

RECORD OF ORDINANCES

Ordinance No. 63-2023 Passed December 4th, 2023

AN ORDINANCE AUTHORIZING THE AMENDMENT AND ADOPTION OF A DRUG-FREE
WORKPLACE POLICY AND THE ADDITION OF THE
POLICY AS DEFINED TO THE VILLAGE EMPLOYEE HANDBOOK

WHEREAS, Issue 2 legalizing recreational use of marijuana was passed/adopted by ballot in November 2023, and

WHEREAS, Ohio voters passed/enacted Issue 2, which created Ohio Revised Chapter 3780, and

WHEREAS, newly passed/enacted Ohio Revised Code Section 3780.35 establishes that employers may continue be able to establish and enforce drug testing, drug free workplace policies, and zero tolerance drug policies, and

WHEREAS, Brewster Village Council previously adopted Ordinance 8-2017 that established 6.03 Drug Free Workplace Policy, which includes a zero-tolerance policy for marijuana, and

WHEREAS, Brewster Village Council desires to continue its zero-tolerance policy for marijuana, and

WHEREAS, Ohio Revised Chapter 3780 enacted by passage of Issue 2 is effective December 7, 2023, and

WHEREAS, Brewster Village Council desires to amend the Village’s 6.03 Drug Free Workplace Policy to clearly state and convey to its employees that its zero-tolerance policy for marijuana shall remain in effect and continue to be enforced uninterrupted and include said revised policy in the Village Employee Handbook.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF BREWSTER, THAT:

SECTION 1: The Village shall amend and adopt 6.03 Drug Free Workplace Policy as defined below and shall add Section 6.03 Drug Free Workplace Policy to the Village Employee Handbook as follows:

DRUG FREE WORKPLACE POLICY 6.03

OVERVIEW

The Village of Brewster has a vital interest in ensuring a safe, healthy and efficient working environment for our employees, their co-workers and the general public we serve. The unlawful or improper presence or use of controlled substances or alcohol in the workplace presents a danger to everyone. For these reasons, the Village of Brewster is committed to maintaining an effective, efficient and safe drug free work environment at all Village facilities and work sites in order to safeguard Village personnel, property, equipment, and the people we serve.

The following policy establishes the standards, rules, procedures and disciplinary guidelines the Village will use, as a condition of employment and continued employment with the Village, in order to enforce this policy and to promote a drug free work environment.

(A) Employment Conditioned Upon Compliance with Drug Free Policy

- 1. The Village of Brewster will not hire anyone who is known to currently abuse alcohol and/or other controlled substances.
- 2. Continued employment with the Village of Brewster is conditioned upon your full compliance with this Drug Free Workplace Policy.

(B) Report Fit for Duty

RECORD OF ORDINANCES

GOVERNMENT FORMS & SUPPLIES 844-224-3338 FORM NO. 30043

Ordinance No. 63-2023

Passed December 4th, 2023

Employees, including supervisors, are required to report to work in a fit condition to perform their duties.

(C) Use of Drugs or Alcohol in the Workplace

The Village of Brewster strictly prohibits the use of alcohol or controlled substances by employees in the workplace. Employees shall not be under the influence of alcohol and/or drugs and/or controlled substances when reporting to work or while at work. Employees are prohibited from:

1. reporting to work or working while under the influence of alcohol.
2. reporting to work or working while using or under the influence of illegal drugs and/or controlled substances.
3. reporting to work or working while using any drug(s) or substance(s) that adversely affect the employee's ability to safely perform his or her essential job duties.
4. reporting to work or working when the employee uses any drug(s) or substance(s) that adversely affect the employee's ability to safely perform his or her essential job duties, even when the use is pursuant to a health care provider's orders, unless the health care provider has advised the employee that the substance does not adversely affect the employee's ability to safely perform the essential functions of his or her job duties.
5. consuming/using alcohol at the work place during working hours, including meal and break periods.
6. consuming/using illegal drugs, or any other drug(s) or substance(s) that adversely affects the employee's ability to safely perform his or her essential job duties, except when the use is pursuant to a health care provider's orders and the health care provider advised the employee that the substance does not adversely affect the employee's ability to safely perform his or her job duties.

