

ARTICLE VIII CODE OF CONDUCT

Section 1 STATEMENT OF INTENT

The Town of Windham is concerned for the safety, well being, and professionalism of its employees. Every employee has the responsibility to behave in a courteous and professional manner, and to conduct their public and private affairs in a manner that will reflect positively on the Town and its people. The Town recognizes that each situation is unique; therefore, it would be impossible to establish a list of all rules and acceptable behaviors, and suitable sanctions or penalties. However, the following policies reflect principles that are intended to guide the conduct of employees. Violation of these principles may result in disciplinary action, up to and including termination of employment.

Section 2 ETHICS.

The Town's employees shall not under any circumstances seek, solicit or accept any gift, gratuity, loan, reward or fee where there is any direct or indirect connection between the solicitation or acceptance and their employment except as may be specifically authorized by the Town Manager.

Actual conflicts of interest, as well as incidents or situations which create the appearance of a conflict, must be avoided. Situations or conduct which would reflect negatively or bring discredit upon the Town of Windham are also unacceptable.

Section 3 CONFLICTS OF INTEREST.

Compensation paid to the employee in accordance with the Pay Plan, and reasonable expenses as approved by the Town Manager, shall constitute the sole remuneration for services rendered by an employee in the discharge of Town duties. No additional reward, gift or other form of remuneration shall be accepted by any employee for the discharge of their Town duties. No employee of the Town shall have any financial interest in or profit from any contract, purchase, sale or work performed by the Town unless otherwise provided for by the Town Council.

Section 4 ATTENDANCE AT WORK.

A. It is the responsibility of each employee to get to work on time and be present every day. Dependability is an important factor in determining job performance. Employees who will be absent or late for work are responsible for informing their supervisor as soon as possible, but not later than thirty (30) minutes after their scheduled starting time.

B. Three (3) consecutive days of absence without notification will be interpreted by the Town as an employee's voluntary resignation without notice. Employment will cease and the employee will be automatically dropped from the payroll.

C. Department Heads shall inform all employees of the department's regular work hours and any schedule changes and shall furnish periodic department attendance reports to the Town Manager or designee as requested.

D. Employees arriving before the designated hour for work to begin shall be allowed on premises, but shall not be authorized to begin work unless previously and specifically authorized by their supervisor.

Section 5 INTOXICATING LIQUORS.

The Town prohibits drinking or being under the influence of intoxicating liquors on the job or during work hours, and the possession of liquor or other intoxicants on Town premises (including buildings, vehicles, equipment and/or any other property owned by or in the care, custody or control of the Town).

Section 6 DRUGS.

A. It is the policy of the Town to provide a drug free work place. Therefore, the Town prohibits possession, use, and distribution of illegal drugs on Town premises (including buildings, vehicles, equipment and/or any other property owned by or in the care, custody or control of the Town.) Any violation of this rule subjects the employee to immediate disciplinary action and/or dismissal. Employees must notify the Town Manager, within five (5) days, if they are convicted of a criminal drug statute violation occurring in the workplace.

Section 7.
ALCOHOL AND DRUG POLICY AND TESTING PROCEDURES
FOR
CDL EMPLOYEES.

A. PURPOSE. The Town of Windham is committed to a drug and alcohol free workplace. In order to ensure the safety of its employees and the general public, as well as to comply with 49 CFR Part 382 and other pertinent federal laws, the municipal officers have adopted this employment policy.

The Town takes pride in its employees who perform critical duties in a truly effective manner with safety foremost in their minds. This policy strengthens our commitment to a safe workplace.

B. PROGRAM ADMINISTRATOR. The Assistant to the Town Manager is designated by the Town as the Alcohol/Drug Testing Program Administrator. The Program Administrator is responsible for answering questions from drivers, employees or the public in general. The Program Administrator will maintain the confidentiality of all information relating to drug and alcohol testing. The Program Administrator may provide such information as necessary to enable the appropriate supervisor to take the appropriate action to ensure compliance with this policy. In addition to his/her duties under this policy, the Program Administrator is also responsible for compliance with the Program Administrator Guidelines.

