

Draft Ordinance No:_____

AN ACT TO REPEAL Ordinance number 444 Chapter 29 of the Code of the Town of Dewey Beach and to Enact the following new “Chapter 29 POLICE AND LIFEGUARD DRUG AND TESTING ACT”

GENERAL REFERENCES

Code of Conduct — See Ch. 10.

Police Pension and Retirement Fund — See Ch. 36.

Article 29: Police and Lifeguard Drug and Alcohol Use and Testing Act

§ 29-1 **Applicability.**

§ 29-2 **Testing schedule for drugs and alcohol substances.**

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§ 29-7 **Refusal to submit to a test.**

§ 29-8 **Positive tests for controlled drug substances.**

§ 29-9 **Positive tests for alcohol.**

§ 29-10 **Payment of costs.**

§ 29-1 **Applicability.**

Every candidate who is seeking employment as a full- or part-time employee with the police or lifeguard departments shall complete and pass testing for alcohol and drugs as a condition of employment, and every full- or part-time employee of the police or lifeguard departments shall be subject to substance testing as set forth hereinbelow as a continuing condition of employment. Part-time officers shall not be privileged to the voluntary rehabilitation sections of the regulations. The testing policy and procedures shall be established by ordinance by majority vote of the Commissioners of the Town of Dewey Beach.

§ 29-2 **Testing schedule for drugs and alcohol substances.**

Drug and alcohol testing for candidates for employment and full- and part-time employees in the lifeguard and police departments of the Town of Dewey Beach shall be conducted at six stages of employment, as follows:

A.

Preemployment. Conducted prior to a final employment offer for positions covered by this policy; required for all police and lifeguard applicants. Any candidate who refuses to perform such test and any candidate who fails such tests shall be rejected.

B.

Post-accident. Conducted after any accident resulting in a fatality, injury resulting in the hospitalization of an injured person, and after any accident that results in damage to any motor vehicle, property, or to any equipment of the Town of Dewey Beach.

C.

Reasonable suspicion. Conducted when a trained supervisor observes behavior or appearance that is abnormal or erratic and characteristic of alcohol or drug use, when observation is made of alcohol or drug use or possession of alcohol or drugs or drug paraphernalia, when a medical incident or accident appears to be alcohol or drug related, or whenever credible incidents give a reasonable observer reasonable suspicion of alcohol and/or drug use by the subject employee.

D.

Random. Conducted on a random unannounced basis just before, during, or just after work performance.

E.

Return-to-duty. Conducted before an individual who has violated the prohibited alcohol or drug conduct standards may return to work.

F.

Follow-up. Tests are unannounced and up to six tests may be conducted in the first 12 months after an employee returns to duty.

§ 29-3 Notice of testing.

This policy serves as notice for alcohol and drug testing by means of breath, blood and/or urine testing. Each candidate and employee subject to this policy will receive a copy of this policy.

§ 29-4 Prohibited activities.

All subject employees are prohibited from engaging in the following activities:

A.

The possession or consumption prior to or while on duty of any:

1. drug defined in Schedules I through V of Title 16, Chapter 47 of the Delaware Code, as amended, for which the employee does not have a valid prescription from a licensed physician, or
2. alcoholic beverage.

B.

Reporting to work while under the influence of any drug defined hereinabove in Subsection A for which the employee does not have a valid prescription, or in a dosage or amount that exceeds the dosage or amount prescribed for the employee by a licensed physician.

C.

Reporting to work with a blood alcohol concentration of 0.03 or greater, meaning an amount of alcohol in a sample of a person's blood equivalent to 0.03 or more grams of alcohol per 100 milliliters of blood, or an amount of alcohol in a sample of a person's breath equivalent to 0.03 or more grams of alcohol per 210 liters of breath.

D.

Refusal to submit to an alcohol or drug substance test conducted pursuant to the provisions of this article.

§ 29-5 Substances tested.