(D) Self-Reporting Drug or Substance Use

Employees are required to report to the Village when they are taking any drug(s) or substance(s) that may adversely affect the employee's ability to safely perform his or her essential job duties, even when the use is pursuant to a health care provider's orders.

(E) Unlawful Manufacture, Distribution, Dispensing, Possession, or Use of Alcohol or a Controlled Substance

Employees are prohibited, while on duty, on or off the workplace, from possessing, using, purchasing, transferring, unlawfully manufacturing, distributing, or dispensing illegal controlled substances, abusing alcohol, or abusing prescription drugs in any way that is illegal.

(F) Inspection of Premises

The Village reserves the right to take any and all appropriate and lawful actions necessary to enforce this substance abuse policy including, but not limited to, the inspection of Village issued lockers, desks or other suspected areas of concealment.

(G) Medical Marijuana – Zero-Tolerance

As permitted by Ohio Revised Code Section 3796.28, the use of medical marijuana is prohibited under this and any other applicable Village policies.

The Village of Brewster has a zero-tolerance policy for marijuana, and any employee who tests positive pursuant to Village policy is subject to discipline up to and including termination.

RECORD OF ORDINANCES

GOVERNMENT FORMS & SUPPLIES 844-224-3338 FORM NO. 30043

Ordinance No. 63-2023

Passed December 4th, 2023

(H) "Legalized" Marijuana – Zero-Tolerance

As permitted by Ohio Revised Code Section 3780.35, the use of marijuana is prohibited under this and any other applicable Village policies.

The Village of Brewster has a zero-tolerance policy for marijuana, and any employee who tests positive pursuant to Village policy is subject to discipline up to and including termination.

(I) Employee Assistance Program

Brewster currently has an Employee Assistance Program (EAP) that refers employees or their families to appropriate substance abuse rehabilitation programs. Employees with substance abuse problems are encouraged to voluntarily contact the EAP and enroll in a certified rehabilitation program. Voluntary contact of the EAP or enrollment in a substance abuse program will not adversely affect employment. However, continued conduct including, but not limited to, unacceptable job performance, attendance, and/or behavioral problems will result in disciplinary action, up to and including termination.

(J) Submission to Rehabilitation Program

Any employee who comes forward prior to a complaint or investigation of use of alcohol and/or illegal drugs while at work **may** be permitted in lieu of termination, at the Village's sole discretion, to participate in and successfully complete an appropriate treatment, counseling, or rehabilitation program as recommended by a substance abuse professional as a condition of continued employment.

(K) Testing

- 1. Post-Offer Employment Pre-duty Testing:** Drug tests (not including alcohol) are required for all final applicants for positions covered by Federal DOT testing requirements (i.e., CDL holders whose job duties will require them to drive Commercial Motor Vehicles for the Village) and/or safety sensitive positions. Persons entering these positions from outside Village government, and current Village employees who do not perform safety-sensitive functions (as defined in 49 CFR Part 382) who are transferring into these positions, must be tested.
- 2. Reasonable Suspicion Testing:** Employees may be tested for drugs and/or alcohol when there is a reasonable suspicion that they are using or have used illegal drugs and/or alcohol.

"Reasonable suspicion" testing shall be conducted when there is reasonable suspicion to believe that an employee, when appearing for duty or on the job, is under the influence of, or their job performance is impaired by alcohol or other drugs. This reasonable suspicion must be based upon objective facts or specific circumstances found to exist that present a reasonable basis to believe that a covered employee is under the influence of, or is using or abusing alcohol or drugs. Specific, objective facts and reasonable inferences, drawn in light of experience and training, may be based on, but are not limited to, any of the following:

- Observable phenomena, such as direct observation of use, possession, or distribution of alcohol or a controlled substance, or of the physical symptoms of being under the influence of alcohol or a controlled substance, such as but not limited to slurred speech, dilated pupils, odor of alcohol or a controlled substance, changes in affect, or dynamic mood swings;
- A pattern of abnormal conduct, erratic or aberrant behavior, or deteriorating work performance such as frequent absenteeism, excessive tardiness, or recurrent accidents;

RECORD OF ORDINANCES

GOVERNMENT FORMS & SUPPLIES 844-224-3338 FORM NO. 30043

Ordinance No. 63-2023

Passed December 4th, 2023

- The identification of a covered employee as the focus of a criminal investigation into unauthorized possession, use, or trafficking of a controlled substance;
- A report of use of alcohol or a controlled substance provided by a reliable and credible source;
- Repeated flagrant violations of the safety or work rules of the Village that are determined by the covered employee's supervisor to pose a substantial risk of physical injury or property damage and that appear to be related to the use of alcohol or a controlled substance and that do not appear attributable to other factors.