C. SCOPE OF POLICY. This policy applies to all regular full-time, part-time, seasonal, on-call and temporary employees who are required to hold a Commercial Driver's License (CDL) for their position. All applicants for employment positions requiring a CDL are required to pass a drug test as a prerequisite of employment, prior to final hiring. Any applicant who fails a drug test shall not be hired, although may reapply for employment in the future.

All covered employees shall receive a copy of this policy, as well as educational materials on alcohol and substance abuse.

D. COMPLIANCE WITH REGULATIONS. All CDL employees subject to alcohol and drug testing must be in compliance with this policy at all times while working for the Town. This includes all time spent operating commercial vehicles, as well as time spent maintaining or repairing those vehicles.

NOTE REGARDING INDEPENDENT CONTRACTORS: Independent contractors and their employees who must hold a CDL for the contracted activity are subject to the requirements of 49 CFR Part 382 and are responsible for compliance. The Town will not provide or pay for tests or rehabilitation for independent contractors or their employees. The Town shall make compliance with the law a condition of any contract which requires a CDL driver.

E. SUBSTANCES TESTED. When drug and alcohol screening is required by this policy, a breath test and/or urine test will be given to detect the following:

1. Alcohol
2. Marijuana
3. Cocaine
4. Amphetamines
5. Phencyclidine (PCP)
6. Opiates

F. PRESCRIPTION DRUG USE. Employees covered by this policy may use prescription drugs and "over the counter" medications provided that:

1. The prescription drugs or their generic equivalent have been prescribed to the employee within the past 12 months by an authorized medical practitioner.
2. The employee does not consume prescribed drugs more often than as prescribed by the employee's physician.
3. Any employee who has been informed that the medication could cause adverse side effects while working shall inform his/her supervisor prior to using these substances. The Town at all times reserves the right to have a licensed physician determine if use of a prescription drug or medication by an employee produces an adverse effect. If such a finding is made, the Town may notify the employee's doctor (with employee's permission) to determine if other medications are available which would not seriously affect the employee's ability to work safely. If an appropriate substitute medicine is not available, the Town may limit or suspend the employee's work activities to non-safety sensitive duties.

G. TESTS REQUIRED. All employees subject to this policy shall be tested for alcohol and/or controlled substances in the following circumstances:

1. **Pre-employment.** Drug tests will be conducted when an offer is made to hire an employee for a CDL position. The offer for employment is contingent on the applicant passing these tests. This includes existing employees who are applying for CDL positions.
2. **Random.** Drug and alcohol tests will be conducted on a random, unannounced basis. The number of annual drug tests shall equal 50% of the number of CDL required positions while the number of annual alcohol tests shall equal 25% of the CDL required positions. The Town has entered into an agreement with a third party administrator (TPA) to randomly select the CDL employees for testing and then notify the Program Administrator of the person or persons chosen.

Note: Random alcohol testing **must be** conducted just before, during or just after a driver's performance of a safety-sensitive duties. Random drug testing **does not** have to be conducted in immediate time proximity to performing safety-sensitive functions.

3. **Post-accident.** As soon as is practicable after an accident, the employee shall be tested for alcohol and drugs if: (a) the accident involved the loss of human life; (b) the employee must receive medical treatment away from the accident scene, or (c) the employee received a citation for a moving traffic violation arising from the accident.
4. **Reasonable suspicion.** All employees who exhibit to a trained supervisor signs and symptoms of alcohol and/or drug abuse while on the job, prior to reporting to work, or just after work will be required to submit to an alcohol and/or drug test. The supervisor shall document the specific facts, symptoms or observations by completing a "Reasonable Suspicion Record" form.

Note: Employees shall not be allowed to drive themselves to the testing facility for a reasonable suspicion test. The supervisor or another employee shall provide transportation to the testing facility.

5. **Return-to-duty.** An employee who engaged in conduct prohibited by Paragraph I must submit to an alcohol test and drug test to return to duty. The results of a drug test must be negative to return to duty, and the results of an alcohol test must be less than 0.02 to return to duty.
6. **Follow-up.** An employee who previously tested positive and has returned to duty must submit to a combination of at least six (6) alcohol and drug tests during the first year after returning to work. Follow-up tests will be unannounced and may continue for up to sixty (60) months after returning to work, not to exceed twelve (12) a year.

