

**POLICY AND PROCEDURE**

**HANDBOOK**

**FOR**

**LOUDON COUNTY GOVERNMENT**

**December 2011**

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FOR  
LOUDON COUNTY GOVERNMENT

**TABLE OF CONTENTS**

PAGE

PART 1

INTRODUCTION

Section 1.1	Foreword .....	1
Section 1.2	Conflicting Policies Superseded .....	3
Section 1.3	Classifications of Employees .....	4

PART 2

EMPLOYMENT POLICIES

Section 2.1	Application for Employment .....	5
Section 2.2	Immigration Law Compliance .....	6
Section 2.3	Employment Examinations .....	7
Section 2.4	Probationary Period .....	8
Section 2.5	Promotions .....	9
Section 2.6	Transfers .....	10
Section 2.7	Termination of Employment .....	11
Section 2.8	Resignation or Voluntary Quit .....	12
Section 2.9	Equal Employment Opportunity .....	13
Section 2.10	Disabilities .....	14
Section 2.11	Employee Records .....	15
Section 2.12	Governmental Records .....	16

PART 3

COMPENSATION POLICIES

Section 3.1	Hours of Work and Pay Day .....	17
Section 3.2	Overtime .....	18
Section 3.3	Recording Work Hours .....	19
Section 3.4	Deductions From Pay .....	20

PART 4

EMPLOYEE BENEFITS

Section 4.1 Introduction to Benefits ..... 21  
Section 4.2 Medical, Dental and Life Insurance Benefits ..... 22  
Section 4.3 Retirement Plan..... 23  
Section 4.4 Worker’s Compensation Benefits ..... 24  
Section 4.5 Unemployment Compensation and Social Security ..... 25

PART 5

TIME-OFF BENEFITS AND LEAVES OF ABSENCE

Section 5.1 Sick Leave..... 26  
Section 5.2 Holidays ..... 28  
Section 5.3 Vacation ..... 29  
Section 5.4 Medical Leaves of Absence ..... 31  
Section 5.5 Occupational Leave of Absence ..... 32  
Section 5.6 Family and Medical Leave..... 33  
Section 5.7 Parental Leave..... 45  
Section 5.8 Bereavement Leave..... 46  
Section 5.9 Jury Duty Leave ..... 47  
Section 5.10 Witness Leave ..... 48  
Section 5.11 Voting Leave..... 49  
Section 5.12 Military Leave..... 50  
Section 5.13 Inclement Weather ..... 51

PART 6

EMPLOYEE CONDUCT

Section 6.1 Disciplinary Procedures ..... 52  
Section 6.2 Grievance Procedure ..... 53  
Section 6.3 Work Rules ..... 54  
Section 6.4 Attendance ..... 56  
Section 6.5 Political Activity ..... 57  
Section 6.6 Outside Employment ..... 58  
Section 6.7 Ethics Policy, Complaint Procedure and Ethics Committee..... 59  
Section 6.8 Pecuniary Interest Prohibited ..... 62  
Section 6.9 Sexual and Other Discriminatory Workplace Harassment ..... 63  
Section 6.10 Firearms and Weapons..... 66  
Section 6.11 Workplace Violence..... 67

Section 6.12 Drug-Free Workplace .....69  
Section 6.13 Dress Code .....70  
Section 6.14 Health and Safety .....71  
Section 6.15 County Vehicles.....72  
Section 6.16 Computers, Telephones and Other Electronic Communication  
Systems and Equipment.....74  
Section 6.17 No Tobacco Use.....76  
Section 6.18 Travel/Expense Reimbursement .....77  
  
ACKNOWLEDGMENT OF RECEIPT AND UNDERSTANDING.....78

## PART 1. INTRODUCTION

### Foreword

#### Section 1.1

The following provisions are promulgated pursuant to the Tennessee statutes on County Written Personnel Policies, T.C.A. § 5-23-101, *et seq.*, and shall be officially known and cited as the "Policy and Procedure Handbook for Loudon County Government" (hereinafter referred to as "Handbook").

This Handbook generally applies to all employees of the County of Loudon ("County" or "Loudon") (excluding employees of the Loudon County Board of Education), except those provisions which expressly only apply to certain employees. These provisions are the personnel policies of the County and are established to assist in maintaining compliance with applicable state and federal laws and utilization of human resources in a manner designed to maximize efficient and effective performance in providing appropriate service and leadership to the citizens of Loudon County and equitable treatment of County employees. In addition to this Handbook, the County and each Department or office of the County may adopt and publish other personnel policies and procedures so long as they do not conflict with or are inconsistent with the Handbook.

In accordance with the Tennessee statutes on County Written Personnel Policies, T.C.A. §5-23-101, *et seq.*, "County officials" may adopt separate "base personnel policies," as defined by that Act, for their individual offices even if such "base personnel policies" are inconsistent with or conflict with this Handbook, provided such policies are approved by an attorney as provided in T.C.A. § 5-23-101(a) and filed with the County Commission and County Clerk in accordance with T.C.A. § 5-23-101(c)(1) and (2).

It is the duty of each employee to maintain high standards of performance, cooperation, efficiency, and economy in the employee's work for the County. The County Mayor, supervising County officials (i.e., elected or appointed), Department Heads, and supervisors will organize and direct the work of their departments to achieve these objectives.

No provisions of this Handbook shall be construed as an employment agreement or legal contract. **Employment with Loudon County is "at will" and nothing in this Handbook shall be considered as a promise of employment for a definite duration.** Loudon County has the right to add, delete, or modify any of the provisions at its sole discretion without notice. It also has the right to not apply these policies in individual cases where application, in its opinion, is considered inappropriate. This Handbook is not intended to and does not bestow to employees any property or other rights to employment or employment benefits.

If after reading through this Handbook you have any questions, please discuss them with your supervising County official, supervisor or Department Head. They will be glad to help you in any way they can. Save this Handbook for future reference.

If any section or provision of this Handbook is held by any court to be invalid, the validity, force, and effect of any other section or provision is not affected unless it clearly appears that such other section or provision is wholly or necessarily dependent for its operation upon the invalid section or provision. If any section or provision of this Handbook is effectively made invalid by the enactment or change in federal, state, or local law, the section or provision shall be considered void.

**Conflicting Policies Superseded**  
**Section 1.2**

This Handbook supersedes and replaces any prior Handbook and/or general policies of Loudon County. Except as provided for by the operation of state law, this Handbook supersedes and replaces any existing policies of the County's individual Departments to the extent that such policies are contrary to, inconsistent with or in conflict with this Handbook.

## **Classifications of Employees**

### **Section 1.3**

The following are the different classifications of employees and a brief explanation of what that classification means:

a. Regular Full-Time Employees (exempt and nonexempt employees) work a minimum of forty (40) hours a week or the minimum number of hours prescribed for the position in question, which, at a minimum, is at least thirty-two (32) hours a week, and maintain regular employment status. Regular full-time employees are eligible to participate in all benefits subject to the limitations contained herein or in the specific benefit policies and plans.

b. Regular Part-Time Employees (exempt and nonexempt employees) regularly work less than a full time schedule, which is generally forty (40) hours a week. The fact that a part-time employee may infrequently work forty (40) hours or in excess of their regularly scheduled hours in a week will not convert such employee to regular full-time status.

c. Temporary or Seasonal Employees (exempt and nonexempt employees) are hired for a specific limited duration and their employment is generally less than six (6) months. They will only work certain designated hours.

Temporary or seasonal and part-time employees are covered by Workers' Compensation Insurance and Social Security, and if nonexempt, are paid overtime for any time worked in excess of forty (40) hours in any work week. Temporary, seasonal and part-time employees are not entitled to any other benefits, including vacations, holidays, sick leave, medical or retirement benefits, except as required by law.

The term exempt and nonexempt refers to definitions provided in the Fair Labor Standards Act (FLSA). Nonexempt employees are entitled to overtime pay after working a certain number of hours in accordance with the FLSA. For most nonexempt workers, overtime compensation begins after forty (40) hours. See Section 3.2 for an explanation of overtime compensation and compensatory time in lieu of overtime. Exempt employees, which typically include executive, professional, and administrative positions, are not entitled to overtime pay.

## **PART 2. EMPLOYMENT POLICIES**

### **Application for Employment**

#### **Section 2.1**

All applicants for employment are required to submit their applications on forms provided for that purpose by the County.

All blanks on the application form must be filled in and all questions answered in full. Any applicant who makes a false, misleading, or materially deficient statement on the application or, who, in the course of the application process, makes false or misleading statements or who fails to disclose material information, will not be hired or, if discovered after employment, is subject to disciplinary action, up to and including termination.

The County reserves the right to designate certain positions as being of sufficient responsibility or sensitivity so as to require the satisfactory completion of a background check, after a contingent offer of employment, which may be based on public and private sources of information, including but not limited to criminal and motor vehicle records, as well as confirmation of work and educational history. If the County utilizes consumer reporting agencies to obtain consumer reports on an individual, it shall do so in conformity with the requirements of the Fair Credit Reporting Act.

## **Immigration Law Compliance**

### **Section 2.2**

Loudon County is committed to employing only United States citizens and aliens who are authorized to work in the United States and does not unlawfully discriminate on the basis of citizenship or national origin.

In compliance with the Immigration Reform and Control Act of 1986, each new employee, as a condition of employment, must complete the Employment Eligibility Verification Form I-9 and present documentation establishing identity and employment eligibility. Former employees who are rehired must also complete the form if they have not completed an I-9 within the past three years, or if their previous I-9 is no longer retained or valid.

Employees with questions or seeking more information on immigration law issues are encouraged to contact Employee Benefits. Employees may raise questions or complaints about immigration law compliance to the County Mayor without fear of reprisal.

## **Employment Examinations**

### **Section 2.3**

All applicants and employees, before being employed or promoted, shall take and satisfactorily complete any required employment examination for the position sought. All examinations will be job related and will fairly and impartially test the relative capacity of the applicant to discharge efficiently the duties of the position.

Examinations that may be required include a written test of required knowledge; an oral interview; a performance test of manual skills; a physical test of strength, agility, and fitness; a written test of mental ability; an evaluation of training and experience; and other similar examinations.

All applicants for certain positions, after an offer of employment is extended, may be required to undergo a medical examination to determine physical and mental fitness to perform the essential functions of the positions. All applicants for safety-sensitive positions are subject to pre-employment drug testing and existing employees must undergo drug testing in connection with a transfer or promotion to a “safety sensitive” position. All employees may be required to undergo periodic medical examinations, if job-related and justified by business necessity, to determine continued physical and mental fitness to perform the essential functions of the position in which they are employed. The medical examination will be conducted by a physician(s) designated by the County at the County's expense.

Failure of an applicant or employee to take or successfully complete any required examination is sufficient cause for disciplinary action, including rejection of an applicant and termination of an employee.

## **Probationary Period**

### **Section 2.4**

The probationary period for all new County employees shall be for a continuous period of six (6) months. It is a period of adjustment and trial period during which the employee's attitude, work performance, job compatibility, and other job related criteria are examined.

New employees who, in the opinion of the supervising County official or Department Head, do not satisfactorily complete the probationary period, will be terminated. New employees who are not performing adequately during the probationary period may be terminated at any time during such period and nothing contained herein requires the County to continue such an employee for the full six (6) months.

For promotions and transfers, if the employee does not satisfactorily complete the probationary period in the opinion of the supervising County official or Department Head, the employee will be returned to the former position, if available, or to another position at the County's discretion. If there is no other available position that the employee can perform, then the employee is subject to layoff or termination.

New or rehired employees begin accruing sick and vacation leave from their hire date, but are not entitled to utilize it until successfully completing the probationary period. New employees are also not eligible for holiday pay, bereavement leave, or any other paid time off benefits until satisfactory completion of the probationary period, except as otherwise stated herein or required by law.

Nothing herein is intended to alter the employment at-will relationship.

## **Promotions**

### **Section 2.5**

The County provides promotional opportunities, when possible, to qualified employees. Employees are encouraged to take advantage of these opportunities by qualifying themselves for advancement through further education and study, improvement of skills, by passing the appropriate employment examination or licensing/certification requirements, and by maintaining a high level of job performance, service, interest and loyalty.

Promotions to vacant positions will be based on merit, ascertained by evaluation of job performance and relative qualifications. Continuous service alone is not sufficient to warrant a promotion. Vacancies may be filled by the promotion of current employees, or in order to select the best available candidate, by recruitment of a new employee.

## **Transfers**

### **Section 2.6**

Any employee who successfully completes the probationary period may, at the discretion of the County, be transferred to the same or different position in a different department. Employees seeking a transfer must submit a written request to the supervising County official or Department Head. If a vacancy in that position exists or becomes available, an employee who has requested a transfer and who is qualified for the position will be considered in accordance with County policy. Transfer requests remain active only for a period of six (6) months from the original date of submission.

## **Termination of Employment**

### **Section 2.7**

All terminations of employment will be designated as one of the following types:

- (1) Resignation or voluntary quit;
- (2) Lay-off or reduction in force;
- (3) Discharge; or
- (4) Retirement.

At the time of termination and prior to receiving a final paycheck, all records, equipment, supplies and other items of County property in the employee's custody must be delivered to the supervising County official or Department Head. Any amount due to shortage or damage of the above shall be withheld from the employee's final compensation, subject to the requirements of the Fair Labor Standards Act ("FLSA").

Employees who resign are requested to give at least two (2) weeks prior notice. Retiring employees should give at least two (2) months notice of their intention to retire.

## **Resignation Or Voluntary Quit**

### **Section 2.8**

An employee may resign by submitting written notice of the reasons and the effective date to the supervising County official or Department Head. Two (2) weeks advance notice is requested. Unauthorized absence from work for a period of three (3) consecutive days may be considered a voluntary quit. County officials and Department Heads shall forward all notices of resignation to the County Mayor immediately upon receipt. With the written approval of the County Mayor and the supervising County official or Department Head, an employee may withdraw a notice of resignation up until the end of the last day provided in the notice.

## **Equal Employment Opportunity**

### **Section 2.9**

It is the policy of the County to provide equal employment opportunities in its employment, promotion, wages, benefits and all other privileges, terms and conditions of employment to all qualified persons without regard to race, color, religion, gender, age, national origin, handicap, disability, genetic information, military service or status as a veteran, in accordance with applicable federal and state laws.

Any applicant or employee who feels discriminated against in any term or condition of employment should promptly discuss the matter with the County Mayor, currently Estelle Herron, or Employee Benefits, currently Tammy Reynolds. Complaints or reports of sexual and other discriminatory harassment are to be directed to the County Mayor or to Employee Benefits, as detailed in Section 6.9 of this Handbook. Retaliation against employees who complain of, report, or cooperate in the investigation of any employment discrimination is strictly forbidden, and any individual who believes he or she is the subject of retaliatory conduct should **IMMEDIATELY** report the same to the County Mayor, currently Estelle Herron or Employee Benefits, currently Tammy Reynolds.

## **Disabilities**

### **Section 2.10**

It is the County's policy to comply with the Americans With Disabilities Act, as amended, (ADAAA) and other applicable laws prohibiting discrimination against qualified employees and applicants with respect to any terms, privileges, or conditions of employment because of a disability. This policy applies to all personnel and employment practices. The County endorses the mandate of the ADAAA and other applicable laws to remove barriers which prevent qualified individuals with disabilities from enjoying the same employment opportunities that are available to persons without disabilities.

Reasonable accommodations will be provided to qualified disabled applicants and employees with known limitations and who require an accommodation in order to perform essential job functions, unless such accommodation would cause an undue hardship.

Disabled employees and applicants are invited to identify any proposed reasonable accommodation that would enable them to safely perform the essential functions of the position to their supervising County official or Department Head, or to Employee Benefits, currently Tammy Reynolds. The County will consider all job accommodation requests, and respond to such requests within a reasonable period of time. Information regarding any disability and other medical information will be kept confidential in accordance with the ADAAA and retained in separate medical files.

## **Employee Records**

### **Section 2.11**

Employees are responsible for keeping the County advised of correct name, address, telephone number, social security number, and information relative to family status. The name, address and telephone number of an emergency contact is also essential. The information is used for maintaining proper records for payroll, Social Security, and insurance, including the administration of COBRA benefits.

A personnel file is maintained for each employee, and contains applications, personal data, enrollment forms, performance reviews, disciplinary actions, and other employment information. The file is used by the County Mayor, Employee Benefits, County officials, Department Heads, supervisors, or other authorized personnel. By law, the County must make these files available to certain state and federal government agencies upon request, or in connection with a lawsuit, and most personnel files are subject to public review in accordance with the Tennessee Public Records Act.

Employees may review their own personnel files during regular business hours in the presence of their supervising County official or Department Head, but may not remove originals of any documents or records.

A separate medical file is also maintained for each employee. This medical file is confidential and will not be disclosed except as required by law.

## Governmental Records

### Section 2.12

Generally, records maintained by the County are subject to public inspection in accordance with the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-503 *et seq.* Employees may, however, acquire or use confidential information that is not subject to public inspection under the Act. To the extent permitted or required by law, this information should be kept confidential and not disclosed or discussed with anyone who is not authorized to receive it.

Employees must comply with all laws relating to governmental records. Employees should be aware that it is a crime to alter, falsify, destroy, remove, conceal or tamper with governmental records pursuant to T.C.A. § 39-16-504, which provides:

39-16-504. Destruction of and tampering with governmental records. – (a) It is unlawful for any person to:

(1) Knowingly make a false entry in, or false alteration of, a governmental record;

(2) Make, present, or use any record, document or things with knowledge of its falsity and with intent that it will be taken as a genuine governmental record; or

(3) Intentionally and unlawfully destroy, conceal, remove, or otherwise impair the verity, legibility, or availability of a governmental record.

(b) A violation of this section is a Class A misdemeanor.

(c)(1) Upon notification from any public official having custody of government records, including those created by municipal, county or state government agencies, that records have been unlawfully removed from a governmental records office, appropriate legal action may be taken by the city attorney, county attorney or attorney general, as the case may be, to obtain a warrant for possession of any public records which have been unlawfully transferred or removed in violation of this section. (2) Such records shall be returned to the office or origin immediately after safeguards are established to prevent further recurrence of unlawful transfer or removal.

## **PART 3. COMPENSATION POLICIES**

### **Hours of Work And Pay Day**

#### **Section 3.1**

The County establishes hours of work for each position, based on the needs of service and the needs of the public. The starting and ending times of shifts varies by department and may vary during different times of the year. The normal work week for most employees, excluding the Sheriff's Office, consists of forty (40) hours.

Currently, hourly employees are paid every two (2) weeks and salaried employees are paid twice a month.

## **Overtime**

### **Section 3.2**

Overtime must be authorized by prior approval of the supervising County official, Department Head, supervisor, or County Mayor, or the employee is subject to discipline. Exempt employees are not entitled to overtime pay or compensatory time off. All nonexempt employees required to work overtime are paid one and one-half (1 ½) times the regular hourly rate for overtime work, which begins for most employees after working 40 hours in a work week. Payments made for occasional periods when no work is performed due to vacation, holiday, sick leave and the like are not included in an employee's regular rate of pay for purposes of computing overtime. To the extent possible and practical, overtime will be distributed equally within the department.

In lieu of overtime pay and at the discretion of the County, nonexempt employees may be granted compensatory time off at the rate of one and one-half (1 ½) hours off for every one (1) hour of overtime worked pursuant to a written agreement between the County and the employee. Employees may not accrue compensatory time off in excess of limits allowed under the FLSA. Upon termination of employment, employees will be paid for any accrued but unused compensatory time in accordance with the FLSA.

Exempt and nonexempt employees are defined by the FLSA. Exempt employees include executive, professional, and administrative employees as those terms are defined under the FLSA. Exempt employees will be paid a salary which is intended to cover all hours worked by the employee.

## **Recording Work Hours**

### **Section 3.3**

The County must maintain and keep various records in order to comply with the FLSA, the Family and Medical Leave Act, and other applicable laws. All employees must accurately record their hours of work in order to insure that adequate records of hours worked, time off, and accrued leave are kept, and to insure that employees are correctly paid in a timely manner.

Depending upon department and position, employees must record their hours worked on a time sheet, time card, or other time record. This should be done on a daily basis. Any changes/corrections to a time record must be made by the supervising County official, the employee's supervisor or Department Head.

Falsification of a time sheet, card or record will result in discipline, up to and including termination. Employees who are aware of but do not report falsifications of time records are also subject to discipline, up to and including discharge.

## **Deductions From Pay**

### **Section 3.4**

Deductions from pay shall be made only as required or permitted by law or regulation, or as authorized by the employee. The law requires that Loudon County make certain deductions from every employee's compensation. Among these are applicable federal, state, and local income taxes. Loudon County also must deduct Social Security taxes on each employee's earnings up to a specified limit that is called the Social Security "wage base." Loudon County matches the amount of Social Security taxes paid by each employee.

If you have questions concerning why deductions were made from your pay check or how they were calculated, the Finance Office can assist in having your questions answered.

Employees who believe that impermissible deductions from their pay have been made are encouraged to bring such complaints to the immediate attention of the Budget Director. Loudon County shall promptly investigate all such complaints. If the investigation reveals that impermissible deductions have been made from an employee's pay, Loudon County will repay the employee(s) in question and make any necessary changes to its practices and procedures. Employees shall not be retaliated against for bringing good faith complaints regarding deductions from pay to the attention of Loudon County. Employees are strongly encouraged to bring any complaints of retaliation for raising such complaints to the immediate attention of the Budget Director or the County Mayor.

## **PART 4. EMPLOYEE BENEFITS**

### **Introduction To Benefits**

#### **Section 4.1**

The following benefits are provided to eligible employees. Unless otherwise indicated, or except as required by law, they are provided only to regular full-time employees on the first day of the month following an employee's first full month of employment. These benefits are provided to show the County's appreciation for employees' hard work and continued service. However, this Handbook is not intended to give employees any contractual right to any of these benefits and they are subject to change or elimination at the County's sole discretion.

It is the employee's responsibility to notify Employee Benefits of any changes that may affect benefits such as the birth or adoption of children, pregnancy, changes in marital status, changes in designated beneficiaries, change in address, etc.

## **Medical, Dental and Life Insurance Benefits**

### **Section 4.2**

All regular full-time employees become eligible for medical, dental, vision and life insurance benefits after completing the number of days of continuous employment required by the applicable plan. At the current time, employees are eligible on the first day of the month following the employee's first full month of employment. The County's current medical benefits plan provides for hospital care, surgery, physicians fees, prescription drugs and x-rays subject to certain deductibles, co-insurance, exclusions and limitations. The dental plan provides coverage for exams, cleanings, x-rays, fillings, root canals, crowns, and bridgework, also subject to deductibles, co-insurance, exclusions and limitations. The group term life insurance plan provides life insurance for employees and their covered dependents. The County pays a substantial portion of the cost of these benefits for employees and their dependents.

Details about these plans are available for employees' inspection and are summarized in a booklet. The terms and conditions of the actual insurance policies will govern employees' entitlement to benefits. For assistance in obtaining copies of summary plan descriptions or complete plans, contact Employee Benefits.

## **Retirement Plan**

### **Section 4.3**

The County provides a retirement plan for all eligible employees pursuant to the Tennessee Consolidated Retirement System. It is administered by a Board of Trustees which supervises its operation, interprets the meaning of the specific provisions, determines eligibility for participation and benefits, and decides when benefits are to be paid in accordance with the terms of the Plan. The purpose of the Plan is to provide a basic benefit at retirement based on an employee's final compensation, contributions to the Plan, years of employment and age at retirement. Employees may also be eligible for social security retirement benefits.

Complete details about the Plan are available for employees' inspection. The terms and conditions of the actual Plan will govern employees' entitlement to benefits. Contact Employee Benefits for additional information.

## **Workers' Compensation Benefits**

### **Section 4.4**

Any employee injured in the course and scope of employment may be entitled to benefits under the Tennessee Workers' Compensation Act ("Act"). The County pays the full cost of this coverage. Employees will receive medical expenses and pay in accordance with such Act.

Employees injured on the job must immediately report the injury to their supervising County official or Department Head, regardless of how minor the injury seems at the time. The County maintains a list of at least three (3) reputable physicians from which an employee will select an attending physician. The County will assist employees in making the necessary medical appointments and the initial transportation to the physician if necessary. An employee who wishes to be examined by a physician not listed must first request and receive written permission from Employee Benefits in order for that physician's costs to be covered.

See the Medical Leave, Occupational Leave, and Family and Medical Leave policies for details regarding absences due to injuries and illnesses in the course and scope of employment.

Employees may be required to submit to post-accident drug and/or alcohol testing in conformity with the County's Drug and Alcohol policies, and may forfeit benefits in the event of a positive test.

## **Unemployment Compensation and Social Security**

### **Section 4.5**

All eligible employees of the County are covered under the benefits of the Tennessee Employment Security Act. The County pays the full cost of this program.

Under the Federal Insurance Contribution Act (“FICA”), a percentage of an employee’s pay is deducted from each pay check. The County contributes to Social Security benefits by matching dollar for dollar the amount of this deduction. This benefit, though mandatory, is provided for each employee and amounts to a considerable investment in Old Age Retirement and Medicare benefits under Social Security.

## **PART 5. TIME-OFF BENEFITS AND LEAVES OF ABSENCE**

### **Sick Leave**

#### **Section 5.1**

Paid sick leave is a benefit and privilege and not a right or compensation, and will not be paid out at termination of employment. However, accrued but unused sick leave may be applied towards an employee's eligibility under the Tennessee Consolidated Retirement System ("TCRS"), subject to the terms and conditions of the TCRS.