The Village of Brewster "Reasonable Suspicion Testing" form shall be prepared each time a person is suspected of drug or alcohol use.

An employee ordered to undergo drug or alcohol testing due to reasonable suspicion must ALWAYS be transported and accompanied by a member of management to and from the collection/alcohol site until the completion of all required testing or instructed otherwise by competent medical personnel at the testing site.

- 3. CDL Random Testing:** Employees who, as a part of their job responsibilities, are or may be required to operate motor vehicles requiring a Commercial Driver's License (CDL), whether union or non-bargaining, will be subject to random testing pursuant to the terms and conditions of the Omnibus Transportation Employee Testing Act of 1991.
- 4. Specific Task Random Testing:** Employees (i.e. lifeguards, day camp workers, traffic flaggers, etc.) who, as part of their job, are responsible for the safety and/or care of children under 17 years of age or younger or are involved in directing traffic or operating mowing and trimming equipment in public right-of-ways or in the presence of the public, whether union or non-bargaining, will be subject to random testing on the basis of "special needs".
- 5. Post-Treatment Random Testing:** Employees who are directed for random follow-up testing as directed by an EAP or Substance Abuse Professional (SAP).
- 6. Post-Accident Testing:** Employees must be tested for alcohol and controlled substances (amphetamines, cocaine, marijuana, opiates and phencyclidine [PCP]) (49 C.F.R. Section 40.85) following an accident while on duty for the Village if:
 - a. A fatality occurs, or
 - b. While driving a Village vehicle, the employee is involved in an accident and is cited for a moving violation of any kind, or
 - c. Any involved vehicle requires towing from the scene, or
 - d. Any personnel involved requires medical treatment away from the scene of the incident, or
 - e. Injury occurs that requires medical treatment beyond first aid and/or lost time, or
 - f. Damage to property exceeds \$1,000.00.

If it is clear that the employee did not contribute to the cause of the accident, the employee will be exempted from drug and alcohol testing, unless the employee otherwise is subjected to reasonable suspicion testing.

Employees must immediately notify their appointing authority, or designee, about the accident (if medically able to do so), remain available for testing, and not consume any alcohol for eight (8) hours after the accident, or until an alcohol test

RECORD OF ORDINANCES

GOVERNMENT FORMS & SUPPLIES 844-224-3338 FORM NO. 30043

Ordinance No. 63-2023

Passed December 4th, 2023

has been administered, whichever comes first (49 C.F.R. Section 382.209). Post-accident alcohol testing must be performed within two (2) hours following the accident, if this is not done management must document why it was not done. If an alcohol test is not administered within eight (8) hours following the accident, the Village shall cease attempts to administer an alcohol test and shall document why the test was not done [49 C.F.R. Section 382.303(d)(1)]. Post-accident drug testing must be performed as soon as possible after the accident, but shall not be done more than 32 hours after the accident. If the drug test was not done within the 32 hour time limit, management must document why it was not done [49 C.F.R. Section 382.303(d)(2)].

In the event a post-accident test is necessary, the Village is not required to use one of the Village's designated collection providers, but instead may use federal, state, county, or local authorities to conduct such tests, provided the test giver has independent authorization to conduct such tests, the test process conforms to the Omnibus Transportation Employee Safety Act of 1991 and the test results can be obtained by the employer.

The Village must take all necessary steps to perform the required post-accident testing of the employee. If the employee is seriously injured following the accident, the employee must provide the necessary authorization to allow the Village to obtain hospital reports and other documentation that would indicate whether controlled substances contributed to the accident (49 C.F.R. Section 382.303).

