

**AN ORDINANCE TO AMEND CHAPTER 40 OF THE CITY CODE
REGARDING THE ELIMINATION OF PRE-EMPLOYMENT DRUG
SCREENING FOR NON-SAFETY SENSITIVE POSITIONS**

#0064

WHEREAS, Policy 202.1 of the City of Wilmington Human Resources Policy Manual

Sponsor:

(the “Policy”) requires all candidates who have been extended a conditional offer of employment

**Council
Member
Darby**

to consent and submit to a urine sampling for drug screening during the pre-employment process.

Candidates are certified for hire only upon satisfactorily completing the screen; and

WHEREAS, this Policy currently applies to all prospective employees, regardless of whether or not they are applying for positions which affect the safety and/or security of themselves, other employees or members of the public; and

WHEREAS, while the City has compelling interests and legitimate needs to conduct pre-employment drug screening for designated safety sensitive positions, the City does not have the same interests in conducting pre-employment drug screening for non-safety sensitive positions; and

WHEREAS, following a collaborative effort with the Department of Human Resources, the Pre-Employment Drug Testing Policy has been revised to eliminate pre-employment drug screening for non-safety sensitive positions, effective July 1, 2021; and

WHEREAS, Wilmington City Council deems it necessary and appropriate to codify the elimination of pre-employment drug screening for non-safety sensitive positions.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Chapter 40 of the Wilmington City Code is hereby amended by adding Section 40-63, to read as follows:

Sec. 40-63. – Pre-employment Drug Testing

- (a) Definitions. Except as otherwise provided in this Chapter, the following term, as used in this Subsection, shall have the following meaning:

Safety-Sensitive Position means a position in which the employee is responsible for their own safety or the safety of others or has the potential to significantly impact the health or safety of employees and members of the public.

(b) Except as otherwise required by law and applicable federal regulations, candidates for employment with the City of Wilmington shall not be required to submit to drug testing as a condition of employment.

(c) Exceptions.

(1) The provisions of this Subsection shall not apply to candidates for safety-sensitive positions, including:

- a. Police officers, positions with a law enforcement or investigative function, or dispatchers of emergency and non-emergency calls;
- b. Fire suppression personnel, positions with an investigative function, and other non-administrative personnel within the Wilmington Fire Department;
- c. All positions requiring a commercial driver's license (CDL);
- d. All positions requiring the use of a motor vehicle or motorized equipment;
- e. All positions for which the successful candidate is required to be an authorized driver;
- f. All positions involving the enforcement of state, local and federal building codes and laws pertaining to occupational safety and health;
- g. All positions requiring entry into dwellings;
- h. All positions involving the production of clean drinking water
- i. In any position requiring the direct supervision or care of children or elderly persons; or
- j. Any safety-sensitive position, as determined by the Director of the Department of Human Resources.

(2) The provisions of this Subsection shall not apply to drug testing required pursuant to:

- a. Any regulation promulgated by the federal Department of Transportation that requires testing of a prospective employee in accordance with 49 CFR 40 or any rule promulgated by the Delaware Department of Transportation adopting such regulation for the purpose of enforcing the requirements of that regulation with respect to interstate commerce;
- b. Any contract entered into between the federal government and the City or any grant of financial assistance from the federal or state government to the City that requires drug testing of prospective employees as a condition of receiving the contract or grant; or
- c. Any applicants for positions which are covered by a valid collective bargaining agreement that specifically addresses the pre-employment drug testing of such applicants.

(d) The Director of Human Resources shall be responsible for determining the applicability of this Subsection to any newly created positions and for promulgating rules for the implementation of this Subsection. The Director shall have the authority to administratively establish requirements for pre-employment drug testing for safety-sensitive positions.

SECTION 2. This Ordinance shall have no impact on Human Resources Policy 102.1 Drug Free Workplace or Policy 103.2 Drug and Alcohol Abuse. Where there is reasonable suspicion that an employee has violated Policy 102.1 and/or Policy 103.2, the employee suspected to be impaired shall be subjected to a fitness for duty examination, which may include blood and/or urine drug testing.

SECTION 3. This Ordinance Shall be effective on

First Reading..... June 3, 2021
Second Reading..... June 3, 2021
Third Reading..... _____, 2021

Passed by City Council,

President of City Council

ATTEST: _____

City Clerk

Approved this ____ day of _____, 2021.

Mayor

SYNOPSIS: This Ordinance amends Chapter 40 of the City Code by adding Section 40-63 which codifies the revised Pre-Employment Drug Testing policy. This Ordinance eliminates pre-employment drug screening for candidates for employment with the City in non-safety sensitive positions.