All regular full-time employees accrue sick leave at the rate of one (1) day (eight (8) hours for employees who work forty (40) hours per week or a pro rata amount for employees who work less than forty (40) hours per week) per month for each completed month of service and paid sick leave may be accrued up to a maximum of twelve (12) days per fiscal year. The County's fiscal year begins July 1 and ends June 30. Sick leave begins accruing from the date of an employee's hire, but it may not be utilized until and unless an employee has completed his or her probationary period.

Employees may carry over sick leave from one fiscal year to another with no maximum number of sick days. For instance, an employee may accrue up to 12 days in a fiscal year. If the employee uses only 2 sick days during the year, the employee may carry over 10 sick days into the next fiscal year and will earn up to 12 sick days during the next fiscal year.

Paid sick leave may be used for the following reasons: personal illness or physical incapacity; illness or incapacity of the employee's immediate family member (current spouse, child or parent, including step relations) requiring the employee's personal care and attention; enforced quarantine of the employee in accordance with community health regulations; and for a doctor's appointment that cannot be scheduled for either before or after work. Sick leave does not accrue while an employee is on a leave of absence.

In order to utilize paid sick leave, employees must notify the supervising County official, Department Head or supervisor prior to the beginning of the scheduled work day of the reason for absence. Employees may be required to submit a medical statement signed by a licensed physician certifying that the employee has been incapacitated from work for the period of absence, stating the nature of the employee's sickness or injury, and stating that the employee is physically able to return to work and perform the job duties.

If the absence is due to illness or incapacity of a family member, written certification of the need for the employee to care for the family member is required for any absence in excess of three days. Verification may also be required for shorter absences upon notice by the employee's supervisor.

Employees are strictly forbidden from falsifying the reason for an absence. Abuse of the benefit may result in absences being unexcused, and employees are subject to discipline for violating this policy.

Paid sick leave may be taken as necessary, but may not be extended beyond the employee's number of accrued sick days at the time of the absence. Employees are not permitted to donate sick leave time to any other County employee.

Paid sick leave does not count as hours worked and is not included in an employee's regular rate for overtime purposes. Absences which are covered by paid sick leave and which qualify under the FMLA count toward an eligible employee's entitlement under the FMLA. At no time can paid sick leave, when used in conjunction with other paid benefits (such as worker's compensation benefits, disability benefits, etc.) be used in an amount which would result in an employee receiving an amount greater than the employee's regular compensation. If an employee is approved for disability benefits retroactively covering a period of time when the employee used paid sick leave, the County will not require the employee to pay back any overpayment of sick leave. However, from the date the County is informed of disability benefits approval, paid sick leave will only be approved in an amount sufficient to equal regular compensation by the employee.

## **Holidays**

### **Section 5.2**

The following holidays will be recognized as paid holidays for all regular full-time employees:

- New Years Day (January 1)
- Martin Luther King, Jr. Day (3rd Monday in January)
- President's Day (3rd Monday in February)
- Good Friday (Friday before Easter Sunday)
- Memorial Day (Last Monday in May)
- Independence Day (July 4)
- Labor Day (1st Monday in September)
- Veteran's Day (November 11)
- Thanksgiving Day (4th Thursday in November)
- Friday after Thanksgiving (4th Friday in November)
- Christmas Eve (December 24)
- Christmas Day (December 25)

Eligible employees receive a full day of regular pay and are excused from work. When a recognized holiday falls on a Saturday, the preceding Friday will be observed as the holiday. When a recognized holiday falls on a Sunday, the following Monday will be observed as the holiday. Holiday pay is not counted as hours worked or included in an employee's regular rate of pay.

Where possible, every eligible employee is given time off on recognized holidays, except those required to maintain essential or emergency County operations. When an employee is required to work on a recognized holiday, the employee will receive holiday pay calculated on the employee's regular schedule and, in addition, any work performed on the holiday is compensated at the employee's regular pay (i.e. double-time for the hours worked on normal schedule). Employees on a leave of absence for any reason are not entitled to paid holidays.

Unless prior approval of the supervising County official, Department Head or supervisor is obtained, an employee will not receive holiday pay unless the employee works the last scheduled shift before the holiday and the first scheduled shift after the holiday.

## **Vacation**

### **Section 5.3**

All regular full-time employees earn paid vacation at the employee's regular rate of pay after successfully completing the probationary period.

The amount of vacation an employee accrues each month is determined by the individual employee's number of years of continuous service with the County. Employees with zero (0) to four (4) years of continuous service accrue one (1) day (eight (8) hours for employees who work forty (40) hours per week or a pro rata amount for employees who work less than forty (40) hours per week) of vacation per month for each completed month of service up to twelve (12) days per fiscal year (July 1 through June 30). New or rehired employees begin accruing vacation from their employment date, but are not entitled to utilize it until successfully completing the probationary period. Employees with five (5) to nine (9) years of continuous service accrue one and one-quarter (1  $\frac{1}{4}$ ) days (ten (10) hours) of vacation per month for each completed month of service up to fifteen (15) days per fiscal year. Employees with ten (10) to fourteen (14) years of continuous service accrue one and one-half (1  $\frac{1}{2}$ ) days (twelve (12) hours) of vacation per month for each completed month of service up to eighteen (18) days per fiscal year. Employees with fifteen (15) to nineteen (19) years of continuous service accrue one and three-quarter (1  $\frac{3}{4}$ ) days (fourteen (14) hours) of vacation per month for each completed month of service up to twenty-one (21) days per fiscal year. Employees with twenty (20) or more years of continuous service accrue two (2) days (sixteen (16) hours) of vacation per month for each completed month of service up to twenty-four (24) days per fiscal year. Vacation accrual will be calculated on a pro rata basis for employees who work less than forty (40) hours per week.

All vacation must be pre-approved by the employee's Department Head who will schedule vacation so as to meet the operational requirements of the department. Vacation time may not be taken in less than one-half (1/2) day increments, except for FMLA purposes.

Requests for vacation should be made as far in advance as possible. If two or more employees request vacation for the same time period and the supervising County official or Department Head determines it will create a hardship or disrupt operations, the employee with the most seniority will be granted vacation first.

Paid vacation does not accrue while an employee is on a leave of absence. It may not be loaned or donated to another employee. Upon cessation of employment, employees are paid for any unused accrued vacation (not to exceed thirty (30) days) at the employee's regular rate of pay.

Vacation may be carried over up to a maximum of thirty (30) days. Effective January 1, 2008, accrued but unused vacation in excess of the 30 day "ceiling" shall, on January 1<sup>st</sup> of every calendar year, be converted into sick leave and be available for use pursuant to the terms and conditions of the sick leave policy (5.1).

Paid vacation is not counted as hours worked or included in an employee's regular rate for overtime purposes. An employee's use of paid vacation in situations that qualify for family or medical leave under the FMLA counts toward the employee's entitlement under the FMLA. At no time can paid vacation leave, when used in conjunction with other paid benefits (such as worker's compensation benefits, disability benefits, etc.) be used in an amount which would result in an employee receiving an amount greater than the employee's regular compensation. If an employee is approved for disability benefits retroactively covering a period of time when the employee used paid vacation leave, the County will not require the employee to pay back any overpayment of vacation leave. However, from the date the County is informed of disability benefits approval, paid vacation leave will only be approved in an amount sufficient to equal regular compensation by the employee.

## **Medical Leaves of Absence**

### **Section 5.4**

Medical leaves of absences due to any medical reason or a combination of multiple medical reasons, inclusive of workplace illnesses or injuries, or as a reasonable accommodation under the Americans with Disabilities Act, or for an FMLA-eligible employee's serious health condition(s), may be granted at the sole discretion of the County for a maximum period which is not to exceed twelve months (inclusive of FMLA entitlement). Except where covered by workers' compensation benefits, disability benefits or by substituted paid sick leave or vacation pay, such leave shall be unpaid. Employees may be required to report periodically as to their status and intent to return to work, to provide physician certification of the need for and the duration of any requested leave (during any FMLA-covered leave), and, upon expiration of any FMLA entitlement, to provide the County with requested medical information related to the need for continuing leave and the employee's ability to perform job related functions.

Note: The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to requests for medical information under this section or any other, unless such information is directly related to the employee's request for reasonable accommodation. "Genetic Information" as defined by GINA includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Employees seeking to return to duty at the expiration of any medical leave in excess of FMLA entitlement can be required to submit to a fitness for duty examination, or, at the County's choice, to provide a physician's release to return to work. The protections and entitlements of the FMLA do not apply to medical leaves of absence which extend beyond the twelve week limit for eligible employees, or to leaves of absence for employees who are not eligible for FMLA leave.

## **Occupational Leave of Absence**

### **Section 5.5**

Upon submitting the written recommendation of a designated physician detailing the medical necessity and duration, employees injured in the course and scope of employment may be granted an occupational leave of absence for a period not to exceed twelve (12) months. While on Occupational Leave, employees are required to report periodically on their status and intent to return to work and may be required to report to the County's designated physician for consultation. Before returning to work, employees must present a physician's statement releasing the employee to return to work and Loudon County reserves the right to send a returning employee to a physician of its choosing for an independent evaluation of his or her fitness to return to work. Occupational Leave is Medical Leave for the purposes of the FMLA Policy and the Medical Leaves of Absence Policy.

Employees on Occupational Leave who decline to accept light duty work may remain on FMLA leave if eligible; however, an employee's refusal to accept appropriate light duty work may result in a cessation of temporary disability benefits. Any decision to offer light duty work during a period of Occupational Leave is in the absolute discretion of the County. Any such light duty assignments will be made based on the availability of appropriate work in the department or office compatible with the individual's medical restrictions (which does not displace other employees or hinder efficient delivery of services) and shall be made for an initial maximum period of twenty work days. Any additional extensions of such assignments must be coordinated with the Department Head, supervising County official and Employee Benefits in advance.

After being released to work by a physician, employees must report to work immediately. If an employee does not report to work within three (3) working days after a physician's release, he or she will be considered to have voluntarily resigned.

The first twelve (12) work weeks (or the remainder of an employee's entitlement to FMLA leave) of Occupational Leave counts toward an employee's entitlement under the FMLA.

## Family and Medical Leave

### Section 5.6

The purpose of Loudon County's Family and Medical Leave Policy (the "FMLA Policy") is to allow employees to balance their work and family life by taking reasonable leave for certain medical reasons, for the birth or adoption of a child, for the care of a child, spouse or parent who has a serious health condition, for leave related to caretaking of an injured servicemember, and for leave related to exigencies created by a family member's call to active duty without having to worry about job security or having to choose between their jobs or their family. The FMLA Policy is intended to balance the demands of the workplace with the needs of employees and families, to promote the stability and economic security of our employees and to promote Loudon County's interest in preserving its employees' family integrity.

Loudon County also recognizes that the number of households in which a single parent or both parents work has significantly increased and, as a result, it is important for the development of children and the family unit that both fathers and mothers are able to participate in early child rearing and the care of family members who have serious health conditions. Loudon County developed this policy to address these concerns and needs of its employees and their families, while accommodating its interest in providing quality service to its citizens in an efficient manner.

The Family and Medical Leave Act (FMLA) of 1993 grants up to 12 weeks of job-protected leave to eligible employees for qualifying family and medical reasons. The National Defense Authorization Act of 2008 permits eligible employees to use their 12-week leave entitlement for any "qualifying emergency" as described above and up to 26 weeks to care for a covered servicemember who is recovering from a serious illness or injuries as described above. This policy sets forth the terms, conditions and procedures under which an employee may be granted a medical or family leave of absence. This policy supersedes any former versions of the County's FMLA Policy. If another policy (i.e., vacation, attendance, etc.) conflicts with this policy, this policy governs.

#### Definitions

Child means a biological, adopted, or foster child, a stepchild, legal ward, or a child of a person standing in loco parentis, who is under 18 years of age or is 18 or older and incapable of self care because of a mental or physical disability.

Continuing Treatment by a Health Care Provider includes any one of the following five sets of circumstances:

(1) A period of incapacity (i.e., an inability to work, attend school or perform other regular daily activities) that lasts more than 3 consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, and that also

involves: (i) treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider, within 30 days of the start of the period of incapacity, or (ii) treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment (i.e., a course of prescribed medication or therapy) under supervision of the health care provider;

(2) Any period of incapacity because of pregnancy or prenatal care;

(3) Any period of incapacity or treatment for such incapacity because of a chronic serious health condition, as long as the chronic serious health condition (i) requires periodic visits (at least 2 visits per year) for treatment by a health care provider, and (ii) continues over an extended period of time, including recurring episodes of a single underlying condition, and (iii) that may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.);

(4) A period of incapacity which is long term or permanent due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g., Alzheimer's disease, a severe stroke, or the terminal stages of a disease, etc.); or

(5) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider either for (i) restorative surgery after an accident or injury, or (ii) for a condition that would likely result in a period of incapacity of longer than three consecutive days in the absence of medical intervention, (e.g., cancer, severe arthritis, or kidney disease.)

Eligible employee means any employee who has been employed by Loudon County for a total of at least 12 months (not necessarily consecutive), who worked at least 1,250 hours during the previous 12-month period, and who works at a worksite with 50 or more employees located within 75 miles.

Health Care Provider means (1) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; (2) podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law; (3) nurse practitioners, nurse midwives and clinical social workers who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law; (4) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts, or (5) any health care provider recognized by Loudon County's Health Plan.

In loco parentis includes those persons with day-to-day responsibilities to care for and financially support a child, or in the case of an employee, those persons who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

Intermittent leave is leave taken in separate blocks of time due to a single illness or injury, rather than for one continuous period of time, and may include leave periods from one hour or more to several weeks. Intermittent leave is limited solely to treatment, recovery from treatment, recovery from illness, or for periods of disability due to chronic serious health conditions including psychological conditions.

Mental or physical disability means a physical or mental impairment that substantially limits one or more of the major life activities of the individual, as defined under the Americans With Disabilities Act, as amended (ADAAA). A "physical or mental impairment" is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, speech organs, respiratory, cardiovascular, reproductive, endocrine; it also includes mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

Parent means the biological parent of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a child, such as a foster or adoptive parent or stepparent. It does not include a parent-in-law.

Qualifying Exigencies means job protected leave authorized for families of National Guard and Reserve personnel on active duty to manage their affairs – “qualifying exigencies.” This may include:

1. short-notice deployment
2. military events and related activities
3. childcare and school activities
4. financial and legal arrangements
5. counseling
6. rest and recuperation
7. post-deployment activities and
8. additional activities where the employer and employee agree to the leave

Reduced leave schedule means a leave schedule that reduces an employee's usual number of hours per workweek or hours per workday on a temporary basis, i.e., a temporary change from full-time to part-time.

Regimen of Continuing Treatment for chronic conditions such as asthma or cancer, etc. is the taking of prescription drugs or participating in therapy requiring special equipment to resolve or alleviate the health condition. The taking of over-the-counter medications, bed rest, exercises

and other similar activities that can be initiated without a visit to a health care provider are **not**, by themselves, sufficient to be considered continuing treatment.

Serious health condition that entitles an employee to FMLA leave means any illness, injury, impairment, or physical or mental condition involving: (1) inpatient care (i.e., an overnight stay in a hospital or similar medical facility), and any corresponding period of incapacity or subsequent treatment in connection with such inpatient care; or (2) incapacitated for more than 3 calendar days plus 2 visits to a health care provider within 30 days; or (3) continuing treatment by a health care provider at least 2 times per year. Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Cosmetic treatments, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, and the like are not serious health conditions, unless inpatient hospital care is required or unless complications develop.

Spouse means a husband or wife as defined under applicable State law for purposes of marriage.

### **Types of Leave Provided by FMLA**

An eligible employee may request up to twelve (12) weeks of unpaid, job protected FMLA leave for the following reasons:

1. Family

- For incapacity due to pregnancy, prenatal medical care or childbirth;
- To care for an employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition.

2. Medical

- A serious health condition that renders the employee unable to perform the functions of his or her job. FMLA does not apply to the occasional absence for sickness.

3. Qualifying Exigency Leave

Eligible employees with a spouse, son, daughter, or parent on active duty or called to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, certain counseling sessions, and attending post-deployment reintegration meetings.

#### 4. Military Caregiver Leave

Eligible employees may take up to twenty-six (26) weeks of leave during a single 12-month period to care for a covered servicemember. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status, or is on the temporary disability return list.

#### **Employee Eligibility**

Employees are eligible for FMLA leave if they have been employed at Loudon County for at least one year, have worked at least 1,250 hours over the previous 12 months, and work at a site or sites with 50 or more employees in a 75-mile radius. Loudon County has elected to use the "rolling" 12-month period allowed by the FMLA. Any FMLA leave taken by an employee during the preceding twelve (12) months will be used to determine the amount of available leave pursuant to the FMLA.

For example, if an employee used six weeks of FMLA leave beginning June 1, 2010, two weeks of FMLA leave beginning September 1, 2010, and four weeks of FMLA leave beginning November 1, 2010, the employee would not be entitled to any additional FMLA leave until June 1, 2011. On June 1, 2011, the employee would be entitled to six weeks of FMLA leave, and on September 1, 2011, the employee would be entitled to an additional two weeks, etc. If an employee took twelve weeks of FMLA leave beginning April 1, 2012, the employee would not be entitled to any additional FMLA leave until April 1, 2013.

If any Loudon County policy conflicts with FMLA, the FMLA will govern. Eligible employees are encouraged to request FMLA leave in accordance with this policy. Employees on any leave which qualifies for FMLA leave, specifically workers' compensation, short term disability, long term disability and maternity leave, will be placed on FMLA leave as soon as it comes to the attention of the Employee Benefits Department.

#### **Amount of Leave**

Eligible employees are entitled to a total of twelve (12) weeks of medical leave, family leave, qualifying exigency leave, or a combination thereof during a twelve (12) month period. Eligible employees are entitled to a combined total of 26 workweeks of leave for military caregiver leave and leave for any other FMLA-qualifying reason during the same single 12-month period, provided that the employee may take no more than twelve (12) weeks of leave because of a qualifying exigency or any other FMLA-qualifying reason. For example, an eligible employee may, during a single 12-month period, take eighteen (18) weeks of FMLA leave to care for a covered servicemember and eight (8) weeks of FMLA leave because of the employee's own serious health condition; however, the employee may not take more than twelve

(12) weeks of leave due to his or her own serious health condition or any other FMLA-qualifying reason.

The entitlement to family leave for the birth or placement of a child for adoption or foster care will expire 12 months from the date of the birth or placement of the child.

### **Intermittent or Reduced Schedule Leave**

Intermittent leave or a reduced leave schedule is available in two (2) circumstances under the FMLA. First, if medically necessary for a serious health condition of the employee, or the employee's spouse, child or parent, or a serious injury or illness of a covered servicemember, the employee may elect such leave. Second, for the birth of a child or placement of a child for adoption or foster care, Loudon County, at its discretion, may grant such leave. If an employee goes on intermittent leave or a reduced leave schedule, Loudon County may, at its discretion, require employees requesting intermittent or a reduced leave schedule to transfer temporarily to an available alternative position with equivalent pay and benefits or to a part-time position with the same hourly rate of pay and benefits for which the employee is qualified and which better accommodates recurring periods of leave. While on an intermittent leave schedule, the employee will remain on active status even if the intermittent periods of leave are unpaid.

If an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken will be counted toward the 12 weeks of leave to which an employee is entitled. For example, if a full-time employee who normally works five days a week takes off one day, the employee would use 1/5 of a week of FMLA leave. Similarly, if a full-time employee who normally works 8-hour days works 4-hour days under a reduced leave schedule, the employee would use ½ week of FMLA leave each week. Where an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled is determined on a prorata or proportional basis by comparing the new schedule with the employee's previous regular schedule.

For example, if a part-time employee who normally works 30 hours per week works only 20 hours a week under a reduced leave schedule, the employee's ten hours of leave would constitute one-third of a week of FMLA leave for each week the employee works the reduced leave schedule. If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks prior to the beginning of the leave period would be used for calculating the employee's normal workweek.

Where an employee is on intermittent leave or a reduced leave schedule, Loudon County may seek a fitness-for-duty certification once every thirty (30) days (or less frequently) if reasonable safety concerns exist regarding performance of the employee's job duties based on the condition that triggered the leave. The fitness-for-duty certification is at the employee's expense. Loudon County may delay restoration following leave until a satisfactory fitness-for-duty certification has been submitted by the employee. Loudon County will give notice of the

fitness-for-duty certification requirement at the same time it issues the Designation Notice (Form WH-382) approving intermittent leave or a reduced leave schedule.

### **Substitution of Paid Leave**

FMLA leave is unpaid. However, as described below, Loudon County requires its employees to substitute any accrued sick or vacation leave, which is available to an employee as of the date that the FMLA leave begins, on a consecutive daily basis until the accrued sick or vacation leave is exhausted. For intermittent leave or leave on a reduced schedule, substitution of sick leave or accrued vacation is required in increments of ½ hour. The substitution of accrued sick or vacation is not required or permitted when the medical leave under the FMLA results in the payment of benefits under Workers' Compensation or other disability plan, except that employees may elect to supplement such benefits with accrued sick leave and, once exhausted, accrued vacation leave up to the employee's regular rate of pay. Any time off by an employee on vacation, paid sick leave, occupational leave, maternity leave, or other leave that qualifies for family or medical leave under the FMLA will count against the employee's entitlement under the FMLA.

For any period of time on approved FMLA leave for which accrued sick and vacation leave is not required to be used, an employee may elect to apply accrued sick and vacation leave to that time.

### **Making a Request for FMLA Leave**

A. **Administration**. The employee must provide a thirty (30) day advance notice of the need to take FMLA leave when leave is foreseeable based on an expected birth, placement for adoption or foster care, planned medical treatment for a serious injury or illness of a covered servicemember, and as soon as practicable when not foreseeable. Where the need for leave is unforeseeable, the employee must give notice before the employee's scheduled work time in accordance with Loudon County's Attendance Policy to be eligible to substitute vacation or sick leave for the FMLA leave. Employees must provide sufficient information for Loudon County to reasonably determine whether the FMLA may apply to the leave request.

An employee's supervisor should contact Employee Benefits as soon as the supervisor learns the employee is or will be out due to a personal illness or injury that is expected to last four (4) consecutive working days or more. In any event, where an employee is absent for five (5) consecutive working days for illness or injury, the supervisor **must** notify Employee Benefits in order to determine whether the employee's leave qualifies as FMLA leave.

After receiving an employee's request for leave, Loudon County will provide an employee with a Notice of Eligibility and Rights & Responsibilities (DOL Form WH-381) indicating whether the requested leave is FMLA eligible or non-eligible and will set forth the terms of the leave. When Loudon County has enough information, including the medical certification discussed below, to make a determination about whether the leave actually qualifies as FMLA

leave, Loudon County will designate the leave as FMLA (or not) in writing as FMLA on the Designation Notice (DOL Form WH-382) within five (5) business days absent extenuating circumstances. Whenever possible, Loudon County will provide the employee with its estimate of number of hours, days or weeks that will count against the employee's FMLA entitlement. If Loudon County knows that an employee's leave qualifies as FMLA leave and does not designate it as such, the leave cannot be retroactively designated as FMLA leave, except under limited circumstances. Loudon County can designate it as FMLA leave prospectively from the date of notification if it is done before the employee returns to work. If Loudon County does not have knowledge that the employee's leave qualifies for FMLA leave, Loudon County may retroactively designate it as FMLA leave if the designation is made within two days of the employee returning to work.

Where leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt the operations of Loudon County, subject to the approval of the health care provider.

Leave taken for a serious health condition which results in a disability benefit or worker's compensation benefit can be credited against an employee's FMLA leave entitlement. The worker's compensation and FMLA leave will run concurrently.

**B. Medical Certification.** When a leave request is based on an employee's own or a family member's serious health condition, Loudon County requires that the request for leave be supported by a Certification of Health Care Provider for Employee's Serious Health Condition (DOL Form WH-380-E) or Certification of Health Care Provider for Family Member's Serious Health Condition (DOL Form WH-380-F) submitted to Employee Benefits. Loudon County will generally provide the employee with the appropriate health care provider certification form within five (5) business days of the employee's request for FMLA leave, or in the case of unforeseen leave, within five (5) business days after the employee provides sufficient information to determine that the leave may qualify for FMLA leave. When the leave is foreseeable and at least 30 days notice of the leave has been provided, the employee should provide the Medical Certification before the leave begins. When this is impossible, the Medical Certification form must be provided to Loudon County within 15 calendar days after Loudon County's request unless there are extenuating circumstances.

The employee must provide a complete and sufficient medical certification to Loudon County to be entitled to the requested FMLA leave. Incomplete, ambiguous, vague or non-responsive certification will not be accepted and the employee will be provided seven (7) business days to cure any such deficiency. If the deficiencies are not cured, Loudon County may deny the taking of FMLA leave. It is the employee's responsibility to provide the health care provider with any necessary release to provide a complete and sufficient certification to Loudon County.

When an employee submits a completed and sufficient medical certification, Loudon County cannot request additional information from the employee's health care provider.

However, after Loudon County has given the employee an opportunity to cure any deficiencies in a defective medical certification, Loudon County may contact the health care provider for purposes of clarification and authentication of the medical certification through Loudon County's health care provider, designated Employee Benefits representative or an appropriate management official. The employee will be required to provide Loudon County with a HIPAA-compliant authorization allowing Loudon County to clarify the authenticity of certification if necessary. If the employee's health care provider is also the employee's workers' compensation provider, Loudon County may request information in accordance with the Workers' Compensation Act.