An employee ordered to undergo a post-accident test must ALWAYS be transported and accompanied by a member of management to the collection/alcohol site until the completion of all required testing or instructed otherwise by competent medical personnel at the testing site. However, in cases where the employee is seriously injured and is transported to a medical facility by a rescue unit, a member of management need not accompany the injured employee to the medical facility.

- 7. Return-to-Duty and Follow-up Testing:** Any employee with a positive alcohol or drug test will be required to complete a return-to-duty drug and/or alcohol test with a negative test result as a condition for returning to work. Unless the collective bargaining agreement provides otherwise, the employee, after successfully completing the return-to-duty test (meaning an alcohol test under 0.02 BAC or a negative controlled substance test), will be subject to a minimum of six (6) unannounced follow-up tests during the twelve (12) months following the employee's return to work. The covered employee will be responsible for paying for those six (6) follow-up tests. Any additional tests beyond six (6) during the first 12 months after the covered employee returns to duty shall be at the Village's cost.

Follow-up testing may continue for up to sixty (60) months after the employee returns to work, if ordered by the EAP or Substance Abuse Professional (SAP). The covered employee will be responsible for paying for up to six (6) follow-up tests each subsequent year for the period up to sixty (60) months after the covered employee returns to duty.

(L) Refusal to be Tested.

Testing is fundamental to assuring a drug free work environment. Refusal to be tested when requested by a Village supervisor or law enforcement official includes the following conduct:

1. Saying "no" and refusing to take a required test;

RECORD OF ORDINANCES

Ordinance No. 63-2023 Passed December 4th, 2023

- 2. Failing to provide adequate breath for alcohol testing without a valid medical explanation;
- 3. Failing to provide adequate urine for drug testing without a valid medical explanation;
- 4. Engaging in conduct that clearly obstructs the testing process (i.e., attempting to manipulate the drug/alcohol testing process through adulteration or substitution of the specimen); or
- 5. Failing to remain available for testing following an accident involving a Village vehicle.

In such event, disciplinary action will be in accordance with this policy.

(M) Consequences to Employees Refusing to Submit to Testing or Providing False Information in Connection with Testing

- An applicant who refuses a post-offer employment/pre-duty test will not be hired.
- An employee who refuses a return-to-duty test will not be returned to duty.
- An employee who refuses a post-accident, random, reasonable suspicion or follow-up test will be treated as if they had a positive result.
- An employee who refuses a post-accident, random, reasonable suspicion or follow-up test will be subject to discipline for insubordination.
- An employee who provides false information or attempts to falsify test results shall be removed from duty immediately and subject to discipline up to and including termination.

(N) Discipline

An employee in violation of the Village’s Drug-Free Workplace Policy is subject to disciplinary action up to and including termination, and/or the disciplinary provisions of any applicable collective bargaining agreements, and/or Village ordinances, policies, and procedures, as well as subject to criminal prosecution.

Any employee who violates this policy who is subject to termination may be permitted in lieu of termination, at the Village’s sole discretion, to participate in and successfully complete an appropriate treatment, counseling or rehabilitation program as recommended by a substance abuse professional as a condition of continued employment. The Village of Brewster is unlikely to consider this option if an employee is already under investigation.

(O) Evaluation by a Substance Abuse Professional (SAP)

Any employee who is not discharged as a result of a positive alcohol test or a positive drug test result shall undergo evaluation by a Substance Abuse Professional (SAP) and will be required, as a condition of continued employment, to successfully participate in any counseling or treatment program as recommended by the SAP.

In the event that an employee is required by an SAP to participate in any counseling or treatment program, the covered employee’s health insurance coverage with the Village may be used and sick leave may be used for counseling or treatment.

Upon successful completion of the counseling or treatment program that was recommended by the SAP, the covered employee shall submit to a return-to-duty drug and/or alcohol test. The result of the return-to-duty test(s) must be below 0.02 for alcohol or have a negative result if testing for controlled substances. A return-to-duty drug test that is positive or a return-to-duty alcohol test above .02 BAC may serve as grounds for immediate discharge.