H. TESTING PROCEDURES.

1. **Drug Testing:** Drug testing is accomplished by analyzing the employee's urine specimen (urinalysis). Specimens will be collected at an off-site facility selected by the Town. Once the employee provides a urine specimen, it is sealed and labeled by a certified/authorized agent of the testing facility. A chain of custody document is completed in the presence of the employee, and the specimen is shipped to a SEMSA certified laboratory.

All urinalysis procedures are required to include split-specimen techniques. Each urine sample is sub-divided into two containers and labeled as primary and split specimens. Both specimens are forwarded to the laboratory. Only the primary specimen is used in the urinalysis. In the

event of a confirmed positive test result, the split specimen may be used for a second confirmation test if requested by the employee.

During testing, an initial screening test is performed. If the test is positive for one or more drugs, a confirmation test will be performed for each individual drug using gas chromatography/mass spectrometry (GC/MS) analysis. This test ensures that over the counter medications are not reported as positive results.

If the analysis of the primary specimen results in a confirmed positive test, the employee may, within 72 hours, request that the split specimen also be tested at the SEMSA laboratory of his choice. The second test is at the employee's expense unless the test result is negative, in which case the Town would reimburse the employee.

All test results are reviewed by a Medical Review Officer (MRO) prior to results being reported to the Town. In the event of a positive test result, the MRO will first attempt to contact the employee and conduct an interview to determine if there are any alternative legitimate reasons for the positive results (such as over-the-counter or prescription medications). If the MRO determines there is a legitimate medical explanation for the presence of drugs, the result will be reported as negative. If the MRO is unable to contact the employee, then the employer will be contacted and requested to advise the employee to contact the MRO. Urine samples shall be provided in a private test room, stall or similar enclosure so that employees and applicants may not be viewed while providing the sample. Employees and applicants may be required to disrobe and will be given hospital gowns to wear while they are providing test samples in order to ensure there is no tampering. Street clothes, bags, briefcases, purses, and other containers may not be carried into the test area. The water in the commode, if any, shall be colored with dye to protect against dilution of test samples.

An applicant or employee may waive the right to privacy and provide the urine sample in the presence of a witness (of the same gender) and not be required to disrobe and wear a hospital gown.

2. **Alcohol Testing:** Alcohol testing will be conducted using an evidential breath testing (EBT) device. The breath test must be performed by a certified Breath Alcohol Technician (BAT) trained in the use of EBT and alcohol testing procedures. Under certain circumstances, post-accident tests conducted by law enforcement personnel or medical personnel will be acceptable.

Two (2) breath tests are required to determine if an individual is over the alcohol concentration limit permitted. Any result of less than 0.02 concen-

tration is considered a negative result. Any result of 0.02 or greater requires a confirmation test. A confirmed test of 0.02 or greater is considered a positive result.

J. PROHIBITED CONDUCT. CDL employees shall not:

1. Report to work and/or remain on duty with an alcohol concentration of 0.04 or greater;
2. Possess any alcohol while on duty;
3. Use any alcohol while on duty;
4. Use any alcohol within four (4) hours before going on duty;
5. Use any alcohol within eight (8) hours after an accident for which the CDL employee must be tested for alcohol concentration;
6. Refuse to submit to the following alcohol and/or controlled substance tests: random test, reasonable suspicion test, post-accident test, or follow-up test;
7. Report to or remain on duty when using any controlled substance, except when used under a physician's orders and when the physician has informed the CDL employee in writing that the use will not affect the safe operations of a commercial vehicle. In the case of a written warning by the physician, the employee shall report this to his/her supervisor immediately;
8. Report to or remain on duty if the employee tests positive for controlled substances.

Failure to comply with these rules is a violation of this policy and may result in disciplinary action and shall result in referral to a substance abuse professional.