If Loudon County has reason to doubt the validity of a medical certification, Loudon County may require the employee to submit to an examination by a Loudon County-designated physician (not regularly employed or utilized by Loudon County) at Loudon County's expense. Pending the receipt of the second medical certification, the employee will be provisionally placed on FMLA leave. If the second medical certification differs from the first medical certification, Loudon County may require the employee to submit a third medical certification from another physician approved jointly by Loudon County and the employee, at Loudon County's expense. This third medical certification shall be final and binding. The employee, upon request, is entitled to copies of any second or third medical certifications.

Loudon County may, at its discretion, require the employee to submit a medical re-certification as to the employee's or family member's serious health condition at the end of the initial leave duration, but not more often than every thirty (30) days unless the employee requests an extension of FMLA leave, the circumstances described in the previous certification have changed, or Loudon County receives information casting doubt on the validity of the certification. In all cases, Loudon County may request recertification of a medical condition every six months.

If an employee fails without good reason to provide a medical certification or re-certifications on a timely basis, Loudon County may deny the request for leave until it is submitted. If the employee fails to produce a medical certification within the time requested by Loudon County, the leave may not qualify for FMLA leave and the absences will be considered unexcused.

C. **Military Family/Qualified Exigency Administration.** When a military family leave is requested, Loudon County requires that the request for leave be supported by a Certification of Qualifying Exigency For Military Leave (DOL Form WH-384) or Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave (DOL Form WH-385) submitted to Employee Benefits. When the leave is foreseeable and at least 30 days notice has been provided, the employee should provide the appropriate Certification before the leave begins. When this is impossible, the Certification form must be provided to Loudon County within 15 calendar days after Loudon County's request unless there are extenuating circumstances.

Loudon County will require employees to report periodically on their status and their intention to return to work.

### **Benefits During Leave**

During a period of family or medical leave, qualified exigency or military family leave under the FMLA, an employee will be retained on Loudon County's medical insurance and other plans in which the employee was enrolled under the same conditions and on the same basis as if the employee was not on leave. Loudon County will continue to pay its portions (if any) of the insurance contribution and, to continue all employee contributed coverage, the employee must continue to make any contributions that the employee would make if not on leave, including any increases. Failure of the employee to pay his or her share of the premiums within sixty (60) days of the due date will end Loudon County's obligation to maintain health insurance for the employee. Loudon County will provide 15 days of written notice to an employee that payment has not been received prior to terminating coverage.

Employees are not entitled to the accrual of seniority or employment benefits while on FMLA leave. An employee who takes family or medical leave will not lose any seniority or employment benefits that accrued before the date that the employee was on FMLA leave.

If the employee fails to return to work after the expiration of the leave, the employee will be required to reimburse Loudon County for all insurance contributions made by Loudon County during the leave, unless the reason the employee fails to return is the presence of a serious health condition which prevents the employee from performing his or her job, or due to circumstances beyond the employee's control, (i.e. a parent's decision to stay home with a newborn baby is not beyond the employee's control, unless the newborn has a serious health condition.) Nothing in this policy should be construed to grant health insurance coverage to employees not otherwise covered by Loudon County's health insurance policy.

### **Procedures For Returning From Leave**

Before an employee can return to work following a medical leave of at least ten (10) consecutive workdays, the employee, at the employee's cost, must submit a Return To Work Fitness For Duty Certificate from the designated physician releasing the employee to resume work and stating that the employee is fit for duty, but only with regard to the particular health condition that caused the employee's need for FMLA leave. The health care provider may be required to specifically address the employee's ability to perform the essential functions of the employee's job and, if so, Loudon County will provide the employee with a list of the essential functions with the Designation Notice (Form WH-382). Loudon County may contact the employee's health care provider through Loudon County's health care provider, designated Employee Benefits representative or appropriate management official, with the employee's permission, for clarification of the employee's fitness to return to work certification, but no additional information may be required. Loudon County may deny restoration to employment until such certification is provided.

Upon being released for work, an employee must report to Employee Benefits immediately and present the Return to Work Fitness for Duty Certificate. Where the certification indicates that the employee cannot perform the essential functions of the job, Employee Benefits will recommend that the employee continue on medical leave pending a determination of whether the employee requires an accommodation and what accommodation, if any, is reasonable. Where the employee's certification releases the employee to return to work without restrictions which prevent the employee from performing the essential functions of his or her job, Employee Benefits will contact the employee's supervisor to discuss return to work.

Loudon County may contact the employee's health care provider for purposes of clarifying and authenticating the fitness-for-duty certification but may not delay the employees' return to work while contact with the health care professional is being made. Loudon County will follow the procedures for clarifying a Certification of Health Care Provider for Employee's Serious Health Condition, and the employee must cooperate by signing any necessary HIPAA-compliant authorization.

If an employee is returning to work from medical leave that is no longer a designated FMLA leave, or was never a designated FMLA leave, Loudon County may require that employee be examined by a Loudon County-designated physician for an independent evaluation of the employee's fitness to return to work.

In all situations, after an employee returns to work, Loudon County may require a job-related medical examination by a Loudon County designated physician where there is evidence of a job performance or safety problem in order to determine an employee's current fitness to safely and effectively perform the job.

### **Restoration to Employment**

Loudon County employees returning to work from a family or medical leave or qualified exigency or military family leave under the FMLA will be restored to the same position or to an equivalent position with equivalent pay, benefits and other terms and conditions of employment. A determination as to whether a position is equivalent will be made by Employee Benefits.

### **Denial of Restoration**

Under the following circumstances, Loudon County may deny restoration of an employee to his or her former position or to an equivalent position: (1) if the employee would not otherwise have been employed at the time restoration is requested; (2) if the employee fails to provide a Return To Work Fitness For Duty Certificate as requested by Loudon County; (3) if the employee fraudulently obtained leave; (4) if the employee is unable to perform the essential functions of the position with or without reasonable accommodation because of a physical or mental condition, including the continuation of a serious health condition; (5) if an employee is no longer qualified for the position because of the employee's inability to attend a necessary

course, renew a license or certificate, etc., as a result of the leave, provided the employee has been given a reasonable opportunity to fulfill those conditions upon return to work; (6) if the employee unequivocally advised Loudon County that he or she does not intend to return to work, in which case the employment relationship is deemed terminated and leave benefits cease immediately; or (7) If the employee is a “key” employee, as defined under the FMLA, and restoration would result in a substantial and grievous economic injury to Loudon County’s operations.

### **Failure to Return from Leave/Extension of Leave**

The failure of an employee to return to work upon the expiration of the maximum leave period for a family or medical leave of absence or a qualified exigency or military family leave, including any authorized extension of leave, will subject the employee to immediate termination.

### **Family and Medical Leave Records**

All records concerning family and medical leave will be maintained for at least three (3) years. Records and documents relating to medical certifications, re-certifications or medical histories of employees or employees' family members will be maintained as separate records and treated as confidential records in Employee Benefits. Each supervisor is required to forward all forms, including Requests for Leave of Absence, Certifications of Health Care Provider, Family and Medical Leave Act Checklist, Response to Your Request for Leave Under the FMLA, Medical Certification Statements, Employer Designation Notices, Return to Work Fitness for Duty Certificates and other documents relating to the leave to Employee Benefits upon completion. Copies of these forms and records may not be retained in the supervisor’s individual files.

Employees should contact Employee Benefits for more information about the FMLA.

## **Parental Leave**

### **Section 5.7**

Any full-time employee who has been employed by the County for twelve (12) consecutive months may be absent for a period of up to four (4) months for adoption, pregnancy, childbirth, and nursing an infant. Employees who give at least three (3) months' notice to the County of the anticipated dates of leave and of their intention to return following the leave will be restored to the previously occupied position or a similar position with the same status, pay, length of service credit and seniority, as of the date of leave. If, however, the employee is prevented from giving the three (3) months' notice because of a medical emergency or a notice of adoption which necessitates that leave begin earlier than anticipated, the employee has not forfeited rights and benefits for failure to give three (3) months' notice. Leave for adoption is not available under this policy until the employee receives custody of the child.

Parental leave is unpaid leave. However, if an employee takes parental leave, it runs concurrent with available FMLA leave until the FMLA leave is exhausted. Employees on parental leave are required to use paid sick leave and paid vacation leave until it is exhausted. During parental leave, the employee maintains rights to vacation time, sick time, seniority, and other benefits for which the employee was eligible at the date the leave began.

If the employee's job position is so unique that the County cannot, after reasonable efforts, fill the position temporarily, it is not liable to the employee for failure to reinstate at the end of parental leave. If the County determines that the employee will not be reinstated at the end of parental leave, it will notify the employee as soon as possible. Employees who seek other employment during a period of parental leave or who work for other employers while taking parental leave are not entitled to be restored to the same or similar positions as described above.

## **Bereavement Leave**

### **Section 5.8**

In the unfortunate event of the death of an employee's immediate family member (defined for the purposes of this policy as the employee's current spouse, child, brother, sister, parent, grandparent or grand-child, including step and in-law relations), the employee may be granted paid bereavement leave up to a three (3) calendar day maximum. At the County's sole discretion, additional time off (up to three (3) extra days) may be granted without pay for travel time for an out-of-town funeral or for other compelling or unusual circumstances. The County may require verifying documentation prior to or after granting such leave.

## **Jury Duty Leave**

### **Section 5.9**

Upon receiving a summons to report for jury duty, an employee must present the summons to the supervising County official or Department Head on the next working day so that arrangements can be made for the excused absence.

All employees, except temporary employees employed for less than six (6) months, who give proper notice and who serve on jury duty for more than three (3) hours on a given day are excused from work for that day and receive regular pay less amounts received for serving as a juror. If the jury service is less than three (3) hours, the employee must report to work immediately for the remainder of that work day and will receive regular pay less amounts received for serving as a juror. If an employee who served less than three (3) hours fails to immediately return to work, that employee will not receive regular pay for the balance of the day, and it will count as an unexcused absence. Employees should obtain a signed attendance statement from the Court verifying the dates and times of jury duty service and the amount of jury duty pay, and present it to the supervising County official or Department Head.

In certain circumstances, such as where an employee's absence would cause public service or a department's performance to suffer substantially as a result of the lost work time or have a serious effect on operating efficiency, the County may request that an employee be excused from jury duty or that the jury duty assignment be postponed.

## **Witness Leave**

### **Section 5.10**

Employees responding to a lawful summons, subpoena, or other lawful process are eligible for leave provided they present a copy or the original of the same to the supervising County official or Department Head prior to the time which they must appear (unless good cause exists for the failure to give prior notice). Leave is unpaid, except that exempt employees will not have amounts deducted from their pay except for absences of a week or more or for fees received for service as a witness.

## **Voting Leave**

### **Section 5.11**

All employees entitled to vote in an election may be excused from work with pay on the day of the election for a reasonable period of time, not to exceed three (3) hours, as necessary to vote during the time the polls are open in the county where the employee resides. Provided, if an employee's tour of duty begins three (3) or more hours after the polls open or ends three (3) or more hours before the polls close, no time off for voting shall be granted.

The County may specify the hours during which employees may be absent to vote. Application for such absences must be made to the employee's supervising County official or Department Head before 12:00 noon of the day before the election.

## **Military Leave**

### **Section 5.12**

An employee who is a member of the National Guard or a reserve component of the armed forces and is serving under competent order will be granted a maximum of twenty (20) paid working days for military duty or training in any one year period, in accordance with state and federal law. Additional paid leave is available for any period of active state duty pursuant to Tenn. Code Ann. § 58-1-106. An employee should submit a copy of his or her orders to the supervising County official or Department Head at least thirty (30) days in advance of the leave period. This time for military training duty will be paid at the employee's straight time base pay at the time the military training occurs. If a holiday occurs while the employee is on military leave, the employee will be paid the holiday pay only for that day instead of military leave pay.

For the purpose of being inducted or entering military duty, or if ordered to active duty in the U.S. armed services, employees will be granted an unpaid military leave of absence for the duration of the active duty and will have reinstatement and other employment rights in accordance with applicable state and federal law.

## **Inclement Weather**

### **Section 5.13**

In the event of inclement weather, the County Mayor will make a decision regarding whether to close non-essential County offices for the day. If the Mayor closes County offices, employees will be required to use a vacation day to cover the absence. If the Mayor does not close County offices but an employee is unable to report to work because of transportation or other concerns, the employee must call in according to normal call-in procedures and will be charged a vacation day to cover the absence.

Some County offices are essential and must remain open and operational at all times (and particularly during inclement weather), such as the highway department and the Sheriff's department. Employees of those offices must report to work on all scheduled work days, regardless of announcement by the Mayor of closure of County offices. Employees will receive usual compensation for their hours worked on such days, and will further receive overtime pay at a rate of time and a half for all hours worked over 40 (or other applicable threshold) in the workweek.

## **PART 6. EMPLOYEE CONDUCT**

### **Disciplinary Procedures**

#### **Section 6.1**

It is the County's policy to have efficient, orderly and safe operations. Therefore, all employees must conduct themselves in a professional and responsible manner. Any employee who engages in improper conduct or violates any County or Department policy or rule is subject to disciplinary action.

Employees who are subject to the Law Enforcement Sheriff's Office Merit System should refer to its Rules and Regulations for questions regarding disciplinary procedures.

Discipline may, in the sole discretion of the County, and depending upon the seriousness of the violation, the employee's performance record and other factors, consist of a verbal warning, written reprimand, suspension, demotion or discharge. Discipline does not have to be progressive.

All disciplinary actions, including verbal warnings and written reprimands, will be documented and placed in the employee's personnel file. Employees may offer a written response to be attached to the documentation.

## **Grievance Procedure**

### **Section 6.2**

From time to time, an employee may feel that he or she has been dealt with unfairly or may be confronted with problems or difficulties that the employee believes Loudon County should resolve. Except as provided in the Deductions From Pay, Sexual and Other Discriminatory Harassment, and Equal Employment Opportunity policies, employees should first discuss the matter with his or her supervisor. If a satisfactory result is not obtained, the employee should then discuss the matter with his or her supervising County official or Department Head. If the matter is still not resolved, the employee should submit a written grievance to the County Mayor stating the nature and specifics of the grievance, the results obtained from the discussions with the supervisor and Department Head, and why those results are not satisfactory. The County Mayor will review the grievance and the prior decisions of the supervisor and Department Head and will schedule a meeting with the employee.

Employees are encouraged to use the grievance procedure to resolve problems. The purpose of the policy is to enable the County to become aware of and resolve problems before they become extensive and disrupt the workplace.

The County has also established an Ethics Committee to receive, investigate, and make recommendations for actions related to alleged violations of its Ethics Code. Generally, on matters related to personnel policies, the Committee will defer investigation to the appropriate County official or Department Head. See the Ethics Code Complaint Procedure and Ethics Committee Policy, Section 6.7, for more details.

## Work Rules

### Section 6.3

Below are some examples of conduct that is forbidden while on duty or off duty. Violation of these or other rules and policies may result in discipline, including termination, even for a first offense. This list does not include all the rules or circumstances that could lead to disciplinary action. Rather, these rules are meant as a guideline. In addition, each Department may promulgate its own rules and policies so long as they do not conflict with these, and County officials may, pursuant to Tenn. Code Ann. § 5-23-101 *et seq.*, adopt separate policies.

1. Repeated or excessive tardiness or unexcused absence.
2. Refusal to carry out orders or assignments pertaining to work or other similar insubordination.
3. Leaving the job during work hours without permission of the supervising County official, Department Head or supervisor.
4. Deliberate neglect or destruction of County property, tools, machines or equipment; or the property of fellow employees; or tampering with vending machine equipment in any manner.
5. Willful falsification, including a material misstatement or omission, of information of County records including, but not limited to, applications for employment or other data requested by the County, doctor's statements, and time and expense records.
6. Violation of safety rules or safety practices, including the failure to wear safety equipment.
7. Theft of County property or property of other employees or other similar dishonesty.
8. Immoral conduct or indecency on County property, while on duty, or in County vehicles.
9. Unauthorized possession of ammunition, firearms or explosives on County premises, while on duty or in County vehicles.
10. Loitering or loafing during working hours, or sleeping while on duty except when authorized as part of the job.
11. Stopping work before time specified for such purposes.

12. Engaging in horseplay, disorderly conduct, striking or fighting on County premises, while on duty or in County vehicles.
13. Inability to cooperate and get along with coworkers.
14. Creating or contributing to unsanitary conditions.
15. Use of abusive, obscene or threatening language, or any violation of the County's Sexual and Other Discriminatory Harassment or Workplace Violence policies.
16. Poor workmanship/productivity.
17. Unauthorized distribution of non-work material or soliciting during working time.
18. Failure to report any on-the-job injury immediately.
19. Harassing other employees or the public.
20. Any breach of the normal standards of responsible behavior.
21. Violating any Department or County policy or rule.
22. Conviction of a misdemeanor or felony crime or engaging in conduct which adversely affects the employee's ability or capacity to perform the employee's job.
23. Engaging in the illegal use, manufacture, possession, distribution, or sale of controlled substances or alcohol while on County property, while on duty for regularly scheduled or emergency work, while operating County vehicles or equipment or off the job so as to affect the employee's job performance or integrity on the job as a representative of the County.
24. Engaging in conduct or activity that is inconsistent or incompatible with the functions and responsibilities as a County employee or the operations of the County.

## **Attendance**

### **Section 6.4**

The County expects good and regular attendance by all of its employees. This means being at work on time each day fully able and ready to work. When an employee will be tardy or absent, that employee must call the supervising County official, Department Head or supervisor and report the reason prior to the start of work.

Tardiness or absenteeism that is unexcused or excessive in the County's judgment, or failure to call in prior to being absent or late, may result in disciplinary action up to and including termination.

## **Political Activity**

### **Section 6.5**

Employees may individually exercise their right to vote, privately express their political views, and engage in other political activities as private citizens. However, no employee shall solicit political campaign contributions, actively participate in a political campaign or engage in other political activities when on duty, while at work or when acting in the employee's official capacity. No employee will be prohibited from, disciplined or otherwise discriminated against for communicating with any appointed or elected public official for any job-related purpose, unless the communication involves untrue allegations.

Except as permitted by law, no employee shall be appointed, promoted, demoted, transferred, terminated, or in any way favored or discriminated against with respect to any term or condition of employment because of such employee's vote, political opinions, political affiliations, or other political activities, and no official or employee shall use or attempt to use any official position, authority or influence, whether possessed or anticipated, for the purpose of influencing the vote or political action of any employee or group of employees.

In accordance with Tennessee law, County employees otherwise qualified to serve as a member of the County Commission are not disqualified for seeking such office by reason of being a County employee. Employees may also seek nomination, election or appointment to other public offices.

However, any employee who wishes to accept or seek nomination, election, or appointment to any full-time public office must make written request to the County Mayor or supervising County official for an unpaid leave of absence from employment. The leave will not begin any sooner than the date of the qualification. The employee must also submit a formal declaration and/or other written evidence of candidacy. For certain positions and in accordance with state and federal law, the County may allow or require the employee to continue working during the election, nomination or appointment. Upon successful election or appointment, the employee shall resign employment from the County or from his or her current position with the County, with separation from employment occurring prior to the taking of office. Upon unsuccessful election or appointment, the employee shall immediately return to the employee's former position or, if not available, to another available position to which the employee is qualified; provided, however, that the County cannot guarantee restoration of employment to an employee who takes a leave of absence for nomination, election or appointment for a public office.

Any violation of this section may result in disciplinary action, up to and including termination.

## **Outside Employment**

### **Section 6.6**

No employee may moonlight or engage in additional employment unless approved in writing by the supervising County official, Department Head or the County Mayor. Such approval will be granted if the outside employment will not likely interfere with the satisfactory performance of the employee's duties, will not interfere with the best interests of the County, is not incompatible with the employee's duties, and is not likely to disparage or create embarrassment for the County. Failure of an employee to obtain prior approval may result in disciplinary action, up to and including termination.

Employees may not use County equipment, materials, supplies, tools or vehicles in outside employment, unless approved in writing by the supervising County official, Department Head or the County Mayor. Employees on any leave of absence may not engage in outside employment without the required approval, and are subject to discipline for failing to do so.

## **Ethics Policy, Complaint Procedure and Ethics Committee**

### **Section 6.7**

In accordance with Section 49 of the Comprehensive Governmental Ethics Reform Act of 2006, Loudon County adopted a Code of Ethics on February 5, 2007, and it was amended in 2010. It applies to all County boards, committees, commissions, authorities, corporations or other instrumentalities appointed or created by the county or an official of the County, specifically including the school board, election commission, health department, and utility district of the County.

As used herein, "County" means Loudon County, which includes all boards, committees, commissions, authorities, corporations or other instrumentalities appointed or created by the county or an official of the county, and specifically including the county school board, the county election commission, the county health department, and utility districts in the county.

"Officials and employees" means and includes any official, whether elected or appointed, officer, employee or servant, or any member of any board, agency, commission, authority or corporation (whether compensated or not), or any officer, employee or servant thereof, of the county. "Personal interest" means, for the purpose of disclosure of personal interests in accordance with this Code of Ethics, a financial interest of the official or employee, or a financial interest of the official's or employee's spouse or child living in the same household, in the matter to be voted upon, regulated, supervised, or otherwise acted upon in an official capacity.

An official or employee with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and to be included in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official's or employee's vote on the measure. In addition, the official or employee may, to the extent allowed by law, excuse himself or herself from voting on the measure.

An official or employee who must exercise discretion relative to any matter other than casting a vote and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of the discretion shall disclose, before the exercise of the discretion when possible, the interest on the attached disclosure form and file the disclosure form with the county clerk. In addition, the official or employee may, to the extent allowed by law, excuse himself or herself from the exercise of discretion in the matter.

An official or employee, or an official's or employee's spouse or child living in the same household, may not accept, directly or indirectly, any gift, money, gratuity, or other consideration or favor of any kind from anyone other than the county:

(1) For the performance of an act, or refraining from performance of an act, that he would be expected to perform, or refrain from performing, in the regular course of his duties; or

(2) That a reasonable person would understand was intended to influence the vote, official action, or judgment of the official or employee in executing county business.

It shall not be considered a violation of this policy for an official or employee to receive entertainment, food, refreshments, meals, health screenings, amenities, foodstuffs, or beverages that are provided in connection with a conference sponsored by an established or recognized statewide association of county government officials or by an umbrella or affiliate organization of such statewide association of county government officials.

An official or employee may not disclose any information obtained in his official capacity or position of employment that is made confidential under state or federal law except as authorized by law. An official or employee may not use or disclose information obtained in his official capacity or position of employment with the intent to result in financial gain for himself or any other person or entity.

An official or employee may not use or authorize the use of county time, facilities, equipment, or supplies for private gain or advantage to himself, a family member, or any group with which the official or employee is affiliated. County time, facilities, equipment, and supplies are to be used only for the benefit of the County.

An official or employee may not make or attempt to make private purchases, for cash or otherwise, in the name of the County. An official or employee may not use or attempt to use his position to secure any privilege or exemption for himself or others that is not authorized by the general law or other policy of the County.

A County Ethics Committee (the "Ethics Committee") consisting of five members shall be appointed to one-year terms by the County Mayor with confirmation by the county legislative body, to be appointed each year at the same time as internal committees of the county legislative body. At least three members of the committee shall be members of the county legislative body; one member shall be a constitutional county officer or, should no constitutional county officer be willing to accept appointment, an additional member of the county legislative body; and the remaining member may be either a member of a board, committee, commission, authority, corporation, or other instrumentality governed by this policy, or an additional member of the county legislative body. The Ethics Committee shall convene as soon as practicable after their appointment and elect a chair and a secretary. The records of the Ethics Committee shall be maintained by the secretary and shall be filed in the office of the county clerk, where they shall be open to public inspection.

Questions and complaints regarding violations of this Code of Ethics or of any violation of state law governing ethical conduct should be directed to the chair of the Ethics Committee. Complaints shall be in writing and signed by the person making the complaint, and shall set forth in reasonable detail the facts upon which the complaint is based.

The County Ethics Committee shall investigate any credible complaint against an official

or employee charging any violation of this Code of Ethics, or may undertake an investigation on its own initiative when it acquires information indicating a possible violation, and make recommendations for action to end or seek retribution for any activity that, in the Committee's judgment, constitutes a violation of this Code of Ethics. If a member of the Committee is the subject of a complaint, such member shall recuse himself or herself from all proceedings involving such complaint.

The Committee may:

(1) Refer the matter to the County Attorney for a legal opinion and/or recommendations for action;

(2) In the case of an official, refer the matter to the county legislative body for possible public censure if the county legislative body finds such action warranted;

(3) In the case of an employee, refer the matter to the official responsible for supervision of the employee for possible disciplinary action if the official finds discipline warranted;

(4) In a case involving possible violation of state statutes, refer the matter to the district attorney for possible ouster or criminal prosecution;

The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this Code of Ethics. When a violation of this Code of Ethics also constitutes a violation of a personnel policy or a civil service policy, the violation shall be dealt with as a violation of the personnel or civil service provisions rather than as a violation of this Code of Ethics.

In addition to the ethical principles set out in this Code of Ethics, state laws also provide a framework for the ethical behavior of county officials and employees in the performance of their duties. Officials and employees should familiarize themselves with the state laws applicable to their office or position and the performance of their duties. To the extent that an issue is addressed by state law (law of general application, public law of local application, local option law, or private act), the provisions of that state law, to the extent they are more restrictive, shall control.