RECORD OF ORDINANCES

GOVERNMENT FORMS & SUPPLIES 844-224-3338 FORM NO. 30043

Ordinance No. 63-2023

Passed December 4th, 2023

The employee shall also be subject to unannounced follow-up testing.

(P) Confidentiality

Confidentiality about alcohol and/or drug test results will be maintained **to the extent provided by law.**

(Q) Work Assignment During or After Treatment

During an employee's rehabilitation/treatment or once an employee successfully completes treatment/rehabilitation, the employee may be returned to their regular work assignment provided that the employee has been medically recertified as qualified for performing the essential duties that their position requires.

(R) Right of Appeal

The employee has the right to challenge the results of the drug and alcohol tests by paying for the second (split) sample to be tested by an accredited lab via a procedure that maintains chain-of-control.

Any discipline imposed shall be in accordance with the procedures outlined within the Village's rules and regulations.

(S) Non Discrimination

Consistent with its fair employment policy, the Village maintains a policy of non-discrimination and reasonable accommodation with respect to recovering addicts and alcoholics, and those having a medical history reflecting treatment for substance abuse conditions. We encourage employees to seek assistance before their drug or alcohol use renders them unable to perform their essential job functions or jeopardizes the health and safety of themselves or others. The Village will attempt to assist its employees through referrals to rehabilitation, appropriate leaves of absence and other measures consistent with the Village's policies and applicable federal, state or local laws.

(T) Suspected Criminal Conduct

Any suspected criminal conduct involving a controlled substance in the workplace or any location where employees conduct official business will be reported to the Brewster Police Department or other appropriate law enforcement officials.

(U) Notification

Pursuant to the Drug-Free Workplace Act, employees are required to notify the Department Head and Appointing Authority within five (5) days after they are convicted of violating a criminal drug statute while at the workplace. Criminal drug statutes are defined as any Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance. A violation involving alcohol is not reportable under this law. A conviction means a finding of guilt, no contest (including a plea of *nolo contendere*) or the imposition of a sentence by a judge or jury in any court. Any employee who fails to report such a conviction will be subject to immediate termination and/or the discipline provisions of the various Village ordinances, rules, policies and procedures.

Employees should inform their Department Head and/or their Appointing Authority if they believe a co-worker is consuming/using illegal drugs or alcohol at work.

(V) Federal Regulations Prevail

To the extent that this policy is inconsistent with or conflicts with the provisions or requirements of new or updated Federal regulations, such regulations shall control.

SECTION 2: The above policy replaces any previous version of this policy and supersedes any current policy which may be in conflict with this policy.

RECORD OF ORDINANCES

GOVERNMENT FORMS & SUPPLIES 844-224-3338 FORM NO. 30043

Ordinance No. 63-2023 Passed December 4th, 2023

SECTION 3: This ordinance is deemed an emergency due to the fact that Ohio Revised Chapter 3780 regarding legalizing the recreation use of marijuana, enacted by passage of Issue 2, is effective December 7, 2023; and as this Ordinance is being considered on first reading December 4, 2023; and as it is the desire of Brewster Village Council to amend the Village's 6.03 Drug Free Workplace Policy to clearly state and convey to its employees that its zero-tolerance policy for marijuana shall remain in effect and continue to be enforced uninterrupted, said amendment/ordinance must be passed on first reading as an emergency to be in effect prior to Ohio Revised Code Chapter 3780 effective date of December 7, 2023.; for the forgoing reasons and for the protection of the public peace, health and safety and shall be in full force and effect upon passage.

Charles B Hawk
Mayor Charles B. Hawk
ATTEST:

K. Kris King
Village Clerk Treasurer K. Kris King

CERTIFICATE

I, K. Kris King, hereby certify that the above is a true copy of an ordinance passed at a regular meeting of the Brewster Village Council held on December 4, 2023.

K. Kris King
Clerk K. Kris King

I, K. Kris King, Clerk of the Council of the Village of Brewster, State of Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing ordinance was duly made by posting true copies thereof at five of the most public places in said corporation as determined by Council as follows: Office of Brewster Utilities, Brewster Barber Shop, Brewster Federal Credit Union, Post Office and Brewster Laundromat.

K. Kris King
Clerk K. Kris King