All specimens shall be analyzed for the following drugs: amphetamine, marijuana (THC metabolite), cocaine, opiates (including heroin), phencyclidine (PCP) and all substances described in Schedules I through V as set forth in Title 16, Chapter 47 of the Delaware Code, and as amended.

§ 29-6 Testing methods.

Substance testing may be accomplished by using breath testing devices, urine and/or medical blood testing at a hospital or other appropriate testing facility.

§ 29-7 Refusal to submit to a test.

A subject employee who refuses to submit to alcohol and/or controlled substance testing is subject to termination of employment. Refusal shall include the following:

A.

Failure to provide an adequate breath, blood or urine sample for testing without a valid medical excuse immediately after the candidate for employment or the subject employee has received notice of the requirement of a test.

B.

Obstruction of the testing process by the candidate for employment or the subject employee.

§ 29-8 Positive tests for controlled drug substances.

A.

Full-time subject employees.

(1)

A. Each full-time lifeguard and non-sworn police employee whose substance test is positive for a drug defined in Schedules I through V of Title 16, Chapter 47 of the Delaware Code, as amended, and for which the employee does not have a valid prescription or the dosage or amount exceeds the dosage or amount prescribed by a licensed physician shall immediately be suspended from work without pay for a period of two weeks and shall complete a course of rehabilitation as directed by the town manager within six months after the positive test result.

B. Each sworn police officer whose substance test is positive for a drug as defined in Schedules I through V of Title 16, Chapter 47 of the Delaware Code, as amended, and for which the employee does not have a valid prescription or the dosage or amount exceeds the dosage or amount prescribed by a licensed physician shall immediately be suspended from

work without pay and noticed for termination pursuant to the Delaware Law Enforcement Officers Bill of Rights Title 11, Chapter 92 of the Delaware Code, as amended.

(2)

Any full-time employee who fails a return to work, follow-up, or subsequent random substance test within two years from the date of the original failed substance test shall immediately be terminated from employment.

B.

Part-time subject employees. Each part-time employee whose substance test is positive for a drug defined in Schedules I through V of Title 16, Chapter 47 of the Delaware Code, as amended, and for which the employee does not have a valid prescription or the dosage or amount exceeds the dosage or amount prescribed by a licensed physician shall immediately be terminated from employment.

§ 29-9 **Positive tests for alcohol.**

A.

Each employee whose test indicates an alcohol concentration of 0.03 or greater and not more than 0.05 shall be sanctioned as follows:

(1)

For the first occurrence, a suspension without pay of eight hours;

(2)

For the second occurrence which occurs within two years of the first occurrence, a suspension without pay of 40 hours;

(3)

For the third occurrence which occurs within two years of the first occurrence, termination of employment.

B.

Each employee whose test indicates an alcohol concentration of greater than 0.05 shall be sanctioned as follows:

(1)

For the first occurrence, a suspension without pay of 40 hours;

(2)

For the second occurrence which occurs within two years of the first occurrence, a suspension without pay of 80 hours;

(3)

For the third occurrence which occurs within two years of the first occurrence, termination of employment.

§ 29-10 Payment of costs.

The Town shall pay the costs of alcohol and controlled substance testing except as herein provided.

A.

The employee shall pay the cost of any tests requested by the employee to confirm the use of alcohol or a controlled substance if the results of the confirmation test are positive.

B.

The Town shall not be required to pay the costs of evaluating, counseling or rehabilitation which may be required by the Workplace Drug and Alcohol Testing Program and any other standards and policies established by ordinance by majority vote of the Commissioners of the Town of Dewey Beach. The Town shall encourage those who violate the provisions of this article to seek help in overcoming their problems and to return to work as drug-free and alcohol-free employees in accordance with the requirements of this article.

SYNOPSIS

This updates Article 29: **Police and Lifeguard Drug and Alcohol Use and Testing Act of the Code of Dewey Beach to come into compliance for sworn police officers with the Law Enforcement Officers Bill of Rights Chapter 92 of Title 11 of the Delaware Code and removes DELDOT references found in an earlier version of this Article.**

Dale H. Cooke, Mayor

Bill Zolper, Town Manager