**Generally, where a violation of the Code of Ethics is also a violation of personnel policy or merit board provisions, it will be handled as a violation of that policy or provision rather than as a violation of the Code of Ethics.** A "reasonable person" standard applies in the interpretation of the County's Code of Ethics.

See the "Pecuniary Interest Prohibited" policy for additional conflict of interest information, and the complete Code of Ethics, available at the County Clerk's office, for a summary description of major Tennessee conflict of interest and ethics statutes.

## **Pecuniary Interest Prohibited**

### **Section 6.8**

County officials and employees shall not personally profit directly or indirectly from any contract, purchase, sale or service between the County and any person, company or entity; shall not personally or as an agent provide any surety, bail or bond required by law or subject to approval by the County Commission; shall not accept any free or preferred services, benefits, concessions or gifts from any person, company or entity if such is given in connection with or on account of the official's or employee's connection or employment with the County; and shall not directly or indirectly give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, transfer, promotion, dismissal, suspension, disciplinary action or any other employment action.

With the permission of the supervising County official or Department Head, employees are allowed to solicit contributions or sell candy, merchandise, etc. for charitable and community organizations.

In accordance with Tennessee law, during an employee's employment or an official's tenure in office, and for six (6) months thereafter, no employee or officer shall purchase from the County any property declared to be surplus by the County, except by bid at public auction.

Any violation of this Section may result in disciplinary action, up to and including termination.

## **Sexual and Other Discriminatory Workplace Harassment**

### **Section 6.9**

It is the policy of Loudon County that all employees have a right to work in an environment free from discriminatory harassment based on sex, gender, race, age, national origin, religion, disability, genetic information, or any other protected discriminatory factor. The County prohibits any form of harassment of its employees by other employees and will take immediate and appropriate action to prevent and to correct behavior that violates this policy. Loudon County also strives to protect its employees from any form of harassment by third parties, including vendors and others.

#### **Sexual Harassment**

Sexual harassment is defined as unwelcome sexual advances, request for sexual favors and other verbal or physical conduct of a sexual nature. This conduct constitutes unlawful sexual harassment when: (1) submission to such conduct is either explicitly or implicitly made a term or condition of an individual's employment; (2) submission to or rejection of such conduct is used as the basis for an employment decision; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

While sexual harassment usually involves members of the opposite sex, it also includes same sex harassment, (i.e., males harassing males and females harassing females because of the recipient's sex).

Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It refers to behavior that is not welcome, that is personally offensive, that fails to respect the rights of others, that lowers morale and that, therefore, interferes with our work effectiveness. Sexual harassment may take different forms. One specific form is the demand for sexual favors. Other forms of harassment include:

Verbal	Sexual innuendos, suggestive comments, jokes of a sexual nature, sexual propositions, threats.
Non-verbal	Sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, obscene gestures.
Physical	Unwanted physical contact, including touching, pinching, brushing the body, coerced sexual intercourse, assault.

Sexual harassment may be overt or subtle. Some behavior which is appropriate in a social setting may not be appropriate in the workplace. But whatever form it takes, verbal, non-verbal or physical, sexual harassment is insulting and demeaning to the recipient and will not be

tolerated in the workplace. Sexual harassment by an employee, County official, Department Head, supervisor, or third party non-employee will not be tolerated by the County. All employees County-wide are expected to comply with this policy and take appropriate measures to ensure that such conduct does not occur. Appropriate disciplinary action will be taken against any employee who violates this policy. Based on the seriousness of the offense, disciplinary action, up to and including termination, will be taken.

### **Other Workplace Harassment**

Loudon County also has a strong policy against harassment on the basis of race, color, religion, national origin, age, disability, or genetic information.

Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his or her race, color, religion, national origin, age, disability, or genetic information, or that of his or her relatives, friends, or associates, and that:

(1) has the purpose or effect of creating an intimidating, hostile or offensive working environment;

(2) has the purpose or effect of unreasonably interfering with an individual's work performance; or

(3) otherwise adversely affects an individual's employment opportunities. Harassing conduct includes, but is not limited to, the following:

(a) epithets, slurs, negative stereotyping, or threatening, intimidating or hostile acts that relate to race, color, religion, national origin, age, disability, or genetic information; and

(b) written or graphic material that denigrates or shows aversion or hostility toward an individual or group because of race, color, religion, national origin, age, disability, or genetic information and that is placed on walls, bulletin boards or elsewhere on the County's premises or is circulated in the workplace.

All employees should avoid any action or conduct that might be viewed as workplace harassment. Approval of, participation in or acquiescence in harassing conduct is a violation of this policy.

If Loudon County determines that this policy has been violated, it will take prompt and appropriate corrective action aimed at stopping the behavior and preventing its recurrence. Depending on the circumstances, such action may include, but not be limited to, written warning, suspension, demotion or termination of employment.

## **Complaint Procedure**

Employees have the responsibility to immediately bring any form of unwelcome harassment to the attention of either the County Mayor, currently Estelle Herron, or Employee Benefits, currently Tammy Reynolds, at the employee's option. Both are trained to respond promptly and effectively to any complaint. Although employees are free to address inappropriate conduct with the offending person, an employee does not have to complain first to the offending person.

All complaints will be handled in a timely and discreet manner, and access to information related to the complaint shall be limited to a strict "need to know" manner. A thorough and independent investigation will be conducted based on the employee's statement of what has occurred. Individuals involved in the complaint will be advised not to discuss the subject outside of the investigation. Loudon County will retain documentation of all allegations and investigations in separate files and will take appropriate corrective action to remedy all violations of this policy. The purpose of this provision is to protect the confidentiality of the employee who files a complaint to the extent possible, to encourage the reporting of any incidents of sexual or other harassment and to protect the reputation of any employee wrongfully charged with sexual harassment.

Investigation of a complaint normally includes conferring with the parties involved and any named or apparent witnesses. Employees will be given an impartial and fair hearing. All employees shall be protected from coercion, intimidation, retaliation, interference, or discrimination for filing a complaint or assisting in an investigation.

If an investigation reveals that the complaint is valid, prompt attention and disciplinary action designed to stop the violation immediately and to prevent its recurrence will be taken.

Retaliation against any complaining employee, any witness, or anyone involved in a complaint is strictly prohibited. Loudon County will follow up any complaint or investigation as appropriate to insure that no retaliation occurs. Employees should immediately report any retaliation to either of the County representatives listed above (the County Mayor, currently Estelle Herron, or Employee Benefits, currently Tammy Reynolds), at the option of the employee. Loudon County will not tolerate retaliation, and will take prompt and immediate steps to eliminate retaliation.

Loudon County recognizes that the question of whether a particular action or incident produces a discriminatory employment effect requires a factual determination based on all facts in the matter. Given the nature of this type of discrimination, Loudon County also recognizes that false accusations of harassment can have serious effects on innocent individuals. We trust that all employees of Loudon County will continue to act responsibly to establish and maintain a pleasant working environment, free from discrimination, for all. Loudon County encourages any employee to raise questions he or she may have regarding this policy with the County Mayor, currently Estelle Herron or Employee Benefits, currently Tammy Reynolds.

## **Firearms and Weapons**

### **Section 6.10**

Loudon County is committed to providing a safe, healthy working environment, and to making adequate provisions for the safety and health of our employees, citizens and the public. It will not permit employees to act in ways that may endanger themselves or others.

All employees are prohibited from possessing, carrying, trading or showing weapons of any kind, including firearms, fireworks, guns, explosives, bows and arrows, knives, etc. while on premises, while on duty, while operating County vehicles or equipment, or while operating personal vehicles for County purposes. Employees are also prohibited from keeping weapons in their personal vehicles parked on the County's premises. Loudon County premises include any property owned, operated, controlled or managed by it. Individuals are permitted to carry mace, pepper spray and pocket knives with blades no longer than four inches as long as they are stored in a pocket, purse, briefcase or other personal belongings. This policy does not apply to those who are expressly authorized by the County to use firearms and explosives (and other authorized tools that could be viewed as weapons) in the performance of their jobs.

The County reserves the right, based upon reasonable suspicion of a violation of this policy, to search an office desk, and other property under the control of the employee, as well as the packages, purses, lunch boxes, briefcases, and employees' vehicles parked on its premises. Individuals may also be required to remove a jacket or sweater and to turn out their pockets. Reasonable suspicion sufficient to justify a search may be based on a clear and reasonable belief, through observation or information provided by a reliable and credible source, that an employee is in violation of this policy. Searches of Loudon County property under the control of the employee are subject to being conducted without notice to the employee, once the reasonable suspicion standard has been met.

## **Workplace Violence**

### **Section 6.11**

Loudon County expects and requires all employees to display common courtesy and respect for others, and to engage in safe and appropriate behavior at all times.

Any involvement in incidents of physical violence is considered unacceptable behavior which violates this policy. “Physical violence” means any unwanted or hostile contact such as hitting, fighting, pushing, shoving, slapping or throwing objects.

Racial or ethnic slurs, sexually harassing remarks, threats of violence, and any other provocative comments, language, or actions also violate this policy and will not be tolerated. A “threat of violence” means an expression (verbal or otherwise) of a present or future intention to cause physical harm. Individuals who threaten violence or otherwise engage in provocative conduct towards co-workers, clients, vendors or other individuals ordinarily are held at least equally at fault for an ensuing physical altercation, even if they do not strike the first blow or otherwise initiate a physical confrontation.

Prohibited conduct includes, but is not limited to:

1. Striking and/or injuring another person physically;
2. Engaging in behavior that creates a reasonable fear of injury in another person;
3. Possession, brandishing, or using a weapon while on the County’s premises or engaged in its business;
4. Intentionally damaging office property, property of employees, citizens, visitors or the general public;
5. Threatening to injure an individual or to damage property;
6. Verbally threatening behavior, such as direct or veiled threats of violence;
7. Harassment or sexual harassment that blurs into conduct threatening an individual’s safety, including unwanted and offensive physical touching and stalking;
8. Threats or intimidation that create fear or extreme emotional distress;
9. Obscene telephone calls on or off duty.

This policy applies to employees while on County premises, whether they are on or off duty; to employees traveling on business; to employees on duty but off the premises; and to employees while off duty where the violence, threats of violence or other violations of this policy are directed toward a fellow employee, citizens or other individual and there is a nexus to work or the work environment.

Loudon County will promptly investigate any physical or verbal altercation, threats of violence, or other conduct by employees that threatens the health or safety of other employees, citizens, or the public or otherwise might involve a violation of this policy. All complaints will be investigated in a timely manner. Information will be released only to those persons directly involved in the investigation, to law enforcement as necessary, and confidentiality will be maintained to the extent practicable. The County will make every effort to guard the reputations of the complainant and the accused.

All employees have a duty to warn their supervisor, the supervising County official, Department Head, or the County Mayor of any workplace activity, situations or incidents that they observe or are aware of involving other employees, citizens and visitors and which appear to violate this policy. This includes, for example, threats or acts of violence, aggressive behavior, offensive acts, threatening or offensive comments or remarks, and the like. Reports pursuant to this policy will be held in confidence to the maximum extent possible under the circumstances. Loudon County will not condone any form of retaliation against any employee for making a report under this policy, and individuals have an immediate duty to report any retaliation they experience or observe to one of the above named individuals.

All individuals who commit violent acts or who otherwise violate this policy are subject to disciplinary action, up to and including termination. Loudon County may seek prosecution of those who engage in violence on its premises or against its employees while they are engaged in County business.

## **Drug-Free Workplace**

### **Section 6.12**

It is the County's policy to create a drug-free workplace in keeping with the spirit and intent of the Drug-Free Workplace Act of 1988. The use of controlled substances is inconsistent with the behavior expected of employees, subjects all employees and the public to unacceptable safety risks, and undermines the County's ability to operate effectively and efficiently. In this connection, the unlawful manufacture, distribution, dispensation, possession, sale, or use of a controlled substance in the workplace, on County premises, or while on duty is strictly prohibited. Intoxication or the use of alcohol at work or while on duty is also prohibited. Such conduct is also prohibited during nonworking time to the extent that it impairs an employee's ability to perform on the job or threatens the reputation or integrity of the County.

The County's General Drug and Alcohol Abuse Policy is attached as Exhibit A. The County's Department of Transportation Drug and Alcohol Policy is attached as Exhibit B. Individual county officials may also adopt separate Drug and Alcohol Abuse policies pursuant to Tenn. Code Ann. § 5-23-101, *et seq.* Copies of the County's Drug and Alcohol Testing Procedures are available upon request to Employee Benefits.

## **Dress Code**

### **Section 6.13**

All employees are expected to dress in a professional and tasteful manner. Apparel which creates a disturbance among employees is prohibited. Employees should wear clothing that is proper and safe for their specific job duties. Employees in some departments are required to wear uniforms. The office personnel and employees who have contact with the public are expected to project a professional and businesslike image in their dress and manner.

## **Health And Safety**

### **Section 6.14**

It is the County's policy to provide a safe workplace for its employees. In order to comply with this policy, it is imperative that all employees obey all safety rules and use common sense and care at all times. Any accident or injury of any nature must be immediately reported to the Department Head and/or supervisor. Employees must follow all safety rules and regulations which may be imposed from time to time by the County, Department, the Occupational Safety and Health Administration (OSHA), or other government agency. No employee is allowed to use machinery, tools or equipment that he or she is not authorized to use or without the proper training.

An orderly and clean working environment reduces accidents, improves health conditions, reduces hazards, promotes efficiency and productivity, and improves the quality of the County's services. All employees are responsible for maintaining a clean and orderly work environment.

Employees who are driving or riding in County vehicles must wear seat belts at all times. Should an employee be involved in an accident, the employee should secure all pertinent information at the scene of the accident and report it to the supervising County official or Department Head. Under no circumstance should liability be admitted or payment of any kind be made to any person or company. In case of bodily injury, an employee should immediately call the supervising County official or Department Head.

With the combined effort of all employees working together as a team, the County can continue to provide the best service to the public in a safe and efficient manner.

Violation of this section may result in disciplinary action, up to and including termination.

## **County Vehicles**

### **Section 6.15**

Employees assigned or using a County vehicle must adhere to the following policy. County vehicles are to be used to conduct official County business only, except for minimum personal use (example: stopping for lunch or stopping at a store in route to and from work).

All employees assigned a County vehicle must meet the I.R.S. regulations and have a valid Tennessee driver's license. Any traffic violation or arrest in a County vehicle must be reported immediately to the Department Head, and employees may be disciplined or barred from driving County vehicles if the circumstances surrounding the arrest or violation indicate a possible threat to public safety. No passengers other than County employees are permitted unless they are being transported for County purposes, or as specifically authorized by the County Mayor or supervising County official.

Employees who are driving or riding in County vehicles must wear seat belts at all times. Should an employee be involved in an accident, the employee should secure all pertinent information at the scene of the accident and report it to the Department Head. Under no circumstances should liability be admitted or payment of any kind be made to any person or company. In case of bodily injury to anyone, an employee should immediately call his or her supervising County official or Department Head.

Any violation of this section may result in disciplinary action, up to and including termination.

Employees who operate County or personal vehicles or equipment as part of their job duties must be insurable under the County's insurance policies with the County's insurance carriers. Any traffic violation, criminal arrest or other action, on or off-duty, which results in the loss of insurance coverage for the employee or increased risk or premiums may result in termination of employment.

Employees of the Loudon County Sheriff's Department who are assigned or who operate a County vehicle may use such vehicle in secondary employment only upon the prior written approval of the Chief Deputy and only upon the execution by the secondary employer of a written agreement with the County setting forth the terms upon which a County vehicle may be used in the secondary employment. During times of engagement by a secondary employer, an employee is working solely for the secondary employer and not as a County or Sheriff's Department employee. An employee's voluntary work for the secondary employer is not counted as hours worked for the County or the Sheriff's Department. The Sheriff's Department will not be responsible for any Workers' Compensation or liability claim incurred while an employee is engaged by a secondary employer. Furthermore, during periods of secondary employment, the employee shall not act in any manner which would imply that any services

performed for a private individual or company are, in fact, being carried out as part of the employee's official duties.

## **Computers, Telephones and Other Electronic Communication Systems and Equipment**

### **Section 6.16**

The County owns, leases, maintains, or operates various electronic communication systems and equipment, including but not limited to, computers, software, telephones, voicemail, facsimiles, telecopiers, copiers, postage meters, e-mail, the Internet, the Web or other electronic communication system, network or equipment. All such electronic communication systems and equipment and all communications, data, and information created, sent, transmitted by, received from, or stored in these electronic communication systems and equipment are and remain at all times the property of the County and as such are to be used solely for job-related reasons concerning official County business. The use of these electronic communication systems and equipment for personal or non-job-related purposes is strictly prohibited.

The County recognizes that family and other emergencies may occasionally occur, and in such instances, the use of telephones for personal purposes is permitted, but the frequency and duration of such calls should be kept to a minimum. Employees should ask family members and friends not to call them at work unless it is an emergency. Personal long distance calls are prohibited except with the permission of the employee's supervisor, and the employee must reimburse the County for any personal long distance calls. Employees should use a personal phone during breaks and lunch for personal phone calls.

Employees are not permitted to use a code or password, access a message or file, or view or retrieve any stored communication unless authorized to do so or unless they have received prior clearance from their supervisor. All codes and passwords are the property of the County, and an employee may not use a code or a password that has not been issued to him or her or that is unknown to the County or Department. Employees should keep their codes and passwords confidential and not disclose them to anyone except the supervising County official, Department Head, or supervisor.

Employees are encouraged to use authorized electronic communication systems and equipment to assist them in performing their jobs. However, such use is a privilege and not a right and it must be done properly and ethically in accordance with all applicable licenses, copyrights, patents, rules, laws and regulations. Employees are responsible for the content of all text, messages, information and communications that they send or receive. Employees should not disclose messages, information or other communications to other employees or individuals who are not authorized to receive them. The improper or unethical use or misuse of any electronic communication systems and equipment will not be tolerated. Employees who violate this policy and use County electronic communication systems for personal purposes do so at their own risk.

In addition to the foregoing, employees are prohibited from: (1) creating, accessing, sending or receiving messages, jokes, pictures, images or other data or material or communication that may be considered pornographic, obscene, sexist, racist, harassing,

malicious, threatening, offensive, disruptive, defamatory, inflammatory, indecent, disparaging, illegal or that would violate the County's Sexual and Other Discriminatory Harassment Policy (See Section 6.9); (2) browsing in restricted content Web or other computer sites; (3) downloading any data or material which is not directly related to the employee's job without prior supervisory approval; (4) downloading software or application programs without prior supervisory approval (because of the potential for embedded viruses, interference with the County's software/application programs, and/or untested software/applications); (5) participating in Web-based or other surveys without prior supervisory approval; (6) using subscription-based services without prior supervisory approval; (7) copying or disseminating copyrighted matters; and (8) receiving, duplicating, retrieving, removing, copying, or altering any file, message, password, code, program, and the like without proper authorization. County employees are not permitted to use County networks, systems and equipment to create, post to or broadcast to any blogs, podcasts, webcasts or any similar methods of transmission, regardless of whether the content is work-related or not.

**Employees have no expectation of privacy in connection with the use of these electronic communication systems and equipment or with the creation, transmission, receipt or storage of information therein.** At its discretion and without notice, the County may monitor (i.e. read, listen, view, retrieve, delete) the use of these electronic communication systems and equipment and the information therein to insure that such use is consistent with this policy, consistent with the County's legitimate business and government interests, and for other legitimate purposes. Employees should be aware that, even when a message, file, document or other communication is erased or when a Web site or program is closed, it is still possible to access or to recreate the message, file, document or other communication or to locate the closed Web site or program.

Employees suspecting or learning of any improper use of electronic communication systems and equipment or any violation of this policy should report it immediately to their supervisor. Employees who violate this policy are subject to disciplinary action up to and including termination.

## **No Tobacco Use**

### **Section 6.17**

Compelling medical evidence shows that smoking, exposure to second-hand smoke, and the use of other tobacco products poses significant health risks and hazards to all people and adversely affects the working environment. Smoking and tobacco use also poses a fire threat and leads to unsanitary and unclean conditions. In order to maintain a comfortable and healthy working environment and to provide for the health, safety and welfare of all of the County's employees, citizens and visitors, all buildings and work areas owned or operated by the County are declared to be tobacco-free, and tobacco use on the premises of such county buildings or work areas is prohibited. Violation of this policy may result in disciplinary action up to and including termination.

## **Travel/Expense Reimbursement**

### **Section 6.18**

The County will reimburse employees for reasonable and authorized expenses incurred while traveling on official County business. All expenses should be approved in advance to the extent possible. Claims for travel/expense reimbursement should be submitted monthly on forms provided by the Finance Department or by the employee's own department. Claim forms must be signed by the employee and the employee's supervisor. Receipts for all claimed expenses should be attached to the claim form. Employees using their personal vehicles for authorized travel will be reimbursed on a per mile basis at the existing mileage rate. Travel expenses (excluding mileage and lodging) cannot exceed a maximum of Thirty Dollars (\$30.00) per day.

Claims for lodging costs should be submitted in advance to the Finance Department. The cost of lodging will be paid directly to the facility. Employees should use lodging facilities that offer a government rate. The County encourages employees to improve their technical and professional skills and knowledge by attending job-related conferences, workshops, seminars and training sessions. With prior approval from the employee's supervisor, the County will pay for the cost of these programs by paying the fee directly to the sponsoring company.

## ACKNOWLEDGMENT OF RECEIPT AND UNDERSTANDING

I have received a copy of the Policy and Procedure Handbook for Loudon County Government dated December 2011 (“Handbook”). I agree to read and keep my Handbook for future reference and abide by the policies, procedures and rules outlined in the Handbook. I understand that my employment is at-will; that this Handbook does not affect my at-will employment status; that this Handbook is not an employment agreement or contract; that this Handbook does not bestow any property right or other rights to employment or employment benefits; that Loudon County has the right to make revisions to the Handbook or to its other policies at any time and without prior notice; that any subsequent amendments to this Handbook will be on file in the County Clerk’s office; and that Loudon County has the right to apply or not to apply these policies in individual cases in its absolute discretion.

I understand and agree that the County has a zero tolerance policy for workplace harassment, that I must abide by this requirement and that I have a duty to report any complaints of harassing conduct or retaliation to the County Mayor, currently Estelle Herron, or Employee Benefits, currently Tammy Reynolds.

Finally, I understand that I am subject to drug and alcohol testing as more fully explained in the Exhibits to this Handbook or, where applicable, to the policies implemented by other County officials pursuant to Tenn. Code Ann. §§ 5-23-101 *et seq.*

Employee Handbook received on \_\_\_\_\_

Employee Name (print): \_\_\_\_\_

Employee Signature: \_\_\_\_\_

**EXHIBIT A**

**LOUDON COUNTY GENERAL DRUG AND ALCOHOL ABUSE POLICY**

**DATE OF REVISION**

**December, 2011**

**TABLE OF CONTENTS**

<b>SECTION</b>	<b>PAGE</b>
I. Scope .....	1
II. Policy .....	2
III. Definitions .....	2
IV. Procedures for Notifying Employees of Coverage .....	6
V. Responsibilities.....	6
VI. Procedures for Testing.....	7
VII. Counseling/Rehabilitation Resources.....	10
VIII. Drug and Alcohol Awareness Program .....	11
IX. Use of Prescription Drugs.....	12
X. Safety Sensitive Positions.....	13
XI. Pre-Employment Testing.....	13
XII. Reasonable Suspicion Testing.....	14
XIII. Post-Accident Testing.....	16
XIV. Promotion and Transfer Testing.....	18
XV. Random Testing.....	18
XVI. Return to Duty and Follow-Up Testing.....	19
XVII. Referral, Evaluation and Treatment.....	20
XVIII. Collection .....	20
XIX. Laboratory.....	21
XX. Medical Review Officer (MRO).....	21
XXI. Record Retention - Confidentiality.....	22
XXII. Inspection.....	23
XXIII. Criminal Charges.....	24
XXIV. Criminal Convictions.....	25
XXV. Administrative and Civil Actions.....	26
XXVI. Procedures for Notifying Employees of Coverage .....	26
Appendix A: Additional Resources.....	27
Appendix B: Safety Sensitive Positions .....	29

**LOUDON COUNTY  
GENERAL DRUG AND ALCOHOL ABUSE POLICY**

**DATE OF REVISION:**

**December 2011**

**I. SCOPE:**

Loudon County (“the County”) is committed to a safe working environment, to making adequate provisions for the safety and health of its employees at their place of employment, and to the safety and health of the citizens we serve as well as the general public. Loudon County is also dedicated to operating in a responsible and efficient manner for the benefit of its citizens.

Loudon County recognizes that drug and alcohol abuse (“substance abuse”) presents a major problem throughout our society and that the County is not immune from this societal problem. The use of illegal drugs and alcohol by County employees not only threatens the health and safety of fellow employees, our residents and the public, but also results in increased costs in the form of lost productivity, high absenteeism, tardiness, excessive time away from work, excessive health care costs, accidents on the job and lower morale of other employees who must do the work of the substance abusers. Loudon County has long been committed to setting the highest standards for emphasizing and enforcing a drug and alcohol free workplace. Our goal is to provide a safe and efficient working environment, to preserve the confidence placed in the County by our employees and the public and to enforce a Drug and Alcohol Free Workplace as authorized by the Drug Free Workplace Act of 1996, Tenn. Code Ann. §50-9-101 *et. seq.*

As part of Loudon County’s effort to achieve the foregoing health, safety and efficiency goals, and as a step in compliance with the law, it has developed the following drug and alcohol abuse policy. This policy represents the County commitment to comply with the Drug Free Workplace Act of 1996, the State of Tennessee’s Drug-Free Workplace Program, and other applicable laws. This revised policy will be communicated to each employee on the effective date hereof or as soon thereafter as reasonably practicable.