K. REFUSAL TO TEST. An employee's failure to submit to testing may result in disciplinary action up to and including dismissal, and is also grounds for referral to a substance abuse professional. Failure to submit to a test by an applicant will result in denial of employment. Specifically, the following circumstances will be considered a refusal to test:

1. Failure to report to the designated testing area within two (2) hours of being notified to submit to an alcohol test, or failure to report to the testing area within 24 hours of notification of a drug test.
2. Failure to accurately provide a sufficient sample to be tested, either breath or urine as the case may be, unless medically determined impossible to do so.

L. ALCOHOL CONCENTRATION OF 0.02 OR GREATER BUT LESS THAN 0.04.

Provided that the employee has not violated Paragraph J, any employee whose alcohol test results in a concentration of 0.02 or greater but less than 0.04 will be placed on unpaid leave for a minimum of 24 hours. The employee will not be required to undergo

evaluation by a substance abuse professional if the test result is 0.02 or greater but less than 0.04, nor will a return-to-duty test be required unless there is reasonable suspicion that the employee is still under the influence of alcohol or drugs.

NOTE: This Paragraph applies only in limited situations. For example, if an employee last consumed alcohol more than 4 hours before work, but still has a blood/alcohol level of .03 when he shows up for work, he is not in violation of Paragraph J, but is subject to this Paragraph.

M. NOTICE AND CONSENT. Before a drug or alcohol test is administered, employees and job applicants will be asked to sign a consent form authorizing the test and permitting the release of test results to those officials with a need to know. The chemical screen consent form shall provide space to indicate current or recent use of prescription and over-the-counter medication.

All recruitment announcements for any position, including in-house recruitment and promotion, will disclose that a drug screening test will be required of the applicant.

N. CONSEQUENCES OF VIOLATION OF THIS POLICY.

1. Any employee who violates Paragraphs J or K of this policy shall be immediately removed from the safety-sensitive function and will be advised by the Town of the resources available for evaluating and resolving drug and alcohol abuse problems. The employee is required to be evaluated by a substance abuse professional. All evaluation and rehabilitation shall be at the employee's cost unless otherwise agreed by the Town. An employee shall not be allowed to return to the safety-sensitive function until he/she has a return-to-duty alcohol test result of less than 0.02 or a return-to-duty drug test with a verified negative result.
2. In addition, any employee who violates Paragraphs J or K of this policy may be subject to disciplinary action up to and including dismissal. Before discipline, reassignment or dismissal is imposed, the employee shall have the opportunity to participate for up to six (6) months in a rehabilitation program. The employee is responsible for all costs associated with the rehabilitation program unless otherwise agreed by the Town. Factors to be considered in determining the appropriate disciplinary response include, but are not limited to the following: employee's work history, length of employment, current job performance and existence of past disciplinary actions. Disciplinary action is imposed by Town policy; it is not required by federal law.
3. Further grounds for discipline or dismissal under Town policy include, but are not limited to:
 - a. Refusal to submit to a rehabilitation program after testing positive.

- b. Failure within six (6) months to successfully participate in a rehabilitation program after receiving a positive test, or failure to pass a return-to-duty drug or alcohol test.
 - c. Evidence that the employee has substituted, adulterated, diluted or otherwise tampered with his/her urine sample.
 - d. Failure to contact a substance abuse professional within five (5) regular working days after being notified of a confirmed (MRO certified) positive test for the improper use of alcohol or unauthorized substances.
 - e. Employees who test positive a second time will be suspended immediately without pay and terminated after being notified of the second confirmed (MRO Certified) positive test for the use of an unauthorized substance.
4. During the period the Town is awaiting an employee's test result for a post-accident test, reasonable suspicion test, or return-to-duty test, the Town may transfer the employee to another position with or without a reduction in pay or benefits. The Town also reserves the right to place an employee on paid or unpaid suspension. A determination as to whether an employee is placed in another position or placed on paid or unpaid suspension may be based on, but is not limited to: who is responsible for and/or the severity of the accident, if applicable; the observed condition of the employee, if applicable; the employee's work history; length of employment; current job performance and the existence of past disciplinary actions. Action taken by the Town under this subsection is a matter of Town policy, and is not imposed by federal law.

