotine use within twenty-four (24) hours of the observed behavior or before the test results are reported, whichever is earlier.

7.6 Any employee who is subjected to a reasonable suspicion test for tobacco and nicotine use will be transported by Management to the sample collection location and then back to their work site.

7.7 Employees will be returned to their work site at the conclusion of the reasonable suspicion test for tobacco or nicotine use

8.0 TOBACCO AND NICOTINE USE TREATMENT

8.1 Employees who are hired after July 15, 2019 and who test positive for the presence of tobacco or nicotine use will be evaluated by an SAP. An SAP is a licensed or certified physician, psychologist, social worker, employee assistance professional, or addition counselor.

8.2 The SAP will evaluate each employee to determine what assistance, if any, the employee needs to resolve their problems associated with tobacco and nicotine use.

8.3 After a positive tobacco and nicotine test, employees who are hired after July 15, 2019 will be required to undergo treatment for tobacco or nicotine cessation.


8.3.1 If an employee is not discharged, they must properly follow the tobacco or nicotine cessation program prescribed by the SAP;

8.3.2 They will be subject to unannounced follow-up tests for a period of up to five (5) years as determined by the SAP.

8.4 After five (5) years from the date of an employee's positive reasonable suspicion test for tobacco and nicotine use, if the employee has not had a second positive tobacco and nicotine use test, the first confirmed positive reasonable suspicion test for tobacco and nicotine use shall be removed from the employee's file upon the request of the employee and shall not be considered in subsequent determination of discipline pursuant to section 8.5.

8.5 Any employee who refuses tobacco or nicotine cessation treatment when required, or fails to comply with the regimen prescribed by the SAP for treatment, aftercare, or return to duty tests, shall be subject to disciplinary action, up to and including discharge.

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8.6 The second occurrence of a positive tobacco or nicotine use test for any employee hired after July 15, 2019 will result in immediate discharge from employment.

9.0 REFUSAL TO SUBMIT TO TESTING

Refusals to comply with a request for tobacco testing, submission of false information regarding a test, or attempts to falsify test results through tampering, contamination, adulteration, or substitution, or in any other way attempts to interfere with the test shall be considered a refusal to submit to testing and will be treated the same as a positive test result.

Refusal to submit to testing can include an inability to provide a specimen or sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test.

10.0 PROCEDURE FOR EMPLOYEES HIRED ON OR BEFORE JULY 14, 2019

Current employees and those hired on or before July 14, 2019 who are users of tobacco or nicotine products are not affected by this policy.

If an employee is hired before July 14, 2019 and is a tobacco or nicotine user and voluntarily ends their City employment, they will not be required to be tobacco and/or nicotine free as described here to be eligible for rehire and/or reinstatement.

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