**Loudon County is also regulated by the DOT and the DOT Federal Motor Carrier Safety Administration Controlled Substances and Alcohol Use and Testing Regulations (“FMCSA” regulations). The County has implemented a separate DOT Drug and Alcohol Abuse Policy (“DOT Policy”) which is intended to comply with the drug and alcohol use and testing requirements of the FMCSA regulations.**

## **II. POLICY:**

### **A. Drug Policy**

The illegal use, manufacture, possession, distribution, or sale of prohibited drugs while on Loudon County properties, while on duty for regularly scheduled or emergency work, while operating Loudon County vehicles or equipment, or off the job so as to affect the employee's job performance, judgment, or integrity on the job as a representative of Loudon County is strictly prohibited. An amount of a prohibited drug in an individual's body equal to or higher than the cut-off level as detected by a drug test, for the purpose of this policy, is considered prohibited use of drugs by the individual. Violations of this policy, except in extremely rare circumstances, will constitute grounds for immediate termination.

### **B. Alcohol Policy**

No employee shall report to work under the influence of alcohol, or use or be under the influence of alcohol while on Loudon County properties, while on duty for regularly scheduled or emergency work, or while operating County vehicles or equipment. No employee shall report for duty or remain on duty while having an alcohol concentration of 0.02 or greater. Moreover, safety sensitive employees are prohibited from using alcohol within four (4) hours before reporting to duty.

When a safety sensitive employee is called to duty to respond to an emergency, the employee is prohibited from using alcohol after the employee has been notified to report to duty. An employee being paid to be on call for a period of time is prohibited from consuming alcohol during that time period. Violation of this policy will lead to disciplinary action up to and including termination.

### **C. Consequences for Violations**

Refusal by an employee to be tested for drugs or alcohol in accordance with this policy is insubordination and, except in extremely rare cases, will constitute grounds for immediate termination. Submitting an adulterated specimen, or a substituted specimen, or similar efforts to avoid or otherwise obstruct the testing process are also violations of the policy that, except in extremely rare circumstances, will constitute grounds for immediate termination. Failing either a drug or an alcohol test will also result in a potential forfeiture of workers' compensation benefits as authorized by Tenn. Code Ann. §50-9-105 and §50-6-110. Nothing in this policy shall be deemed to preclude Loudon County from taking steps to terminate any employee found to be in violation of any part of this policy.

## **III. DEFINITIONS:**

For purposes of this policy, the following definitions apply:

1. "Accidents" by this policy include both Class A and Class B accidents, which are defined as follows:

"Class A Accidents" mean accidents involving employees in safety sensitive positions resulting in: (a) death; (b) personal injury necessitating medical treatment which is recorded in the OSHA 300 log; (c) personal injury to anyone resulting in loss of consciousness, the necessity to carry the person from the scene and/or disability which prevents the discharge of an employee's normal duties beyond the day of the accident; (d) a hazardous situation which presents imminent danger either to the employee, other employee(s), or the public; (e) damage to property in excess of \$1,000.00; or (f) multi-vehicle collisions, regardless of circumstances.

"Class B Accidents" mean accidents involving employees in non-safety sensitive positions resulting in (a) death; (b) personal injury to anyone necessitating hospitalization (inpatient or outpatient); (c) damage to property in excess of \$10,000.00; (d) a multi-vehicle collision, regardless of circumstances.

2. "Adulterated Specimen" means that the urine specimen contains a substance that is not expected to be present in human urine, or contains a substance that is expected to be present but is at a concentration so high that it is not consistent with human urine. Submitting an adulterated specimen is a violation of this policy.
3. "Alcohol" or "Alcoholic beverage" means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.
4. "Alcohol concentration (or content)" means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.
5. "Alcohol use" means the consumption of any beverage, mixture, or preparation, including any medication containing alcohol.
6. "Applicant" means an individual applying for a position who is subject to preemployment testing.
7. "Breath Alcohol Technician (BAT)" means a certified individual who instructs and assists individuals in the alcohol testing process and operates an EBT, as defined below.

8. "Chain of Custody" means procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an appropriate drug testing custody form from a Department of Health & Human Services (DHHS) certified laboratory be used from time of collection to receipt by the laboratory.
9. "Collection site" means a designated clinic/facility where applicants or employees may present themselves for the purpose of providing a specimen of their urine or a breath sample to be analyzed for the presence of drugs or alcohol, respectively.
10. "Collector" means a certified person who instructs and assists applicants and employees through the urine specimen collection process.
11. "Commercial driver's license" or "CDL" means a driver's license required to operate Loudon County commercial motor vehicles.
12. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicle and towed vehicle used in commerce to transport passengers or property when the vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 or more pounds including a towed unit with a gross vehicle weight rating of more than 10,000 pounds, or has a gross vehicle weight rating of 26,001 or more pounds, or is designed to transport 16 or more passengers.
13. "Confirmation test" as to drugs means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.
14. "Confirmation test" as to alcohol means a second test that is given not less than 15 minutes and not more than 30 minutes after the initial screening test. The confirmation test is the final result upon which any action will be taken under this policy.
15. "Conviction" means a finding of guilt (including a plea of no contest or which results in a pretrial or judicial diversion) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug laws as defined below.

16. "Criminal drug law" means a Federal or State criminal statute, regulation, or other law involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.
17. "Drug" means a controlled substance as defined in Schedules I through V of Section 202 of the Controlled Substance Act. The Procedures contains a list of drugs tested under this policy and the cut-off levels for each drug.
18. "Designated Employer Representative" (DER) means an employee authorized by the employer to receive test results and other communications for the employer, consistent with the requirements of Part 40.
19. "Dilute specimen" means a specimen with specific gravity of less than 1.003 and creatinine of less than 20 mg/dL, which are lower levels than expected for human urine. A positive dilute specimen will be regarded as a positive test. A negative dilute specimen will be regarded as a negative test.
20. "Evidential Breath Testing Device" (EBT) means an alcohol Breath-testing device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices."
21. "Employee" means a full-time, part-time, temporary or seasonal employee of Loudon County.
22. "Fail a drug test" or "test positive" means the confirmation test result shows positive evidence of the presence of a prohibited drug above the cutoff limit in the employee's or applicant's system.
23. "Initial test" as to drugs means an immunoassay screen to eliminate negative urine specimens from further consideration.
24. "Initial test" as to alcohol means a breath alcohol test using an Evidential Breath Testing Device given by a qualified Breath Alcohol Technician to determine whether an employee may have a prohibited concentration of alcohol in his or her system.
25. "Pass a drug test" or "test negative" means that initial testing or confirmation testing does not show evidence of the presence of a prohibited drug above the cutoff limit in the employee's system.

26. "Prohibited drug" means the drugs and classes of drugs that are tested for as described under Section VI of this policy.
27. "Refusal to submit" means refusal by an individual who, after receiving notice of the requirement to be tested in accordance with this policy and without valid medical explanation, refuses to provide an adequate urine sample for a drug test or adequate breath for an alcohol test, or otherwise engaging in conduct that clearly obstructs the testing process such as refusal to sign necessary consent forms. A verified adulterated or substituted result constitutes a refusal to submit.
28. "Substance abuse professional" or "SAP" means a licensed physician (i.e., a medical doctor), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of drug or alcohol-related disorders.

#### **IV. PROCEDURES FOR NOTIFYING EMPLOYEES OF COVERAGE:**

On or after the effective date of this policy, applicants for positions covered by this policy will be given a copy of the policy before the preemployment testing. Employees and applicants will be advised that the entire policy and the drug and alcohol testing procedures referenced in this policy can be reviewed at their request.

#### **V. RESPONSIBILITIES:**

The Loudon County Mayor has overall responsibility for this program. The Mayor is responsible for handling all disciplinary actions that occur as a result of refusal to be tested or as a result of a positive test for employees under her control as chief executive officer for the County. The County Mayor works in cooperation with elected and appointed County officials in connection with disciplinary actions under this policy for County employees under their control. Ultimate disciplinary authority for these employees, however, remains with the respective County officials. County officials, for the purposes of this policy, include the Trustee, Register of Deeds, County Clerk, Clerk and Master, Sheriff, Court Judges, Clerk of Courts, Assessor of Property, and Road Superintendent. Employee Benefits has the functional responsibility for the administration of the program, coordinating with the Medical Review Officer and the laboratory selected, keeping records relative to drug/alcohol testing, and for coordinating and initiating testing of employees under Return to Duty Agreements. Employee Benefits, the supervising County officials, and the County Mayor are authorized to act as the DER.

## VI. PROCEDURES FOR TESTING:

Procedures relative to the administration and implementation of this policy are included in a separate document entitled "Loudon County's Drug and Alcohol Testing Procedures" (hereinafter sometimes referred to as the "Procedures") which will provide those supervisors, managers and employees covered by this policy with information that can be used when more detail is needed. **The Procedures are hereby incorporated and made a part of this policy the same as if they had been fully copied herein.** A copy of the Procedures is available upon request from Employee Benefits. The Procedures are also utilized to implement testing under Loudon County's DOT Drug and Alcohol Abuse Policy. The following is a summary of the information which is more fully detailed in the Procedures.

### A. Drug Testing Procedures

Drug testing under this policy will involve the screening of urine samples for the prohibited drugs listed in the Procedures. The initial test performed on the urine sample will be an enzyme-multiplied- immunoassay technique ("EMIT screen"), screen which will be used to eliminate negative urine specimens from further consideration. All specimens identified as positive through the EMIT screen will be confirmed by using gas chromatography/mass spectrometry ("GC/MS") techniques at the cutoff levels set forth in the Procedures. A GC/MS confirmation test above the foregoing cut-off limits for GC/MS tests will be considered a positive drug test.

Personnel trained in the process of collecting the urine samples and seeing that correct chain of custody procedures are followed will be available at the collection site. Loudon County, or any subsequent contractor performing Loudon County's urine specimen collection, shall have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping of urine specimens to a certified drug testing laboratory designated by the County. These personnel shall follow Loudon County's Drug and Alcohol Testing Procedures to ensure that the drug test results of the urine samples are attributable to the correct employee and to preserve the integrity of the testing process and validity of the test results.

It is the responsibility of an applicant or employee who tests positive on a drug test to inform the medical review officer ("MRO") of any prescription or non-prescription drug use that may have affected the results of the test. The purpose of this disclosure is to assist the MRO in determining whether such prescription or non-prescription drug use is the source of any positive test result.

An applicant or employee who receives a positive confirmed test result may contest or explain the result to the MRO within five (5) working days after receiving written notification of the test result. If the applicant's or employee's explanation or challenge is unsatisfactory to the MRO, the MRO shall then report the positive test result to Loudon County. An employee may contest a

drug or alcohol test pursuant to the rules implementing the Tennessee Drug Free Workplace Program.

Under this policy, the County tests for the following prohibited drugs at the following cutoff levels, or as otherwise instructed by the Tennessee Drug-Free Workplace or standard laboratory procedures, including reference to 49 C.F.R. Part 40, as amended:

	EMIT	GC/MS
Amphetamines	1,000 ng/ml	500 ng/ml
Barbiturates	300 ng/ml	300 ng/ml
Benzodiazepines	300 ng/ml	300 ng/ml
Marijuana Metabolites	50 ng/ml	15 ng/ml
Cocaine Metabolites	300 ng/ml	150 ng/ml
Methadone	300 ng/ml	300 ng/ml
Methaqualone	300 ng/ml	300 ng/ml
Opiates	2000 ng/ml	2000 ng/ml
Phencyclidine (PCP)	25 ng/ml	25 ng/ml
Propoxyphene	300 ng/ml	300 ng/ml

## **B. Alcohol Testing Procedures**

Alcohol testing will be conducted using evidential breath testing ("EBT") devices by either Loudon County or its authorized agents, who will use an EBT device capable of printing out the results, date and time, sequential test number, and the name and serial number of the EBT to ensure reliability of the results.

An initial or screening test will be performed by a qualified BAT utilizing an EBT. Where the screening test result shows an alcohol concentration less than 0.02, no further testing action will be taken (unless the test is a return to duty or follow-up test). However, if the alcohol concentration

in the screening test is 0.02 or greater, a confirmation test will be conducted after a 15-minute waiting period.

The confirmation test may be conducted on the same EBT or different EBT by the BAT, but it must be performed no sooner than 15 minutes and no later than 30 minutes after the screening test. The confirmation test result is deemed to be the final result upon which any action will be taken under this policy.

A confirmation test result with an alcohol concentration of 0.04 is considered a positive test, and the employee will be immediately removed from performing his or her functions, and suspended with pay pending an investigation. Disciplinary action up to and including termination will be imposed pursuant to and in accordance with this policy. Where an employee is found to have an alcohol concentration in the confirmation test of above 0.01 but below 0.04, the employee will be required to pass an alcohol test the next day.

An employee who tests 0.02 or above, but less than 0.04 in the first-day confirmation test will be scheduled for a re-test on the next regularly scheduled shift (“second-day test”). If the employee’s initial re-test is less than a 0.02, the employee will be returned to his or her duties. If the employee’s initial re-test is a 0.02 or above, he or she will be given a confirmation test under the foregoing confirmation test procedures. If the confirmation test shows an alcohol concentration of 0.04 or above, it is a positive test and disciplinary action will be taken accordingly. If the second-day confirmation test shows an alcohol concentration of 0.02 or above, but below 0.04, the employee will be referred to EAP for evaluation. The employee will be suspended with pay pending release and recommendations from EAP regarding the employee's return to work.

**Where employees are tested under a test required by Loudon County's DOT Policy, including preemployment, reasonable suspicion, post accident, random, return to duty and follow-up testing required thereunder, the Loudon County DOT will be used generally to the exclusion of a test under this policy. However, Loudon County reserves the right to conduct a separate test under this policy by requiring the employee to void or breathe separately after the employee has voided or breathed for the DOT-required test. Further, a positive test under the Loudon County DOT Policy is considered a positive test under this policy. Before testing, employees will be informed as to whether they are being tested pursuant to Loudon County's DOT Drug and Alcohol Abuse Policy, this policy, or both.**

Loudon County will incur the costs of most testing required under this policy. The cost of any testing related to Return to Work Agreements shall be borne by the employee.

**Note:** An employee who is subject to a Return to Work Agreement will be expected to comply with the conditions of that agreement and considered in violation of his or her Agreement and the County’s General Policy if results of a drug or alcohol test are positive as defined in the

employee's Return to Work Agreement. Such employee will be given both an initial and confirmatory test, and the confirmation test results will control for disciplinary purposes.

## **VII. COUNSELING/REHABILITATION RESOURCES**

Loudon County strongly encourages employees with a drug or alcohol dependency to voluntarily refer themselves to a rehabilitation program. A list of resources designed to assist employees with substance abuse is attached to this policy as Appendix A. Costs of rehabilitation may be covered under Loudon County's group health insurance plan subject to the eligibility requirements, limitations and conditions of the plan. Any and all costs of rehabilitation, whether incurred as a result of voluntary or mandatory referral (as defined below), that are not paid for by Loudon County's insurance carrier will be the responsibility of the employee.

**VOLUNTARY/SELF REFERRAL:** A voluntary/self referral is defined as an employee who seeks an appointment that is not disciplinary in nature. A voluntary referral is not allowed once an employee fails a drug or alcohol test or has otherwise been found in violation of this policy. All information is confidential and names of referrals are not released without written consent of the patient. Employees are not subject to disciplinary action for voluntary/self referral even though the reason may involve drug or alcohol dependency as long as they have not otherwise been found in violation of this policy. Other violations of Loudon County policy or work rules may subject the employee to disciplinary action.

**Employees in safety-sensitive positions who voluntarily refer themselves to counseling and who are, in turn, referred for drug or alcohol rehabilitation treatment, and who release or otherwise disclose that information to Loudon County, will be monitored by the Substance Abuse Professional (SAP), in partnership with Employee Benefits or her designee to help ensure they continue to follow the treatment recommendations of the professionals. Where the employee fails to follow treatment recommendations, thereby raising safety concerns, Loudon County reserves the right to mandatorily refer such an employee to counseling.**

**MANDATORY/SUPERVISORY REFERRAL:** A mandatory/supervisory referral is defined as a directive from Loudon County to an employee to seek assistance when work performance or the ability to safely perform job functions has been affected by personal and/or work related problems. Employees who have BAC's between .02 and .04 on second day tests are subject to mandatory referral. In the rare event that an employee who fails a drug or alcohol test is not terminated, he or she will be mandatorily referred to counseling. In the case of a mandatory referral, the counseling is not confidential and the employee will be required by the provider to sign a release authorizing the provider to furnish Loudon County with appropriate information.

If an employee is assessed by the counselor to need rehabilitation, the referral to rehabilitation will not be confidential. The counselor will notify Employee Benefits. The treatment

facility will require the employee to execute an information release enabling the counselor, Loudon County, and the treatment center to exchange certain information about the employee's diagnosis, recommended program, cooperation, progress, etc.

Disciplinary action related to the actions necessitating the mandatory referral to EAP may occur prior to, during, or following a counseling referral. Employees returning to work following a mandatory referral and rehabilitation for drug abuse will be subject to a Return to Work Agreement, specifying the circumstances and conditions of his or her return to duty, which will include among other things, follow-up drug or alcohol testing required by this policy and the requirement that the employee strictly follow any recommended rehabilitation and after-care program. The recommended treatment plan, including, where appropriate, abstinence from alcohol, will be incorporated into the Return to Work Agreement. Failure to comply and complete the recommended treatment plan outlined, or violation of the Return to Work Agreement, will lead to disciplinary action up to and including termination.

This section should not be construed to limit Loudon County's right to discipline or terminate any employee who is mandatorily referred to counseling or treatment or who otherwise fails to meet Loudon County job standards.

An employee who is approved to enter a rehabilitation program, whether on a voluntary or a mandatory referral basis, will be allowed to use any sick leave or vacation to that employee's credit at the time of entering the program. If no paid days are available, the employee will be approved for absence without pay as long as the employee is continuing in the rehabilitation program and up to the maximum amount of medical leave provided by the County. The time spent in a rehabilitation program will count toward the employee's entitlement under the Family and Medical Leave Act ("FMLA").

#### **VIII. DRUG AND ALCOHOL AWARENESS PROGRAM:**

To assist employees to understand and avoid the perils of drug and alcohol abuse, Loudon County has developed a drug free awareness program. Loudon County will use that program in an ongoing educational effort to prevent and eliminate drug and alcohol abuse that may affect the workplace. The awareness program will inform employees about: (1) the dangers of drug and alcohol abuse in the workplace, (2) the County's drug and alcohol abuse policies, (3) the availability of treatment and counseling for employees who voluntarily seek such assistance, and (4) the sanctions the County will impose for violations of its drug and alcohol abuse policies. This program will be monitored by Employee Benefits or the Mayor's Office on an ongoing basis and revised as new materials and information become available. All employees must complete at least one (1) hour of drug and alcohol education training per year as required by the Tennessee Drug-Free Workplace Program. Attendance records will be kept in Employee Benefits.

Supervisory personnel must, in addition to the one (1) hour of training required for all employees, obtain a minimum of two (2) hours per year of workplace substance abuse recognition training. This training will include educating the supervisory personnel on alcohol and drug awareness, information concerning and identifying specific, contemporaneous, physical, behavioral, and performance indicators (“reasonable suspicion”) of probable drug and alcohol use, and proper procedures to be followed with all types of drug and alcohol testing. Supervisory training will be required for certification under the Tennessee Drug Free Workplace Program. Loudon County reserves the right to coordinate these training sessions with any training required by the Loudon County DOT Drug and Alcohol Abuse Policy.

#### **IX. USE OF PRESCRIPTION DRUGS:**

Loudon County recognizes that use of prescription drugs under the supervision of appropriate health professionals is protected under the Americans With Disabilities Act (ADA). However, legal use of certain prescription drugs by employees in safety-sensitive positions may cause impairment and create dangerous situations in the workplace. Employees are required to take prescription drugs which may cause impairment strictly in conformance with the limits prescribed by a licensed medical practitioner familiar with the employee's medical history and assigned duties. Failure to do so, e.g., by taking impairing drugs without a prescription or with a prescription not in the employee's name, or in amounts greater or more frequently than prescribed, or using multiple prescriptions obtained under false pretenses, or performing duties while taking an impairing drug that has not been reported to Loudon County or otherwise in violation to the foregoing requirements, is a violation of this policy.

To balance the interests of Loudon County and the rights of employees as provided in the ADA, a safety sensitive employee who must use prescription drugs under the supervision of an appropriate medical practitioner or physician is required to advise that practitioner of their safety sensitive responsibilities to determine if the medication may affect their ability to perform their assigned duties. If the physician needs to consult with someone from Loudon County about the safety sensitive responsibilities of the employee, he or she may contact Employee Benefits. If the employee's prescribing physician determines that working while taking the medication will create a safety risk, the employee must: (1) advise his or her manager of the safety risk so that accommodations can be made in the assignment or steps can be taken to eliminate the risk; or (2) not report to work while taking the medication which prevents the employee from performing in a safe manner.

It is the employee's responsibility to discuss any medication and all job responsibilities with his or her personal physician to determine if there is a safety risk involved and to take action to eliminate the risk.

## **X. SAFETY SENSITIVE POSITIONS:**

Loudon County has a number of jobs which are considered safety sensitive positions. In general these are positions where a single mistake by a Loudon County employee can create an immediate threat of serious harm to fellow employees or the public. Such positions include, but are not limited to, positions which require the employee to operate Loudon County vehicles carrying passengers, operate personal vehicles for County business, operate heavy equipment or dangerous machinery, work directly with the high-voltage electric power system, work with raw sewage or hazardous or toxic chemicals which could be discharged into the atmosphere or the public water supply, and/or the performance of emergency response functions. Safety sensitive positions also include individuals with CDL's who are required to drive Loudon County's commercial motor vehicles subject to the FMCSA regulations.

Attached as Appendix B is a description of job duties which include safety sensitive positions subject to this policy. The random, pre-employment, and other required testing for the employees covered by Loudon County's DOT Policy will generally be conducted under that policy. Testing positive under Loudon County's DOT Policy, however, will be a violation of this policy. Moreover, Loudon County reserves the right to conduct drug tests under this policy for the employees covered by the DOT Policy; provided, however that if it exercises that option, Loudon County will require two voidings, will handle the samples separately, and will advise the employees that they are being tested under both policies. Safety sensitive employees (See Appendix B) who are not covered by Loudon County's DOT Policy will be tested under this policy and not the DOT-required policy.

Job functions may be added or deleted from Appendix B at the discretion of Loudon County or as mandated by law or regulations without republishing this policy. If new job functions are added to Appendix B, the County will inform incumbents in the affected classification, in writing, that they will be added to the random testing pool, with the notice mailed at least 30 days before their name is added to the pool.

## **XI. PRE-EMPLOYMENT TESTING:**

In the furtherance of achieving Loudon County's goals as enumerated above, all individuals to whom a conditional offer of employment is made for employment in safety sensitive positions (See Appendix B) will be required to submit to a urinalysis test for the detection of illegal use of drugs.

Applicants will be given a copy of this policy in advance of the post-offer pre-employment physical. Applicants will acknowledge having read or had this policy explained to them and should understand that as a condition of employment they are subject to its contents. Applicants will be required to sign the necessary authorization form for Loudon County to perform the testing and for its DER to be advised of the results. An applicant refusing to complete any part of the drug and

alcohol testing procedures will not be considered a valid candidate for employment at Loudon County.

Applicants who test positive on the drug or alcohol test or who refuse to take the test will not be hired and will not be eligible to be considered for employment at Loudon County for a period of three months and until the applicant shows proof of successful completion of a drug or alcohol rehabilitation program or proof that the applicant has otherwise rehabilitated successfully and is no longer engaging in illegal drug use or misusing alcohol.

## **XII. REASONABLE SUSPICION TESTING:**

Whenever Loudon County reasonably suspects that an employee's work performance or on-the-job behavior may have been affected in any way by illegal drugs or alcohol, or that an employee has otherwise violated Loudon County's General Policy, the County may require the employee to submit to a reasonable suspicion drug or alcohol test as required under the Tennessee Drug-Free Workplace Program. The test will be conducted in accordance with this policy and Loudon County's Drug and Alcohol Testing Procedures.

Reasonable suspicion sufficient to conduct a drug test will be based on a reasonable belief that the employee is using or has used an illegal drug or alcohol, or is otherwise in violation of Loudon County's General Policy, based on specific, current, or continuing physical, behavioral, or performance indicators of probable drug or alcohol use, or information provided by a reliable and credible source. Where it is feasible, at least two of the employee's supervisors, at least one of whom has been trained in detection of the possible symptoms of drug use, shall verify and agree to the decision to test an employee.

Loudon County's determination that reasonable suspicion exists to require a covered employee to undergo drug or alcohol testing will be based on specific, objective, contemporaneous and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, reasonable suspicion sufficient to justify drug or alcohol testing may be based on, but not limited to the following: direct observation by a supervisor of symptoms of drug or alcohol use such as impaired motor control, loud or uncontrollable verbiage, or displays of violent/threatening behavior; slurred speech, odor, glassy eyes; information provided by reliable and credible sources; abnormal conduct or erratic behavior while at work or a significant deterioration in work performance; a report of drug or alcohol abuse provided by a reliable and credible source; evidence that an employee has tampered with a drug or alcohol test; information that an employee has caused, contributed to or been involved in an accident at work; or evidence that an employee has used, possessed, sold, solicited or transferred drugs, whether on or off the job, or evidence that an employee has used alcohol in violation of this policy. Reasonable suspicion to justify drug testing can also be based upon an alert by a trained drug detection dog indicating that an employee possesses illegal drugs on Loudon County property, presence of drugs on the County property under the control

of the employee, or presence of drugs in an employee's personal effects on the County property, including employee vehicles parked on the County property.