O. EMPLOYEE/APPLICANT RIGHTS AND RESPONSIBILITIES.

1. In the event of a confirmed positive test result, employees and job applicants shall have the opportunity to present an alternative explanation for the test result by contacting the Medical Review Officer (MRO). This shall be done within seventy-two (72) hours after notification of the confirmed result. No further action will be taken if there is a justified explanation, or there is a reasonable doubt as to the accuracy of the result or chain of custody of the sample.
2. Any employee with a positive test result may, upon written request to the Program Administrator, have the right to any information relating to the test result and procedures. A job applicant may request information concerning the test result within sixty (60) days after the decision on his/her employment application.
3. Upon successfully participating in a rehabilitation program (within 6 months after it commences) and upon passing a return-to-duty drug and/or alcohol test, the employee is entitled to return to his/her previous job with full pay (but not back pay) and benefits, unless conditions unrelated to the employee's previous test make the employee's return impossible. The rehabilitation or treatment provider in consultation with the Town shall determine whether the employee has successfully participated in the rehabilitation program. The Town is not required to hold the employee's job open for more than six (6) months after the employee commences a rehabilitation program.

Any subsequent second offense positive test will result in immediate suspension without pay and termination after being notified of a second confirmed (MRO certified) positive test for the use of an unauthorized substance.

P. CONFIDENTIALITY OF INFORMATION. Unless the employee or applicant consents, all information acquired by the Town in connection with the testing processes is confidential and may not be released to any person other than to the employee or applicant who is tested, the Program Administrator, officials with a need to know, and the rehabilitation provider. The foregoing shall not prevent the release of information that is required or permitted by state or federal law, or the use of information in any grievance procedure, administrative hearing or lawsuit relating to the imposition of the test or the use of the test results.

Q. DOCUMENTS PROVIDED. The Town will provide each person subject to this policy a copy of the policy. The Town will also provide printed material which describes the effects of alcohol and/or controlled substances on the individual's health, work and personal life, as well as information on the signs and symptoms of alcohol or controlled substances and methods of treatment or intervention for drug or alcohol abuse. In ad-

dition, the Town will provide periodic training on substance abuse awareness for affected employees.

Section 8 INSUBORDINATION.

Insubordination, including refusal or failure to follow lawful instructions, perform work in the manner assigned, or comply with safety rules and regulations, shall not be tolerated, nor will the use of profane or abusive language to supervisors or other employees.

Section 9 HORSEPLAY.

All horseplay, pranks, practical jokes, or any other acts which interfere with or endanger any employee or other person, or interferes with the conduct of official duties of other employees is prohibited.

Section 10 SAFETY.

Employees who encounter safety hazards in their job or workplace should report the condition immediately to their supervisor or department head. Accidents must be reported to the supervisor, department head, or Town Manager's office immediately. All injuries must be reported immediately. Failure to use safety equipment or follow safety rules or practices may result in disciplinary action.

Section 11 COUNCIL-STAFF COMMUNICATIONS

Governance of the Town relies on the cooperative efforts of elected officials, who set policy and priorities, and Town staff, who analyze problems and issues, make recommendations, and implement and administer the Council's policies. The following are general guidelines to help facilitate effective communications between the Town Council and Town staff. [Note: This section of the Rules is intended to expand on and implement the language contained in Article III, Section 11 of the Charter.]

1. Channel communications through the appropriate Town staff.

While any staff member is available to answer Council questions and requests for information, the Town Manager is the primary information liaison between the Council and Town staff as outlined in Article III Section 2(A)(11).

Please direct questions of Town staff to the Town Manager, Assistant Town Manager, or Department Heads.

When a Councilmember makes an information request to a particular staff

member, the practice is for staff to inform the Town Manager so that he is aware of Council's requests and needs.

2. All Councilmembers should have the same information with which to make decisions.

When one Councilmember has an information request, the response will be shared with all members of the Council so that each member may be equally informed.

3. Depend upon the staff to respond to citizen concerns and complaints as fully and as expeditiously as practical.

A primary value in the Town's organizational culture is providing quality customer service. As a first response to customer problems people are encouraged to speak with a staff member's supervisor, department head, or the Town Manager.