Once it is determined that an employee should be subjected to a reasonable suspicion test, one of the verifying supervisors should contact Employee Benefits to coordinate the testing and obtain any necessary instructions.

An employee who refuses to submit to drug or alcohol testing for reasonable suspicion will be immediately removed from his or her position. Refusal to take the test is insubordination and will constitute grounds for immediate termination.

An employee who agrees to be tested will be transported to and from the collection site. Where a reasonable suspicion drug test is given in addition to the alcohol test, even if the employee passes the alcohol test, the employee will be removed from his or her activities and will be suspended with pay pending receipt of the drug test results. If the employee fails the alcohol test, the employee will be immediately removed from his or her position and will be suspended with pay pending a further investigation. The employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the positive alcohol test and/or due to the reasonable belief that he or she may be under the influence of a drug. If the employee insists on driving, the proper local law enforcement authority will be notified that an employee Loudon County believed to be under the influence of a drug or alcohol is leaving Loudon County premises driving a motor vehicle.

If an alcohol test based on reasonable suspicion is not administered within two (2) hours following the determination of reasonable suspicion, Loudon County shall prepare and maintain on file a record stating the reasons the test was not properly administered. If the test is not administered within eight (8) hours following the reasonable suspicion determination, Loudon County will cease attempts to administer the alcohol test and will record, in writing, the reasons for not administering the test.

As required by the Tennessee Drug Free Workplace Act, Loudon County shall, within seven (7) days after testing based on reasonable suspicion, detail in writing the circumstances which form the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential.

An employee who tests positive on a reasonable suspicion drug or alcohol test (either administered under this policy or Loudon County's DOT Policy) will be in violation of this policy. Failing a drug or alcohol test, except in extremely rare circumstances, will constitute grounds for immediate termination. Failing an alcohol test will result in disciplinary action up to and including termination. If the employee is not terminated, Loudon County will refer the employee to counseling

under the mandatory referral provisions of the Counseling/Rehabilitation Resources in Section VII of this policy.

Loudon County reserves the right, in its discretion, to conduct reasonable suspicion tests under this policy for employees being tested under the DOT Policy, but in such cases, independent samples will be taken under each policy.

### **XIII. POST ACCIDENT TESTING:**

Employees involved in accidents within the definition of "accidents" in Definitions, Section III above, will be subject to post-accident testing under the following circumstances:

1. Where a Loudon County employee apparently caused, may have contributed to, or cannot be completely discounted as a contributing factor to the accident, OR
2. Where an employee indicates by actions or otherwise at the scene of an accident that he/she has used some substance in violation of Loudon County's General Policy.

**Note:** An employee subject to post-accident testing need not have personally sustained an injury as long as the definition of accident is satisfied and the employee apparently caused, contributed to, or cannot be completely discounted as a contributing factor to the accident. An employee who is not issued a citation is not necessarily completely cleared of fault.

**Employees who are covered by Loudon County's DOT Policy and who are involved in "accidents" meeting the definition of this policy but not meeting the definition of the DOT policy will be subject to post-accident testing under this policy. Employees covered under Loudon County's DOT Policy will be told whether they are being tested under the General Policy or the DOT policy.**

Testing will be done as soon as possible following the accident in accordance with Loudon County's Drug and Alcohol Testing Procedures. If an employee refuses to submit to post accident testing, the employee will be removed from his or her position. Refusal to take the test is insubordination and will constitute grounds for immediate termination. Refusal to submit to the post-accident test will subject the employee to potential loss of workers compensation benefits as authorized by Tenn. Code Ann. §50-9-102 and §50-6-110(c).

If the alcohol test is not administered within two (2) hours following the accident, Loudon County will prepare a written record stating the reasons why the test was not promptly administered. If the alcohol test is not administered within eight (8) hours following the accident Loudon County

will cease attempts to administer the alcohol test and will also prepare a written record of the reasons for not administering the test.

There is no time limit for administering drug testing under this policy.

An employee who is subject to post-accident testing, but who fails to remain readily available for testing, may be deemed by Loudon County to have refused to submit to the test. The employee may not consume any alcohol for eight hours following the accident or until the alcohol test has been conducted. Nothing herein is intended to require the delay of necessary medical attention for injured people or prohibit a covered employee from leaving the scene of the accident for the period necessary to obtain assistance or necessary emergency medical care.

An employee who agrees to be tested will be transported to and from the collection test site. Because a post-accident drug test will be administered in addition to an alcohol test, even if the employee passes the alcohol test, the employee will not be allowed to perform safety sensitive functions and may be suspended with pay pending the results of the drug test in accordance with this policy.

Upon completion of drug and alcohol testing, an employee who fails the alcohol test will be immediately removed from his or her position and will be suspended with pay pending a further investigation. The employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the positive alcohol test and/or the belief that he or she may be under the influence of a drug. If the employee insists on driving, the proper local law enforcement authority will be notified that an employee Loudon County believes to be under the influence of a drug or alcohol is leaving Loudon County premises driving a motor vehicle.

An employee who fails a post-accident test (administered under this policy or Loudon County's DOT Policy) will be in violation of this policy. Failing a drug test, except in extremely rare circumstances, will constitute grounds for immediate termination. Failing an alcohol test will result in disciplinary action up to and including termination. If the employee is not terminated, the County will refer the employee to counseling under the mandatory referral provisions of the Counseling/Rehabilitation Resources section, Section VII, of this policy. Further, positive test results on a drug or alcohol test pursuant to this policy, including post-accident tests, will also subject the employee to potential loss of workers' compensation benefits as authorized by Tenn. Code Ann. § 50-9-102 and § 50-6-110(c).

Loudon County reserves the right, in its discretion, to conduct post-accident tests under this policy for employees tested under the DOT Policy, but in such cases, independent samples will be taken under each policy.

#### **XIV. PROMOTION AND TRANSFER TESTING:**

When an employee in a non-safety sensitive position applies for a position for a job that has been identified by Loudon County as a safety sensitive position, the employee is subject to drug testing in accordance with Loudon County's Drug and Alcohol Testing Procedures before the employee will be considered a valid candidate for that job opening. An employee who tests positive on a promotion/transfer test, will no longer be considered an applicant for that position. Such employee will also be in violation of this policy, which constitutes grounds for immediate termination. If the employee is not terminated, the employee is subject to the mandatory referral provisions of Section VII , Counseling/Rehabilitation Resources; the provisions of Section XVI, Return to Duty and Follow-Up Testing; and Section XVII, Referral, Evaluation and Treatment, of this policy.

An employee may withdraw the application for the position at any time up until the employee is scheduled for promotion/transfer testing. Once an employee is scheduled for promotion/transfer testing, if that employee refuses to submit to the testing, he/she will be disqualified for consideration for the position and will be considered as being insubordinate and subject to Loudon County's disciplinary procedure. Under no circumstances will this employee be considered as a viable candidate for any future openings in this classification until the employee has signed a release for drug testing at the time of submitting the application for the position in connection with a job posting.

#### **XV. RANDOM TESTING:**

All employees in safety-sensitive positions (Appendix B) are subject to random drug testing at a rate equal to 10% of the covered employees on an annual basis. The testing rates are subject to change at the beginning of each calendar year, and Loudon County will advise covered employees of any change in the random rate before such change is implemented. All testing will be in compliance with Loudon County's Drug and Alcohol Testing Procedures which are incorporated herein by reference.

Temporary and seasonal employees who are performing work in a safety-sensitive position are also covered and will be subject to random testing on the same basis as regular employees.

The process will be unannounced as well as random. The frequency of testing dates will vary and testing will be reasonably spread throughout the year. Due to the large numbers of employees who will ultimately be covered by random testing, testing may be conducted at different locations, on different days in the same month, or even in the same week, as long as testing is reasonably spread throughout the applicable 12 month period. Employees will be notified that they have been selected for random testing **after** they have reported for duty on the day of collection.

The selection for testing will be done using a random number table or a computer-based random number generator that is matched with an employee's social security number, payroll

identification number, or other appropriate identification number. Loudon County reserves the right to create multiple pools of safety-sensitive employees provided that all covered employees are subject to the random drug testing rate of 10%.

Any employee who refuses to submit to a random drug test will be immediately removed from safety-sensitive functions, charged with insubordination and will be subject to immediate termination.

Any employee who fails a random drug test will be immediately removed from the safety-sensitive functions and will be in violation of this policy. Failing a drug test, except in extremely rare circumstances, will constitute grounds for immediate termination. If the employee is not terminated, Loudon County will mandatorily refer the employee to counseling under the mandatory referral provisions of Section VII, Counseling/Rehabilitation Resources; the provisions of Section XVI, Return to Duty and Follow-Up Testing, and Section XVII, Referral, Evaluation and Treatment, of this policy.

**DOT COVERED EMPLOYEES: Where an employee in a safety-sensitive position covered by this policy is also covered by the random testing requirements of Loudon County's DOT Policy, the random testing will be done pursuant to that policy and not this policy. However, testing positive on a DOT-required test is a violation of this policy and subjects the employee to the discipline specified herein. All other safety-sensitive positions will be tested under this policy.**

#### **XVI. RETURN TO DUTY AND FOLLOW-UP TESTING:**

An employee who has been given the opportunity to undergo rehabilitation for drugs or alcohol must pass a return to duty drug test administered under this policy before the employee will be allowed to return to duty and will, as a condition of return to duty, be required to agree to reasonable follow-up testing established by Loudon County. The extent and duration of the follow-up testing will depend upon the safety or security nature of the employee's position, and the nature and extent of the employee's substance abuse problem, but will not exceed 60 months after the employee's return to duty. Loudon County will consult with the SAP, in determining an appropriate follow-up testing program. All follow-up drug and alcohol testing will be conducted in accordance with the Procedures.

If the SAP determines some form of evaluation and/or treatment is required, the employee must strictly comply with the recommendations. If the SAP recommends that the employee remain drug and/or alcohol free, the employee must strictly comply with those recommendations, which shall be incorporated into the Return to Work Agreement.

Any employee who is subject to return to duty or follow-up testing who has a confirmed positive drug or alcohol test or who refuses to be tested will be in violation of this policy and will be subject to immediate termination.

**Return to duty and follow-up testing is not an option if Loudon County terminates an employee who has tested positive, refused to test, or who has otherwise violated this Policy or the DOT Policy.**

## **XVII. REFERRAL, EVALUATION AND TREATMENT:**

A covered employee who has engaged in conduct prohibited by this policy will be advised of the resources available to him or her for evaluating and resolving problems associated with the misuse of drugs or alcohol including the names, addresses and telephone numbers of substance abuse professionals and counseling and treatment programs approved by Loudon County.

Where the employee is not terminated, the County will mandatorily refer the employee for evaluation by a SAP who will determine what assistance, if any, the employee needs in resolving problems associated with drug or alcohol misuse. Before an employee will be returned to a covered position, the SAP must certify that the employee has properly followed any rehabilitation program prescribed by the professional.

Employees mandatorily referred to counseling who are diagnosed as needing assistance in resolving drug or alcohol misuse problems will be required to sign a Return to Work Agreement which will specify the circumstances and conditions on their return to duty which will include, among other things, the follow-up alcohol and drug testing required by this policy and the requirement that the employee follow any recommended rehabilitation and after-care program.

Nothing contained herein should be construed as restricting Loudon County's right to terminate a covered employee for violating this policy. Employees who are terminated are not entitled to Loudon County sponsored rehabilitation other than through their election to continue their health insurance coverage under COBRA (provided the employee's termination is not for gross misconduct, in which case COBRA benefits may be denied).

## **XVIII. COLLECTION:**

The main office of Loudon County's MRO is designated as the primary drug or alcohol testing facility; however, testing may be performed at another site at the County Mayor or his designee's discretion. Drug and alcohol testing will be done at designated collection sites around Loudon County. Personnel trained in the process of collecting the specimen and seeing that correct chain of custody procedures are followed will be available at collection sites. All collections will be done in accordance with the Drug and Alcohol Testing Procedures.

Loudon County or any subsequent contractor performing the County's specimen collection, shall have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary storage, and shipping of urine specimens to a certified drug testing laboratory designated by the County.

A designated collection site will be any suitable location where a specimen can be collected under conditions set forth in the Procedures, including a properly-equipped mobile facility.

Should an occasion arise that requires testing at a time when Loudon County collection sites are not available, employees will be tested at Fort Loudon Medical Center. This facility is aware of the appropriate testing requirements and the chain of custody procedures that must be followed, along with the requirement of transfer of the specimen to the County's selected DHHS certified laboratory. A qualified investigator or supervisor should inform the collection personnel or BAT whether the test is by this policy or by the DOT regulations (i.e., a 5-drug DOT panel) so that the appropriate procedures may be followed.

#### **XIX. LABORATORY:**

A DHHS certified laboratory has been selected to perform the testing on urine specimens submitted. The laboratory shall provide services in accordance with the Procedures and DOT regulations, 49 CFR Part 40, even on Loudon County's non-DOT drug tests. Current laboratory information is found at Appendix A to this document.

In the event that a need arises for a confirmation of a positive result by another laboratory, another DHHS-certified laboratory will be selected from the published list of DHHS-approved laboratories in the Federal Register or latest DOT publication.

Loudon County personnel may periodically perform unannounced inspections, including examination of records.

#### **XX. MEDICAL REVIEW OFFICER (MRO):**

The MRO will be responsible for reviewing the results of drug tests before they are reported to Loudon County; reviewing and interpreting each confirmed positive, adulterated, substituted and invalid test to determine if there is an alternative medical explanation for the positive; conducting an interview with the individual testing positive; reviewing the individual's medical history and all medical records made available by the individual to determine if the positive resulted from legally prescribed medication; requiring a retest of the original specimen if the MRO deems it necessary; and verifying that the laboratory report and assessment are correct. The MRO also ensures that an employee has passed an appropriate drug test conducted in accordance with this policy and the Procedures before returning to work. The MRO is expected to follow the Medical Review Officer Manual published by the U.S. Department of Health and Human Services. Current MRO information is found at Appendix A to this document.

It is the employee's responsibility to inform the MRO of any prescription drug use that may have affected the test result. If the MRO determines that there is a legitimate medical explanation for the positive test other than the use of a prohibited drug, the MRO will report the test result to Loudon

County as negative. If the MRO concludes, based on available data, that a particular drug test is scientifically insufficient, the MRO will report the test as negative for that individual. If the MRO determines that there is no legitimate explanation for the positive test other than the use of a prohibited drug, the MRO will communicate the results of verified positive test to the employee orally and in writing and will inform the DER of a potential positive.

The MRO will notify the employee with a confirmed positive test of the results and that he/she has 72 hours in which to request a re-analysis of the original specimen. If the employee timely requests re-analysis, it will be directed by the MRO. Such re-analysis will be conducted in conformance with Loudon County's Drug and Alcohol Testing Procedures. If the re-analysis fails to confirm the presence of the drug, the MRO will cancel the test and inform the County's DER and the employee of the reasons for the cancellation. The cost of the re-test must be paid by the employee; however, if the re-test is negative, Loudon County will reimburse the employee for the cost of the re-test.

An employee or job applicant who receives a positive confirmed test result, upon notification by the MRO, may contest or explain the result to the MRO within five (5) working days after receiving written notification of the test result. If an employee's or job applicant's explanation or challenge is unsatisfactory to the MRO, the MRO shall report a positive test result back to Loudon County's DER.

The results of confirmed positive tests will be communicated by the MRO to the DER, who in turn will advise the County Mayor. The MRO or his representative will communicate the results of negative tests to the DER, who will then notify the employee through interdepartmental confidential mail or e-mail.

## **XXI. RECORD RETENTION - CONFIDENTIALITY:**

Records of drug test results are recognized to be private and sensitive records, will be maintained separate and apart from personnel records, and will be maintained in a secure fashion to ensure confidentiality. These records will be handled on a strict "need to know" basis. Records of disciplinary actions taken relative to this policy will be maintained in the employee's personnel file.

Loudon County will maintain records of drug and alcohol tests administered under this policy as follows. Records demonstrating that an employee passed a drug and alcohol test hereunder will be kept for at least one year. Records which show that an employee failed a drug or alcohol test, the type of test failed (e.g., post-accident), the prohibited substance(s) that were used by the employee, the disposition of each employee (e.g., termination) and records of rehabilitation, if any, will be kept for at least five years. A record of the number of employees tested each year by type of test will also be kept for five years. Any records listed above may be maintained for an indefinable period beyond the specified minimums at Loudon County's discretion.

Information regarding an individual's drug or alcohol testing results or rehabilitation under this policy is confidential and Loudon County, as set forth herein, will release it only upon the individual's written consent. Information regarding an individual's drug or alcohol use or testing results or rehabilitation under this policy may be disclosed, regardless of consent, to the decisionmaker of a judicial or administrative tribunal in the event of a lawsuit, grievance, civil service appeal, unemployment compensation, worker's compensation or other proceeding brought by or on behalf of the individual arising in whole or in part from the results of a drug or alcohol test or violation of this policy.

## **XXII. INSPECTION:**

Loudon County retains the right, based upon reasonable suspicion of a violation of this policy, to search an employee's office, desk, locker and other County property under the control of the employee, as well as the employee's personal effects in or on Loudon County property, such as parcels, packages, purses, lunch boxes, briefcases, and the employee's vehicles parked on Loudon County property.

Reasonable suspicion sufficient to justify a search may be based upon a clear and reasonable belief, through observation or information provided by a reliable and credible source, that illegal drugs are being possessed, distributed, sold or used while on duty, while operating Loudon County vehicles or equipment, or while on County property.

Except in the case of an immediate need to search, a decision to search shall be made by the County Mayor or the appropriate County official in consultation with the employee's Department Head and Employee Benefits. The search shall be conducted by security personnel with at least one supervisory/management personnel in attendance. Assistance from local law enforcement will be requested as deemed appropriate. Generally, an immediate search is necessary where it is likely that the object of the search may be removed, altered, or destroyed before a more thorough evaluation or review of the situation can be made.

If an immediate search is conducted, the purpose of the search should be explained to the affected employee if the employee is present at the time of the search. Any illegal drugs, alcohol, or related paraphernalia should be identified and turned over to the County Mayor or his designee at the earliest possible moment.

An employee who refuses to allow a search of his personal property such as parcels, packages, purses, lunch boxes, briefcases, and personal vehicles parked on Loudon County property, will be charged with insubordination and subject to immediate termination.

Searches of Loudon County property under the control of an employee (offices, desks, filing cabinets, lockers, etc.) are subject to being conducted without notice to the employee, once the reasonable suspicion standard has been satisfied.

Possession of illegal drugs or alcohol on County property, or while on duty on or off County property, will constitute grounds for immediate termination. Possession of open containers, i.e., containers with broken seals, open containers of beer, etc., of alcoholic beverages while on County property or while on duty on or off County property is a violation of this policy.

In addition to the foregoing, Loudon County reserves the right, with or without any individualized suspicion, to use trained dogs and law enforcement personnel to detect prohibited drugs on County property, on/in County property under the control of employees, as well as employees' personal effects on/in County property, including employee vehicles parked on County property. Identification of the presence of illegal drugs by trained dogs shall constitute individualized reasonable suspicion to allow County to search any such property in accordance with and pursuant to the foregoing policy. Identification of the presence of illegal drugs shall also constitute reasonable suspicion to request the employee to submit to a reasonable suspicion drug test.

Notices to this effect will be prominently posted at the entrance to or near each entrance to County property and/or at the employee bulletin board(s).

### **XXIII. CRIMINAL CHARGES:**

Any employee who is criminally charged with a drug related offense, even while off duty and off Loudon County property **must** report the charge to the employee's supervisor no later than five days after such charge. Failure to report the charge within the time prescribed will lead to disciplinary action up to and including discharge.

Any employee who is charged with violating any criminal law related to operating vehicles under the influence of drugs or alcohol must report the charge to the employee's supervisor no later than 5 days after such charge. Failure to report the charge within the time prescribed will lead to disciplinary action up to and including discharge.

The employee who has been criminally charged with such a drug or alcohol-related offense may be relieved of duty with pay until an investigation is made. Once the facts are known and the investigation complete, the employee may be allowed to return to duty provided the employee agrees to certain conditions which may include random drug or alcohol testing as appropriate to the charges, or may be suspended without pay, or the employee may be terminated.

In determining whether the employee will be returned to duty (with or without testing), suspended or terminated, the following will be considered:

1. The degree to which the nature of the criminal charge and the facts underlying the charge reduces Loudon County's ability to maintain a safe and efficient working environment or are incompatible with the employee's responsibilities as a County employee.

2. The degree to which the nature of the charges and underlying facts unreasonably endangers the safety of other County employees, citizens and/or the public.
3. The degree to which the charges and underlying facts unreasonably undermines the public confidence of the County's operations.
4. The nature of criminal charges.
5. The nature of the employee's job at Loudon County.
6. The existence of any explanatory or mitigating facts or circumstances.
7. Whether the employee promptly reports the charge.
8. Any other facts relevant to the employee including but not limited to years of service and record of performance with Loudon County.

#### **XXIV. CRIMINAL CONVICTIONS:**

Any employee who has been convicted, as defined above in Section III, of violating any criminal drug or alcohol law must report the conviction to the employee's supervisor no later than 5 days after such conviction. Failure to report the conviction within the time prescribed will lead to disciplinary action up to and including discharge.

If an employee who drives a Loudon County vehicle has his or her license suspended, revoked, or canceled because of drug or alcohol-related offense, or if the employee is otherwise disqualified from driving due to such an offense, the employee must notify his or her supervisor before the end of the business day following the day the notice was received. Failure to do so will result in disciplinary action up to and including discharge.

Convictions for drug or alcohol-related offenses can result in disciplinary action up to and including discharge. In determining whether and to what extent an employee will be disciplined or discharged following the conviction of a drug or alcohol-related offense, the County will consider the following primary factors: the degree to which the nature of the offense reduces the County's ability to maintain a safe and efficient working environment or is incompatible with the employee's responsibilities as a County employee; the degree to which the nature of the criminal offense unreasonably endangers the safety of other Loudon County employees and/or the public; the degree to which the nature of the conviction undermines the public confidence of County operations; the nature of the criminal offense; and the nature of the employee's job, and any mitigating factors.

Any off-duty drug or alcohol related activity that is inconsistent, incompatible, or in legal or technical conflict with an employee's duties, functions, and responsibilities as a County employee will result in discipline up to and including termination.

**XXV. ADMINISTRATIVE AND CIVIL ACTIONS:**

It is the responsibility of the applicant or employee to notify their department manager of any administrative or civil action brought pursuant to the Tennessee Drug Free Workplace Act.

**XXVI. PROCEDURES FOR NOTIFYING EMPLOYEES OF COVERAGE:**

Upon the implementation of this policy, Loudon County will notify all employees as defined herein that they are covered by this policy and provide them with the policy. Applicants for positions covered by this policy will be given a copy of the policy prior to pre-employment testing. Employees and applicants may obtain a copy of the procedures referenced in this policy by making a request to Employee Benefits.

NOTE: All referenced documents in this policy are available for inspection in Employee Benefits.

## APPENDIX A

### ADDITIONAL RESOURCES

The Center for Substance Abuse Prevention's Drug Information, Treatment and Referral Hotline  
1-800-662-HELP

National Council on Alcoholism  
1-800 -NCA-HELP

[www.drug-rehabs.org](http://www.drug-rehabs.org)  
[www.usnodrugs.com/tennessee](http://www.usnodrugs.com/tennessee)  
[www.drug-abuse-treatment.org/tennessee.htm](http://www.drug-abuse-treatment.org/tennessee.htm)  
[www.findtreatment.samhsa.gov](http://www.findtreatment.samhsa.gov)

Cocaine Helpline  
1-800-COCAINE

Center for Substance Abuse Workplace Helpline  
1-800-WORKPLACE

National Clearinghouse for Alcohol and Drug Information  
1-800-729-6686

Tennessee Department of Health Alcohol and Drug Abuse Service  
1-615-741-1921

Tennessee Alcohol and Drug Association Clearinghouse  
1-800-889-9789

Tennessee Drug-Free Workplace Program  
1-800-332-2667

#### **Local Resources include**

Alcoholics Anonymous  
Call 974-9888 for information on local meetings at four immediate area churches, or the 24-hour hotline at 522-9667

Greater Smoky Mountain Area Narcotics Anonymous  
Call 1 (866) 617-1710 or visit [www.knoxvillena.org](http://www.knoxvillena.org) for area meeting times and places

## **MEDICAL REVIEW OFFICER**

Peter G. Stimpson, M.D., FAAFP, PC  
The Medical Center  
901 Grove Street  
Loudon, TN 37774  
Phone: (865) 458-4847  
Fax: (865) 458-9412

## **COLLECTION SITES**

Primary: The offices of Peter G. Stimpson, M.D. (see above address)

First Alternate: Fort Loudon Medical Center  
550 Fort Loudon Medical Center Drive  
Lenoir City, TN 37772

## **LABORATORY**

MEDTOX Scientific, Inc.  
402 West County Road D.  
Saint Paul, MN 55112  
(800)-832-3244  
(651)-636-7466

## APPENDIX B

### SAFETY SENSITIVE POSITIONS

**Employees who perform any of the below job functions and hold the positions listed below are subject to random drug testing under Loudon County's General Drug and Alcohol Policy**

- Any safety-sensitive function pursuant to regulations governing drug testing adopted by the U.S. Department of Transportation.
- Most functions with respect to the operation of Loudon County's Sheriff's Department.
- Driving a County-owned vehicle in connection with regular and customary job functions.
- Driving a personal vehicle in connection with regular and customary job functions.
- Any road maintenance duties.
- Operating machinery or engaging in the maintenance of County equipment or vehicles on a regular and customary basis.
- Entering residences or property of Loudon County residents in connection with regular job duties.

### SAFETY SENSITIVE POSITIONS

#### MAYOR'S OFFICE

Mayor (Elected Official)  
Employee Benefits (driving)

#### SHERIFF'S OFFICE

Sheriff (Elected Official)	
Chief Deputy	Resource Officer
Assistant Chief Deputy	Investigator
Captain	Secretary (driving)
Patrol Officers	Deputy
Corporal	Sergeant
Lieutenant	

#### JAIL

Corporal	Corrections Guard/Corrections Officer
Dietitian/Cook	Lieutenant

HIGHWAY DEPARTMENT

Superintendent (Elected Official)	Equipment Operator
Laborer	Foreman
Mechanic	Mower
Truck Driver	

ACCOUNTS & FINANCE

Director (driving)	AP Technician (driving)
Clerks (driving)	AP/AR Technician (driving)
Senior Payroll Administrator (driving)	

ANIMAL CONTROL/ANIMAL SHELTER

Manager	Euthanasia Technician
Animal Control Officer	Laborer

PLANNING & CODES DEPARTMENT

Director/Planner  
Inspector

CLERKS OF COURT (CIRCUIT/GENERAL SESSIONS)

Clerk (Elected Official)	Deputy Clerk (driving)
Chief Deputy Clerk(driving)	Bookkeeper (driving)
Clerk (driving)	Office Manager (driving)

COUNTY CLERK

Clerk (Elected Official)

CLERK & MASTER

Clerk & Master/Director (Elected Official)

COUNTY JUDGES

Judicial Commissioner

CONVENIENCE CENTER

Director	Assistant
Assistant Director	Laborer
Foreman	Attendant
Recycling Attendant	

ELECTION OFFICE

Director/ Administrator

EMERGENCY MANAGEMENT (EMA)

Director	Secretary
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JUVENILE CENTER

Director  
Intake Officer

Social Worker  
Attendant

MAINTENANCE

Foreman/Supervisor  
Laborer

Custodian  
Maintenance Director

PROPERTY ASSESSOR

Property Assessor (Elected Official)  
Chief Deputy

Inspector

PURCHASING

Director

SENIOR CITIZENS CENTER

Clerical (driving)  
Supervisor/Director

Clerk (driving)

DATA PROCESSING

Computer Technician/Programmer

HEALTH DEPARTMENT

Doctor  
Registered Nurse

**EXHIBIT B**

**LOUDON COUNTY DEPARTMENT OF TRANSPORTATION  
DRUG AND ALCOHOL ABUSE POLICY**

TABLE OF CONTENTS

**DATE OF REVISION**

**DECEMBER 2011**

<u>SECTION</u>	<u>PAGE</u>
I. INTRODUCTION: .....	1
II. POLICY: .....	2
A. Drug Policy.....	2
B. Alcohol Policy .....	2
III. DEFINITIONS:.....	3
IV. EMPLOYEE NOTIFICATION AND TRAINING:.....	6
V. COUNSELING/REHABILITATION RESOURCES:.....	7
VI. PRE-EMPLOYMENT TESTING: .....	7
VII. REASONABLE SUSPICION TESTING: .....	9
VIII. POST-ACCIDENT TESTING:.....	11
IX. RANDOM TESTING: .....	12
X. RETURN TO DUTY AND FOLLOW-UP TESTING: .....	13
XI. SUMMARY OF TESTING PROCEDURES: .....	15
XII. COLLECTION:.....	17
XIII. LABORATORY: .....	17
XIV. MEDICAL REVIEW OFFICER (MRO).....	18
XV. COVERED POSITIONS .....	19
XVI. CONTRACTOR EMPLOYEES .....	19
XVII. RETENTION OF SAMPLES .....	19
XVIII. USE OF PRESCRIPTION DRUGS .....	20
XIX. REFERRAL, EVALUATION AND TREATMENT.....	20
XX. RECORD RETENTION - CONFIDENTIALITY .....	21
APPENDIX A TO EXHIBIT B .....	24
APPENDIX B TO EXHIBIT B .....	26

**LOUDON COUNTY DEPARTMENT OF TRANSPORTATION  
DRUG AND ALCOHOL ABUSE POLICY**

**DATE OF POLICY REVISION:**

December 2011

**I. INTRODUCTION:**

Loudon County (the “County”) is committed to a safe working environment, to making adequate provisions for the safety and health of its employees at their place of employment, and to the safety and health of the citizens it serves. Loudon County also is dedicated to operating in a responsible and efficient manner for the benefit of its citizens. It is further committed to compliance with all applicable laws and regulations, including but not limited to the Drug-Free Workplace Act of 1988, the State of Tennessee’s Drug-Free Workplace Program, and the DOT Federal Motor Carrier Safety Administration Controlled Substances and Alcohol Use and Testing Regulations, 49 CFR Part 382.

The catalyst for this anti-drug plan is two-fold. First, Loudon County’s operations are covered by the DOT Federal Motor Carrier Safety Administration Controlled Substances and Alcohol Use and Testing Regulations, 49 CFR Part 382 (hereinafter "FMCSA regulations" or "Part 382") which require the County to drug test its employees who are required to maintain commercial driver's licenses ("CDL's"). FMCSA regulations require Loudon County to follow DOT's Drug and Alcohol Testing Procedures, 49 CFR Part 40 (hereinafter “Part 40”). Part 40 specifies the procedures to be followed in conducting the DOT drug testing. Part 382 preempts any state or local law, rule, regulation or order to the extent that: (1) compliance with both the state or local requirements and this regulation is not possible; (2) compliance with the state or local requirements is an obstacle to the accomplishment and execution of any requirement in Part 382. It does not, however, preempt provisions of state criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

Loudon County has long been committed to setting the highest standards for emphasizing and enforcing an alcohol and drug free workplace. The overall purpose of this policy is to prevent accidents that result from the use of drugs and alcohol, thereby reducing fatalities, injuries, service interruptions and property damage.

**Loudon County also maintains a General Drug and Alcohol Abuse Policy (“General Policy”) for all of its employees. This latter policy is not required by DOT but rather is expressly and solely the policy of Loudon County. It is also authorized by and conforms to the requirements of the Tennessee Drug-Free Workplace Act. Disciplinary actions for violating any of Loudon County’s drug and alcohol policies are ultimately controlled by the General Policy implemented by Loudon County's separate authority and not by this policy or the DOT regulations.**

## II. POLICY:

Any employee's refusal to submit to a drug or alcohol test in accordance with this policy for any purpose required under FMCSA regulations will require that the employee be immediately removed from the covered position. **Under Loudon County's General Policy, refusal to take a drug or alcohol test is considered insubordination and disciplinary action will be taken up to and including termination.**

### A. Drug Policy

The unlawful manufacture, distribution, dispensation, possession or use of a prohibited drug while on Loudon County properties, while on duty for regularly scheduled or emergency work, while operating Loudon County vehicles or equipment, while performing safety sensitive functions, or off the job so as to affect the employee's job performance or integrity on the job as a representative of Loudon County is strictly prohibited. An amount of any prohibited drug in an individual's body equal to or higher than the cut-off level as detected by a drug test, for the purpose of this policy, is considered to be use of drugs by the individual.

### B. Alcohol Policy

No covered employee shall report to work under the influence of alcoholic beverages. No covered employee shall possess, or use, or be under the influence of alcoholic beverages while on Loudon County properties, while on duty for regularly scheduled or emergency work, while operating Loudon County vehicles or equipment, or while performing safety sensitive functions. No covered employee shall report for duty or remain on duty in a covered position while having an alcohol concentration of 0.02 or greater. No employee may use alcohol while performing functions in a covered position. Moreover, covered employees are prohibited from using alcohol within four (4) hours before reporting to duty.

If the covered employee is called to duty to respond to any emergency, the employee is prohibited from using alcohol after the employee has been notified to report for duty. A covered employee being paid to be on call for a period of time is prohibited from consuming alcohol during that time period. If the County has actual knowledge that a covered employee has used alcohol within four hours before performing covered functions or within the time period after the employee has been notified to report for duty, the employee shall not be permitted to perform or continue to perform covered functions.

A covered employee who has actual knowledge of an accident in which his or her performance has not been discounted as a factor contributing to the accident shall not use alcohol for eight (8) hours following the accident, unless he or she has been given a post-accident alcohol test or Loudon County has advised the employee that it has determined that his or her performance could not have contributed to the accident.

Loudon County will not knowingly allow an employee to perform covered functions where the employee has violated any of the following provisions. Violation of this policy by the employee will require the employee to be immediately removed from performing covered functions.

Covered employees are performing safety-sensitive functions when they are actually performing, ready to perform or immediately available to perform such functions. Therefore, covered employees are required to be in compliance with this policy at any time they report to work, are actually working, or have immediately completed work in a covered classification.

Before performing a drug or alcohol test under this policy, Loudon County will inform the covered employee that the test is required by this policy and the applicable FMCSA regulations. Should an employee governed by this policy fail a drug or alcohol test, the employee will be removed immediately from the covered position.

**In accordance with Loudon County's General Policy, violation of this policy is strictly prohibited and will lead to disciplinary action, up to and including termination. An employee who is not terminated will be mandatorily referred to EAP and may be referred to rehabilitation as described later in this policy.**

### **III. DEFINITIONS:**

For purposes of this policy, the following definitions apply:

"Accident" means an accident as defined in FMCSA regulations, which are defined as follows: any reportable accident involving a commercial motor vehicle where the driver receives a citation for a moving traffic violation or where there is a fatality even if the driver is not cited for a moving traffic violation.

"Adulterated Specimen" means that the urine specimen contains a substance that is not expected to be present in human urine, or contains a substance that is expected to be present but is at a concentration so high that it is not consistent with human urine. Submitting an adulterated specimen is a violation of this policy.

"Alcohol" or "Alcoholic beverage" means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol.

"Alcohol concentration (or content)" means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this subpart.

"Alcohol Use" means the consumption of any beverage, mixture, or preparation, including medications, containing alcohol.

"Applicant" means an individual applying for a covered FMCSA classification who is subject to preemployment drug and alcohol testing.

"Breath Alcohol Technician" (BAT) means an individual who instructs and assists individuals in the alcohol testing process and who operates an evidential breath test.

"Blind Sample" means a urine specimen submitted to a laboratory for quality control testing purposes, with fictitious identifier, so that the laboratory cannot distinguish it from employee specimens; and which is spiked with known quantities of specific drugs or which is blank, containing no drugs.

"Chain of Custody" means procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an appropriate drug testing custody form from a Department of Health & Human Services (DHHS) certified laboratory be used from time of collection to receipt by the laboratory.

"Collection Site" means a designated clinic/facility where applicants or employees may present themselves for the purpose of providing a specimen of their urine or a breath sample to be analyzed for the presence of drugs or alcohol, respectively.

"Collector" means a person who instructs and assists applicants and employees through the specimen collection process.

"Commercial driver's license" or "CDL" means a driver's license required to operate Loudon County's commercial motor vehicles.

"Commercial Motor Vehicle" means a motor vehicle or combination of motor vehicle and towed vehicle used in commerce to transport passengers or property when the vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 or more pounds including a towed unit with a gross vehicle weight rating of more than 10,000 pounds, or has a gross vehicle weight rating of 26,001 or more pounds or is designed to transport 16 or more passengers.

"Confirmation Test" as to drugs means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test. In drug testing, a confirmation test employs the techniques and principles of gas chromatography/mass spectrometry ("GC/MS") which uses a different technique and chemical principle from that of the initial test to ensure reliability and accuracy.

"Confirmation Test" as to alcohol means a second test, following an initial or screening test with a result of .02 or greater that is given not less than 15 minutes and not later than 30 minutes after the initial screening test. The confirmation test is the final result upon which any action will be taken under this policy.

"Covered CDL employee" or "driver" means any Loudon County employee who is required to maintain a CDL to operate Loudon County's commercial motor vehicles. This includes all Loudon County employees who regularly, intermittently or occasionally are required to operate Loudon County's commercial vehicles.

"Covered CDL function (safety-sensitive function)" means any on-duty functions by a covered employee set forth in 29 CFR § 395.2 including: (a) waiting to drive a Loudon County commercial motor vehicle; (b) inspecting, servicing, or otherwise conditioning any Loudon County commercial motor vehicle; (c) driving a Loudon County commercial motor vehicle; (d) being in or upon a Loudon County commercial motor vehicle; (e) loading or unloading a Loudon County commercial motor vehicle or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, or remaining in readiness to operate the vehicle; (f) performing driver requirements related to accidents; or (g) repairing, obtaining assistance, or remaining in attendance of a disabled commercial motor vehicle.

"Designated Employer Representative" (DER): The DER receives test results and other communications for the employer, consistent with the requirements of Part 40. Employee Benefits, the supervising County official and the County Mayor are authorized DERs.

"Dilute specimen": A specimen with specific gravity of less than 1.003 and creatinine of less than 20 mg/dL, which are lower levels than expected for human urine. A positive dilute specimen will be regarded as a positive test. A negative dilute specimen will be regarded as a negative test.

"Fail a drug test" or "positive drug test" means the confirmation test result shows positive evidence of the presence under DOT procedures of a prohibited drug or alcohol in the employee's or applicant's system above the confirmation test cut-off limits specified in Part 382 and incorporated herein.

"Fail an alcohol test" or "positive alcohol test" means the confirmation test result shows an alcohol concentration of .04 or above.

"Initial test" as to drugs means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

"Initial test" as to alcohol means a breath alcohol test using an Evidential Breath Testing Device given by a qualified Breath Alcohol Technician to determine whether a covered CDL employee may have a prohibited concentration of alcohol in his or her system.

"Prohibited drug" for the purposes of this policy means amphetamines (specifically including MDMA), cocaine, marijuana, opiates (specifically including 6-Acetylmorphine), and phencyclidine ("PCP").

"Refusal to submit to a test" means refusal by an individual, who after receiving notice of the requirement to be tested in accordance with this policy and without a valid medical explanation, refuses to provide adequate breath for an alcohol test or refuses to provide a urine sample for a drug test, or otherwise engages in conduct that clearly obstructs the testing process. A verified adulterated or substituted result constitutes a refusal to submit. A refusal to submit will be considered a positive result.

"Substance abuse professional" means a licensed physician (i.e., a medical doctor), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders.

"Substituted specimen" means a urine specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine. Submitting a substituted specimen will be considered a violation of this policy.

(For other definitions, see Loudon County's General Policy, the DOT regulations, and Loudon County's Drug and Alcohol Testing Procedures, which are available upon request from Employee Benefits. Department Heads and elected or appointed County officials who oversee employees in DOT-covered positions will also have copies of the Loudon County Drug and Alcohol Testing Procedures.

#### **IV. EMPLOYEE NOTIFICATION AND TRAINING:**

Loudon County has developed a drug and alcohol awareness program to inform employees about the dangers of drug and alcohol abuse, the availability of counseling and treatment for employees who voluntarily seek such assistance, and the sanctions that Loudon County will impose for violations of its drug policies. This program will be monitored on an ongoing basis and revised as new materials and information become available.

Loudon County has held multiple training sessions for its managers and supervisors on drug and alcohol awareness, identification of drug and alcohol misuse, and proper procedures to be followed with all types of drug and alcohol testing. Loudon County will ensure that managers and supervisors designated to determine whether reasonable suspicion exists to require covered employees to undergo drug and alcohol testing training on the physical, behavioral, speech and performance indicators of drug or alcohol use. In accordance with FMCSA regulations, these training sessions will entail at least 60 minutes of training on indicators of probable alcohol misuse, and at least an additional 60 minutes of training concerning the indicators of probable drug use. For more information with regard to supervisory personnel training regarding drug and alcohol education and substance abuse recognition, please refer to Loudon County's General Policy.

In addition to the supervisory training sessions, training sessions have been held with all employees to explain Loudon County's drug and alcohol testing policies and procedures, provide training and information on the dangers of drug use, identification of drugs, the administration of Loudon County's policies concerning drugs, and the methods of gaining help through counseling or rehabilitation, along with urging employees who might have a problem or know of an employee with a problem to seek help or encourage that individual to seek help. For more information with regard to employee drug and alcohol education training, please refer to Loudon County's General Policy.

Newly hired employees, employees moving to covered positions through a successful job bid, or employees promoted to a classified position will be given a copy of this policy when hired and in the next available training session. In addition, any employee handbook which is issued from this date forward will contain information regarding the drug and alcohol policies of Loudon County.

Loudon County reserves the right to combine employee training under this policy with Loudon County's General Policy. Loudon County will clearly explain that the disciplinary consequences of testing positive are derived from its independent drug and alcohol policy.

#### **V. COUNSELING/REHABILITATION RESOURCES:**

Loudon County can provide references to sources for assistance for many kinds of problems, including counseling regarding drug and alcohol use and misuse. Current contact information for those sources is found at Appendix A to this Policy. For additional information, please see Loudon County's General Policy.

#### **VI. PRE-EMPLOYMENT TESTING:**

In accordance with FMCSA regulations, a pre-employment drug test is required before an applicant is employed in a covered CDL position or if an employee transfers or is promoted from a non-covered to a covered position.

Urine specimens will be screened for the prohibited drugs as defined in this policy, i.e., Marijuana, Cocaine, Opiates (specifically including 6-Acetylmorphine), Amphetamines (specifically including MDMA), and Phencyclidine (PCP).

Procedures for taking specimens and handling of specimens will be in accordance with Loudon County's Drug and Alcohol Testing Procedures, which are hereby incorporated herein by reference.

Individuals subject to pre-employment drug testing under this policy will acknowledge having read or had this policy explained to them and should understand that they are subject to its contents as a condition of employment. The pre-employment drug test will be given at the time of the applicant's post-offer, pre-employment physical.

A negative test result is required before employment or transfer/promotion into the covered position. Applicants who test positive on the drug test or who refuse to take the test will not be hired and will not be eligible to be considered for employment at Loudon County until the applicant shows proof of successful completion of a drug rehabilitation program. Employees who test positive on the drug test, or who refuse to take a test in connection with a transfer or promotion, will be in violation of Loudon County's General Policy, and will be subject to disciplinary action, up to and including termination.

In addition to Pre-Employment Testing, employees who are required to have a CDL at the time of employment will be required to sign consent forms authorizing previous employers to release to Loudon County information within the preceding three years concerning (1) any positive alcohol test (.04 or above) for the employee, (2) any positive drug test for the employee, and (3) any refusals by the employee to be tested. If it is not feasible for Loudon County to obtain and review this information prior to the time the employee performs safety-sensitive functions, the information must be obtained and reviewed by Loudon County within thirty calendar days after the employee first performs safety-sensitive functions. Loudon County will not permit a CDL employee to perform safety-sensitive functions after thirty days without obtaining the required information.

The above information may be obtained by Loudon County from previous employers orally or in writing. Loudon County will maintain a written, confidential record with respect to each previous employer contacted, and will ensure the confidentiality of the information provided by previous employers. Loudon County will not permit a CDL employee to perform safety-sensitive functions who has previously tested positive for alcohol, tested positive for drugs, or refused to be tested unless and until Loudon County obtains (1) information that the employee has subsequently tested negative on a return to duty test, and (2) records pertaining to a subsequent evaluation or determination by a substance abuse professional concerning the employee's need for assistance and compliance with the recommendations of the substance abuse professional. If Loudon County is unable to obtain the required information on such an employee, the employee may be terminated.

## **VII. REASONABLE SUSPICION TESTING:**

The Tennessee Drug-Free Workplace Program and the FMCSA regulations require testing of their respective covered employees upon reasonable cause or suspicion that the employee is using prohibited drugs or misusing alcohol. Whenever Loudon County reasonably suspects that a covered employee's work performance or on-the-job behavior may have been affected in any way by a prohibited drug or that an employee has otherwise violated this policy, Loudon County may require the employee to submit to a reasonable suspicion drug or alcohol test in accordance with Loudon County's Drug and Alcohol Testing Procedures.

Reasonable suspicion sufficient to test will be based on a reasonable and articulable belief that the employee is using or has used a prohibited drug or alcohol, or is otherwise in violation of this policy based on specific, contemporaneous or continuing physical, behavioral, or performance indicators of probable drug or alcohol use, or information provided by a credible source.

Reasonable suspicion sufficient to justify drug testing may be based on, but is not limited to, direct observation by a supervisor of symptoms of drug or alcohol use such as slurred speech, odor, unsteady walk, impaired coordination, displays of violent behavior, argumentative, improperly talkative, loud or uncontrolled laughter, or based upon information provided by reliable and credible sources, or evidence that an employee has tampered with a drug or alcohol test, or evidence that an employee has used, possessed, sold, solicited or transferred drugs or alcohol while at work or on Loudon County property, or based on job performance behaviors over a period of time. In determining reasonable suspicion, the supervisors can consider job performance over a period of time where continued deterioration of job performance has resulted in a pattern of events identifiable with drug or alcohol abuse, and/or information provided from a reliable and credible source, but the decision must be grounded in the supervisor's contemporaneous observations. Further, the occurrence of a serious or potentially serious incident or accident that may have been caused by human error, or flagrant violations of established safety, security, or other operational procedures constitute grounds for a reasonable suspicion test.

At least two of the employee's supervisors, at least one of whom has been trained in the detection of possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence of the two supervisors may be by telephone, by discussions a few hours later, or by having another supervisor travel to the job site. Within 24 hours of the reasonable suspicion determination, the supervisors will document the covered employee's conduct, in writing, which led to their determination to conduct a reasonable suspicion drug test. The requirement of having two supervisors observe the conduct can be reduced to one supervisor when it is not feasible for two supervisors to witness the conduct. In that event, the supervisor witnessing the conduct must have received training in the identification of actions, appearance, or conduct of an employee indicative of a prohibited drug or alcohol. Once it is determined that an employee should be subject to a reasonable suspicion test, one of the verifying supervisors shall contact the responsible County official, Department Head, County Mayor or

Employee Benefits to coordinate the testing and obtain any necessary instructions. The observations must be made during, just preceding or just following the period of the work day that the employee is required to be in compliance with this part.

If the alcohol test is not administered within two (2) hours following the reasonable suspicion determination, Loudon County will prepare a written record stating the reasons the test was not promptly administered. If the alcohol test is not administered within eight (8) hours following the reasonable suspicion determination, Loudon County will cease attempts to administer the test and will record, in writing, the reasons for not administering the test. If a reasonable suspicion alcohol test is not administered, Loudon County will nevertheless not permit a covered employee to remain on duty in a covered position while the employee is under the influence of alcohol as shown by behavioral, speech or performance indicators and will not allow an employee to perform in a covered position until an alcohol test is administered and the employee's alcohol concentration measures less than 0.02 or the start of the employee's next shift, but in any event not less than twenty-four hours for covered CDL employees, following the reasonable suspicion determination.

**Refusal to take a test is insubordination, which will subject the employee to termination under Loudon County's General Policy.**

An employee who agrees to be tested will be transported to and from the collection site. Where a reasonable suspicion drug test is administered in addition to a reasonable suspicion alcohol test, the employee will be removed from covered activities pending receipt of the drug test results even if the employee passes the alcohol test. Part 382 states that no employer shall take any action under subpart B based solely on the employee's behavior and appearance. **However, this does not prohibit Loudon County from taking disciplinary action otherwise consistent with local and/or state law or Loudon County's General Policy.** After returning from the collection site, the employee shall not perform covered activities and will be suspended with pay pending receipt of the drug test results if a drug test is administered. The employee should make arrangements to be transported home. If an employee is subject to a reasonable suspicion drug test or fails a reasonable suspicion alcohol test, the employee should be instructed not to drive any motor vehicle due to the reasonable cause belief that he or she may be under the influence of a drug or due to the positive alcohol test. If the employee insists on driving, the proper local enforcement authority should be notified that an employee who Loudon County believes may be under the influence of a drug or alcohol is leaving Loudon County premises driving a motor vehicle.

**An employee who tests positive on a reasonable suspicion test will be in violation of this policy and Loudon County's General Policy. Violation of Loudon County's General Policy constitutes grounds for immediate termination under that policy. If the employee is not terminated, Loudon County will mandatorily refer the employee to counseling under the mandatory referral provisions of, Section VII of the General Policy, Counseling/Rehabilitation Resources.**

## VIII. POST-ACCIDENT TESTING:

Loudon County will conduct post-accident drug and alcohol testing under this policy for FMCSA accidents. First, Loudon County will conduct substance abuse testing of a covered CDL employee only when that CDL employee, while driving a Loudon County commercial motor vehicle, is involved in an FMCSA accident (as defined in Section III). Post-accident drug and alcohol tests will be conducted in accordance with Loudon County's Drug and Alcohol Testing Procedures.