Councilors who receive information about problems or complaints are encouraged to contact the Town Manager's Office to help solve a citizen's problem. Councilors who receive information about problems or complaints from employees are expected to direct the employee to their supervisor, department head, or the Town Manager's Office. There will be follow-through with the Councilor as to the outcome of the problem or concern by the Town Manager's Office or other appropriate staff.

Likewise, the Town Council sometimes will receive constituent letters or emails directly. Due to limited staff resources to handle the amount of correspondence, these are disseminated to the appropriate department to prepare a formal response. The Assistant Town Manager oversees and coordinates the process to ensure consistency in the handling of inquiries, problems, or complaints.

If a letter or email is directed specifically to a Councilmember and requires an official response from the Town, the Town Manager or his/her designee will work directly with the Councilor to provide a response. All correspondence is copied to all members of Council, regardless of to whom it was addressed.

4. The Town Council sets the direction and policy – Town staff is responsible for administrative functions and Town operations.

The role of the Council is as the legislative body. The Council is responsible for approving the budget, setting policy goals, and adopting strategic plans. The primary functions of staff are to execute Council policy and actions taken by the Council and in keeping the Council informed. Staff is obligated to take

direction only from the Town Manager, their Department Head, or their supervisor.

5. In order to provide the Council with timely information, please strive to submit questions on Council agenda items ahead of the meeting.

Councilors are encouraged to submit their questions on agenda items to the Town Manager as far in advance of the meeting as possible so that staff can be prepared to respond at the Council meeting. Having a practice of “no surprises” between the Council and Town staff and vice versa fosters a productive working relationship.

6. Respect the will of the “full” Town Council.

Town staff will make every effort to respond in a timely and professional manner to all requests for information or assistance made by individual Councilors. However, if a request reaches a certain degree in either terms of workload or policy, it may be more appropriate to make the assignment through the direction of the full Town Council. If this should occur, the Town Manager will prepare a memorandum to the Town Council informing them of such situation. It would be the individual Councilor’s prerogative to discuss the request at an upcoming Council meeting and to seek approval by the “full” Council. This procedure helps to ensure that staff resources are allocated in accordance with overall Council goals and priorities.

7. Depend upon the staff to make independent and objective recommendations.

Staff is expected to provide its best professional recommendations on issues, providing information about alternatives to staff recommendations as appropriate, as well as pros and cons for recommendations and alternatives. Sometimes staff may make recommendations that we know will be unpopular with the public and Councilors.

Staff respects the role of Council as policy makers for the Town and understands that Council must consider a variety of opinions and community values in their decision-making in addition to staff recommendations.

8. The Town Manager and staff are supporters and advocates for adopted Council policy.

Regardless of whether it was staff’s preferred recommendation, staff will strongly support and advocate the adopted Council policy and direction. This may cause concern by the Council minority on controversial issues.

9. Refrain from publicly criticizing an individual employee. Criticism is differentiated from questioning facts or the opinion of staff.

All critical comments about staff performance should only be made to the Town Manager through private correspondence or conversation.

10. Seeking political support from staff or engaging staff to influence Council policies or decisions is not appropriate.

The Town is a non-partisan local government. Neither the Town Manager nor any other person in the employ of the Town shall take part directly in securing or contributing any money toward the nomination or election of any candidate for a municipal office. Council members shall not solicit contributions or support for nomination for themselves or any other candidate for elective office.

In addition, some professionals (e.g., Town Manager, Deputy Town Manager, and the Assistant Town Manager) have professional codes of ethics, which preclude partisan political activities or activities that give the appearance of political partisanship.

11. Employees are not permitted to lobby Council members on policy or personnel matters outside of established practices and procedures.

Town staff are expected to participate in the process through their official roles and duties, and may participate in the public process as citizens, but are prohibited from using their positions to improperly influence or undermine Council decisions or policies in violation of this or any other Town policy, ordinance, regulation, Charter provision, or statute. Employees are prohibited from lobbying members of the Council on policy or personnel matters outside of established practices and procedures.

Similarly Council members must not engage Town staff in activities, particularly involving matters of Council policies or business, in an effort to influence the outcome of Council decisions.