**Accidents which do not meet the definition of this policy, but which involve Loudon County employees, may require post-accident drug and alcohol testing under Loudon County's General Policy. Covered employees will be advised whether they are being tested under this policy or under Loudon County's General Policy.**

A covered employee may not consume any alcohol for eight (8) hours following an FMCSA accident or until an alcohol test has been conducted. A covered employee subject to post-accident testing under this policy who fails to remain readily available for testing may be deemed by Loudon County to have refused to submit to the required testing. Nothing herein is intended, however, to require the delay of necessary medical attention for injured people or prohibit a covered employee from leaving the scene of the accident for the period necessary to obtain assistance or necessary emergency medical care. In the event a covered employee is injured, unconscious or otherwise unable to evidence consent to a drug test, Loudon County will take all reasonable steps to obtain a urine sample, but any injury should be treated first.

If the alcohol test is not administered within two (2) hours following the accident, Loudon County will prepare a written record stating the reasons why the test was not promptly administered. If the alcohol test is not administered within eight (8) hours following the accident Loudon County will cease attempts to administer an alcohol test and will prepare written record for the reasons for not administering the test. If a drug test is not administered within thirty-two (32) hours following the accident, Loudon County will cease attempts to administer the drug test and will prepare a written record setting forth the reasons for not administering the drug test.

If a covered employee refuses to submit to post accident testing, the employee will be immediately removed from the covered position. **Under Loudon County's General Policy, the employee will be charged with insubordination and subject to immediate termination.** If an employee agrees to be tested, he or she will be transported to and from the collection test site. Any employee selected for post-accident testing under this policy will not be allowed to proceed alone to or from the collection test site. **Because a post-accident drug test may be administered in addition to an alcohol test, the employee will not be allowed to perform covered functions pending the results of the drug test even if the result of the alcohol test is negative, but can perform peripheral duties.**

If an employee fails the alcohol test, the employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the positive alcohol test. If the employee who failed the alcohol test insists on driving, the proper local enforcement authority should be notified that an employee who Loudon County believes to be under the influence of alcohol is leaving Loudon County premises driving a motor vehicle.

An employee who tests positive on a post-accident alcohol or drug test will be removed immediately from his or her covered position. **The employee will be in violation of Loudon County's General Policy, which provides that failing an alcohol or drug test subjects the employee to disciplinary action, up to and including termination.** If the employee is not terminated, the employee is subject to the provisions of the General Policy's Employee Assistance Program mandatory referral provisions, and to the Return-to-Duty and Follow-Up Testing requirements.

## **IX. RANDOM TESTING:**

In accordance with the current FMCSA regulations, all covered CDL employees will be subject to random drug testing at a rate equal to 50% of those covered employees employed as of the first day of the calendar year. In addition, covered CDL employees will be randomly tested for alcohol misuse as specified in this policy at a rate equal to 10% of the covered employees employed as of the first day of the calendar year pursuant to FMCSA regulations. These testing rates are subject to change at the beginning of each calendar year pursuant to FMCSA regulations. Loudon County will advise covered employees of any change in the random rate before such change is implemented.

The frequency of testing dates will vary, and testing will be reasonably spread throughout the year. The process will be unannounced as well as random, and employees will be notified that they have been selected for testing only after they have reported for duty on the day of testing.

The testing will be done using a random selection of dates coupled with a random number table or a computer-based random number generator that is matched with an employee's social security number, or other appropriate identification number. Loudon County reserves the right to create multiple pools of covered employees provided that it will ensure that all covered CDL employees are subject to the appropriate drug-testing rate of 50%, and that covered CDL employees are subject to the alcohol-testing rate of 10%. All testing will be conducted in accordance with Loudon County's Drug and Alcohol Testing Procedures.

Since covered CDL employees are subject to both random drug and alcohol testing, Loudon County reserves the right to conduct random drug and alcohol testing simultaneously, provided that the CDL employees who are tested simultaneously for drug and alcohol misuse are selected at the appropriate annual rate for drugs and alcohol respectively. For example, where the annual drug testing rate is 50% and the annual alcohol testing rate is 10%, Loudon County reserves the right to create a pool of covered CDL employees and will randomly select one-fifth of the employees identified for both drug and alcohol testing, while the remaining four-fifths will be drug tested only. In the case where the employee is tested for both alcohol and drugs, the alcohol test shall be performed first.

Any covered employee refusing to take a random alcohol or drug test will be in violation of this policy and will be immediately removed from his or her covered position. **Refusal to take the test is a violation of Loudon County's General Policy and will subject the employee to immediate termination under that policy. Any employee who fails an alcohol or drug test will be immediately removed from a covered position and will be in violation of Loudon County's General Policy, which provides that failing an alcohol and/or drug test constitutes grounds for discipline to include termination. If the employee is not terminated, the employee is subject to the General Policy's mandatory referral provisions of the Counseling and Rehabilitation Resources policy, and to Return-to-Duty and Follow-Up Testing requirements.**

**All other employees in defined safety sensitive positions which are not DOT-regulated are subject to random drug and alcohol testing under Loudon County's General Policy.**

#### **X. RETURN TO DUTY AND FOLLOW-UP TESTING:**

In the rare instance that a covered employee has either refused to take or has failed to pass a drug and alcohol test, or has otherwise violated this Policy, **but has not been terminated**, he or she must pass a return to duty drug and/or alcohol test administered under this policy before the employee will be allowed to work in a covered position. The drug and/or alcohol test will be conducted in accordance with Loudon County's Drug and Alcohol Testing Procedures. Urine specimens will be screened for the prohibited drugs as defined in this policy. In addition to passing a drug test, an employee must be recommended by the SAP to return to duty before working in a covered position.

Covered employees who have engaged in conduct prohibited by this policy concerning alcohol shall undergo a return-to duty alcohol test immediately before returning to work, and must have a test result indicating an alcohol concentration of less than 0.02 before returning to duty. Covered employees who have engaged in conduct prohibited by this policy concerning prohibited drugs shall undergo a return-to-duty drug test with the result indicating a verified negative test result before returning to duty.

In addition, if a SAP makes a determination that some form of further evaluation and/or treatment is required, then the covered employee must comply with the recommendations to be considered eligible to return-to-duty. Following a determination by a SAP approved by Loudon County that a covered employee who has failed a drug or alcohol test or has otherwise violated the policy is in need of assistance in resolving problems associated with alcohol or drug abuse, the employee returning to duty will be subject to unannounced follow-up alcohol and/or drug testing as determined by the SAP and with input from Loudon County's Mayor, the responsible appointed or elected County official or his or her designee. The SAP cannot refer an employee to the SAP's private practice, to a person or organization from which the SAP receives remuneration, or in which the SAP has financial interests.

The follow-up testing may include testing for both drugs and alcohol, as determined by the SAP, with input from Loudon County's Mayor or her designee. Follow-up testing may be continued for up to 60 months, but it will consist of at least six tests in the first twelve months following the employee's return-to-duty. Follow-up testing shall be conducted when the covered employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing such functions. The duration and extent of the follow-up testing will be determined by the SAP in consultation with Loudon County's Mayor, the responsible appointed or elected County official, or his or her designee, and will be based on the extent of the employee's substance abuse problem and nature of the employee's position. All follow-up drug and alcohol testing will be conducted in accordance with Loudon County's Drug and Alcohol Testing Procedures.

**A covered employee will be required to sign a Return to Work Agreement before returning to work, which will include, among other things, any follow-up testing and other conditions pertinent to that employee's continued employment with Loudon County. If a covered employee refuses to submit to return to duty or follow-up testing, the employee will not thereafter be used in a position covered by this policy and is subject to immediate discharge for insubordination as set forth in Loudon County's General Policy. Likewise, any covered employee who has a confirmed positive test result for a return-to-duty or follow-up test will not thereafter be used in a position covered by this policy and is subject to immediate termination under Loudon County's General Policy. An employee who is subject to a Return to Work Agreement must comply with the conditions of that Agreement (including, where recommended by the SAP, abstention from drug or alcohol use) and will be considered in violation of the Agreement and the County's General Policy if the results of a drug or alcohol test are positive as defined in the Agreement.**

Return-to-duty and follow-up testing are not an option under this policy if Loudon County terminates an employee who has tested positive, has refused to submit to a test, or has otherwise violated this policy. Nothing herein entitles an employee to be returned to duty if an employee is terminated under Loudon County's General Policy.

**XI. SUMMARY OF TESTING PROCEDURES:**

**Loudon County will conduct drug and alcohol testing under this policy in accordance with the procedures set forth in Part 40. Loudon County has implemented the Part 40 procedures in a separate document entitled, "Loudon County's Drug and Alcohol Testing Procedures, (hereinafter sometimes called the "Procedures", which is hereby referenced and made a part of this policy the same as if it had been fully rewritten herein. A copy of the Procedures is available to any employee (or applicant) upon request directed to Employee Benefits. Department Heads who oversee employees in covered positions also have copies of the Procedures. A summary of the Procedures is as follows:**

**A. Drug Testing Procedures:** Drug testing under this policy will be conducted in accordance with Part 40 and involves the screening of urine samples for the prohibited drugs. The initial test performed on the urine sample will be an enzyme-multiplied-immunoassay technique ("EMIT screen"), which will be used to eliminate negative urine specimens from further consideration. All specimens identified as positive through the EMIT screen will be confirmed by using gas chromatography/mass spectrometry ("GC/MS") techniques at the cutoff levels set forth in the Procedures.

The cutoff values for drugs prohibited under this policy are listed below. These cut-off levels are subject to change pursuant to 49 C.F.R. Part 40, as amended.

	EMIT	GC/MS
Marijuana	50 ng/ml	15 ng/ml
Cocaine	150 ng/ml	100 ng/ml
Opiates	2000 ng/ml	2000 ng/ml
Phencyclidine	25 ng/ml	25 ng/ml
Amphetamines	500 ng/ml	250 ng/ml

The collection of urine samples for drug testing under this policy will occur at the designated primary drug testing site listed in Appendix A to this Policy, or at other collection sites designated by the County Mayor at her discretion. A designated collection site will be any suitable location where a urine specimen can be collected under conditions set forth in the Procedures, including properly equipped mobile facilities.

Personnel certified in the process of collecting the urine samples and ensuring proper chain of custody procedures will be available at the collection site. Loudon County, or any subsequent contractor performing Loudon County's urine specimen collection, shall have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping of urine specimens to a certified drug testing laboratory designated by Loudon County. These personnel shall follow the Procedures to ensure that the drug test results of the urine samples are attributable to the correct employee and to preserve the integrity of the testing process and validity of the test results.

The DOT requires the "split sample" method of collection for those employees and/or applicants subject to testing under DOT regulations. The results of the drug test performed by the laboratory will be forwarded to Loudon County's designated medical review officer ("MRO") who, among other things, is responsible for reviewing the results of the drug test before they are reported to Loudon County. Verified results of the drug test will be communicated by the MRO or his representative to the Designated Employer Representative (DER). A verified positive test result communicated to Loudon County will result in the employee being immediately removed from performing any covered functions. Disciplinary action will be imposed pursuant to and in accordance with Loudon County's General Policy, and will involve discipline up to and including termination. Further details concerning the MRO's responsibilities, the communication of the results of drug tests to Loudon County, and the ability of an employee to request that a retest of the original or split specimen by a different laboratory be conducted, are set forth in this policy and Loudon County's Procedures.

**B. Alcohol Testing Procedures:** Alcohol testing will be conducted in accordance with Part 40 using evidential breath testing ("EBT") devices, which have been approved by the National Highway Traffic Safety Administration ("NHTSA"), and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices." Alcohol testing may be conducted by either Loudon County or its authorized agents, who will use an EBT device capable of printing out the results, date and time, sequential test number, and the name and serial number of the EBT to ensure reliability of the results.

A qualified BAT utilizing an EBT will perform an initial or screening test. Any screening test result with an alcohol concentration less than 0.02 is considered a negative test result, and no further action will be taken. However, if the alcohol concentration in the screening test is 0.02 or greater, a second or confirmation test will be conducted after a 15-minute waiting period.

Where an employee in an initial DOT alcohol test registers 0.02 or above, Loudon County will take a separate initial breath sample under the General Policy and will conduct confirmation tests under both policies. Any disciplinary action and any second-day re-tests will be taken solely under the General Policy.

The confirmation test may be conducted on the same EBT or different EBT by the BAT, but it must be performed no sooner than 15 minutes and no later than 30 minutes after the screening test. The confirmation test result is deemed to be the final result upon which any action will be taken under this policy. The employee and BAT will complete and sign the alcohol testing form in accordance with Loudon County's Procedures, and the BAT will report the test results to the Mayor and/or her designee in a confidential manner.

A confirmation test result with an alcohol concentration of 0.04 is considered a positive test, and the employee will be immediately removed from performing any covered functions. Where a covered employee is found to have alcohol concentration of 0.02 or greater, but less than 0.04, the employee will be removed from his or her position with pay and will not be

allowed to perform or continue to perform covered functions until an alcohol test is administered at the start of the employee's next regularly scheduled shift, but in any event not less than 24 hours following the administration of the confirmation test, and the employee's alcohol concentration measures less than 0.02. Part 382 provides that no employer shall take any action based solely on test results showing a concentration less than 0.04. However, this does not prohibit Loudon County from taking disciplinary action otherwise consistent with local and/or state law or Loudon County's General Policy. Any disciplinary action taken for a violation of this policy will be imposed pursuant to and in accordance with Loudon County's General Policy and not DOT regulations or this policy. Disciplinary action in accordance with Loudon County's General Policy may involve discipline up to and including termination.

## **XII. COLLECTION:**

All alcohol and drug testing will be performed in accordance with and are subject to change pursuant to Loudon County's Procedures and 49 C.F.R. Part 40. Appendix A to this Policy contains current information about the County's primary collection site. Personnel trained in the process of collecting the specimen and seeing that correct chain of custody procedures are followed will be available at collection sites.

Fort Sanders Medical Center – Loudon will conduct the required tests when Loudon County's collection sites are unavailable. If necessary, testing may be conducted at an alternate location. These facilities are aware of the DOT requirements and the chain of custody procedures that must be followed, along with the requirement of transfer of the specimen to Loudon County's selected SAMHSA certified laboratory. The manager or supervisor transporting the employee should inform the collector and/or BAT that the test is required by DOT and that DOT procedures should be followed.

## **XIII. LABORATORY:**

The County has selected a DHHS-certified laboratory under NCLP to perform the testing on urine specimens submitted. The laboratory shall provide services in accordance with Parts 40 and 382. Unannounced inspections, including examination of records, may be done by Loudon County occasionally.

In the event that a need arises for a confirmation of a positive result by another laboratory, or for the purpose of analyzing split sample specimens, another DHHS-certified laboratory will be selected from the published list of DHHS-approved laboratories in the Federal Register or latest DOT publication.

#### **XIV. MEDICAL REVIEW OFFICER (MRO):**

The MRO will be responsible for reviewing the results of drug tests before they are reported to Loudon County; reviewing and interpreting each confirmed positive, adulterated, substituted and invalid test to determine if there is an alternative medical explanation for the results; conducting an interview with the employee testing positive; reviewing the employee's medical history and any medical records made available by the employee to determine if the positive resulted from legally prescribed medication; requiring a retest of the original specimen if the MRO deems it necessary; and verifying that the laboratory report and assessment are correct. The MRO also ensures that an employee has passed an appropriate drug test conducted in accordance with this policy and Loudon County's Drug and Alcohol Testing Procedures before returning to work. The MRO is expected to follow the Medical Review Officer Manual published by the U.S. Department of Health and Human Services. Current MRO information is included in Appendix A to this Policy.

It is the employee's responsibility to inform the MRO that prescription drug use may have affected the test result. If the MRO determines that there is a legitimate medical explanation for the positive test other than the use of a prohibited drug, the MRO will report the test result to Loudon County as negative. If the MRO concludes, based on available data, that a particular drug test is scientifically insufficient, the MRO will report the test as negative for that individual. If the MRO determines that there is no legitimate explanation for the positive test other than the use of a prohibited drug, the MRO will communicate the results of verified positive test to the employee both orally and in writing. At the same time, the MRO will notify the DER of a potentially preliminary result. It is the employee's responsibility to inform the MRO that prescription drug use may have affected the drug test.

Since Loudon County utilizes the split sample method of collection, the employee can request that the MRO direct a retest of the split specimen by a different DHHS-certified laboratory and the MRO will abide by such a request provided it is made within 72 hours of the employee having been notified of the verified positive result. The MRO is responsible for informing the employee of his/her right to request the retest. If the retest does not confirm the original test, the MRO will cancel the test and report the reasons for the cancellation to Loudon County's DER, DOT and the employee. The cost of the retest will be paid by the employee.

An employee or job applicant who receives a positive confirmed test result, upon notification by the MRO, may contest or explain the result to the MRO within five (5) working days after receiving written notification of the test result. If an employee's or job applicant's explanation or challenge is unsatisfactory to the MRO, the MRO shall report a positive test result back to Loudon County's DER.

Before the MRO verifies a confirmed positive result for opiates, he or she shall determine that there is clinical evidence -- in addition to the urine test -- of unauthorized use of any opium, opiate, or opium derivative (e.g., morphine/codeine). This does not apply if the GC/MS testing for opiates confirms the presence of methadone.

The MRO or his representative will report the results of negative tests to the DER, who will then notify the employee.

#### **XV. COVERED POSITIONS:**

Pursuant to the FMCSA regulations, this policy covers any applicant or employee required to maintain a CDL. Attached as Appendix B are the specific classifications/job titles of all classifications that are covered by the FMCSA regulations, i.e., the classifications requiring a CDL.

Jobs may be added or deleted from Appendix B at the discretion of Loudon County or as mandated by law or regulations, with or without republishing of this policy. If new jobs are added to Appendix B, Loudon County will inform incumbents in the classification of their coverage under this policy and provide the same training it would provide for new employees.

#### **XVI. CONTRACTOR EMPLOYEES:**

Loudon County is prohibited by state law from awarding contracts to any construction subcontractor, with at least 5 employees, unless the subcontractor provides a written affidavit stating that they are in compliance with the Tennessee Drug Free Workplace Act. Loudon County is responsible for ensuring that the requirements of Parts 382 and 40 are met.

In addition, Loudon County will require written reports from its contractors on a quarterly basis, and will do on-site audits of contractor's records to assure compliance with DOT regulations, along with periodic work-site audits with contractor employees. Any contractor found not in compliance with DOT regulations contained in CFR Parts 40 and 382 will be stopped from performing any covered work until the contractor shows Loudon County credible evidence that they are in compliance with these regulations. The contractor will allow access to property and other records by Loudon County, the Administrator, and any DOT agency or other federal or state agency acting within their jurisdiction.

#### **XVII. RETENTION OF SAMPLES:**

Samples that yield positive results in confirmation will be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days.

Within this 365-day period, the employee, FMCSA or state agencies within their jurisdiction or Loudon County may request in writing that the sample be retained for an additional period. The laboratory may discard the sample if no such request is received within the 365-day period.

## **XVIII. USE OF PRESCRIPTION DRUGS:**

Loudon County recognizes that use of prescription drugs under the supervision of appropriate health care professionals is protected under the Americans With Disabilities Act ("ADA"). However, legal use of certain prescription drugs by employees in covered positions may cause impairment and create dangerous situations in the work place. Employees required to take prescription drugs that may cause impairment must do so strictly in conformance with the limits prescribed by a licensed medical practitioner familiar with the employee's medical history and assigned duties. Failure to do so, e.g., by taking impairing drugs without a prescription, or in amounts greater or more frequently than that prescribed or otherwise in violation of the foregoing requirements, is conduct prohibited by Loudon County's General Policy and subjects the employee to disciplinary action, up to and including termination.

It is the responsibility of any employee who tests positive in a drug test to inform the MRO of any prescription or non-prescription drug use that may have affected the results of the drug test. The purpose of this disclosure will assist the MRO to determine whether such prescription or non-prescription drug use is the source of any positive test result.

## **XIX. REFERRAL, EVALUATION AND TREATMENT:**

A covered employee who has engaged in conduct prohibited by this policy will be advised of the resources available to him or her for evaluating and resolving problems associated with substance abuse including the names, addresses and telephone numbers of SAP, and counseling and treatment programs approved by Loudon County.

Where the employee is not terminated for violating Loudon County's General Policy, Loudon County will mandatorily refer the employee to an approved provider for evaluation by a SAP who will determine what assistance, if any, the employee needs in resolving problems associated with substance abuse. (See the Mandatory/Supervisory Referral provision of the General Policy's Counseling/Rehabilitation Resources). Before an employee will be returned to a covered position, the SAP must certify that the employee has properly followed any rehabilitation program prescribed by the professional.

Employees mandatorily referred to counseling or Loudon County-approved SAPs, who are diagnosed as needing assistance in resolving substance abuse problems will be required to sign a Return to Work Agreement, which will specify the circumstances and conditions on their return to duty, which will include, among other things, the follow-up alcohol and drug testing required by this policy and the requirement that the employee follow any recommended rehabilitation and after-care program.

Nothing contained herein should be construed as restricting Loudon County's right to terminate a covered employee for violating Loudon County's General Policy. Employees who are terminated are not entitled to Loudon County sponsored rehabilitation other than through their election to continue their health insurance coverage under COBRA.

**XX. RECORD RETENTION - CONFIDENTIALITY:**

Records of drug test results are recognized to be private and sensitive records. Such records will be maintained separate and apart from personnel records, and shall be maintained in accordance with the following schedule:

- (1) **Five Years** -- The following records shall be maintained for a minimum of five (5) years: (i) alcohol test results indicating an alcohol concentration of 0.02 or greater, or records of verified positive drug test results; (ii) documentation of refusal to take the required alcohol or drug test (including substituted or adulterated drug test results); (iii) SAP reports, and (iv) all follow-up tests and schedules for follow-up tests.
- (2) **Three Years** -- Information obtained from previous employers under §40.25 concerning drug and alcohol tests of employees
- (3) **Two Years** -- Records related to drug and alcohol testing collection process and training, including the inspection, maintenance, and calibration of EBTs, shall be maintained for a minimum of two (2) years.
- (4) **One Year** -- Records of negative and cancelled drug and alcohol test results shall be maintained for a minimum of one (1) year.

Any of the records listed above may be maintained for an indefinite period of time beyond the above-specified minimums at Loudon County's discretion.

Loudon County or its agent will maintain (in accordance with the foregoing schedule) the following specific types of records:

- (1) Records Related to the Collection Process:
  - a. Calibration documentation for EBT devices.
  - b. Documentation of BAT training.
  - c. Documents generated in connection with decisions to administer reasonable suspicion drug or alcohol tests.
  - d. Documents generated in connection with decisions to administer post-accident drug or alcohol tests.
  - e. Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for alcohol testing or urine for drug testing.
- (2) Records Related to Test Results:

- a. Loudon County's copy of the drug or alcohol test form, including the results of the test.
  - b. Documents related to the refusal of any covered employee to submit to a required drug or alcohol test.
  - c. Documents presented by a covered employee to dispute the results of a drug or alcohol test administered under this policy.
- (3) Records related to other violations outlined in Part 382 or this policy.
- (4) Records related to referrals and evaluations:
- a. Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.
  - b. Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.
- (5) Records related to Loudon County's annual alcohol misuse testing data and "missed test" information. Loudon County will submit the required alcohol misuse MIS testing data and "missed test" information as prescribed by the regulations.
- (6) Records related to education and training of employees and supervisors:
- a. Materials on drug and alcohol misuse awareness including a copy of Loudon County's DOT Drug and Alcohol Abuse Policy and Loudon County's Drug and Alcohol Testing Procedures.
  - b. Documentation of compliance with the requirements of Section 199.231.
  - c. Documentation of training provided to supervisors for the purposes of qualifying the supervisors to make a determination concerning the need for drug and alcohol testing based on reasonable suspicion.
  - d. Certification that any required training complies with the requirements of 40 CFR Part 382 and 40.

Information regarding an individual's drug or alcohol use, including testing results and rehabilitation or treatment, will not be released by Loudon County except upon the written authorization by the covered employee or as hereinafter provided. Loudon County will make the records available to a subsequent employer upon receipt of written request from the covered employee. A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of drugs or alcohol, including his or her tests. Loudon County will promptly provide the records requested, and Loudon County will not make access contingent upon payment for records other than those specifically requested. Loudon County may also disclose, regardless of consent, such information to proper representatives of FMCSA and/or other federal or state agencies within their jurisdiction and to the DOT as part of an accident investigation. The information shall include name-specific alcohol test results, records and reports. Information regarding an individual's alcohol or drug use and testing information may be also disclosed, regardless of consent, to the decision maker of a judicial or administrative tribunal in the event of a lawsuit, grievance, civil service, unemployment compensation, worker's compensation or other proceeding brought by or on behalf of the individual arising from the results of a drug or alcohol test or violation of this policy. Statistical data related to drug testing and rehabilitation - without identifying the names of the individuals and with all personal identifiers removed -- will be made available to proper representatives of the FMCSA upon request.

\* \* \* \* \*

**Appendix A To Exhibit B**  
**Loudon County Department Of Transportation**  
**Drug And Alcohol Abuse Policy**

**ADDITIONAL RESOURCES**

The Center for Substance Abuse Prevention's Drug Information, Treatment and Referral Hotline  
1-800-662-HELP

National Council on Alcoholism  
1-800 -NCA-HELP

[www.drug-rehabs.org](http://www.drug-rehabs.org)  
[www.usnodrugs.com/tennessee](http://www.usnodrugs.com/tennessee)  
[www.drug-abuse-treatment.org/tennessee.htm](http://www.drug-abuse-treatment.org/tennessee.htm)  
[www.findtreatment.samhsa.gov](http://www.findtreatment.samhsa.gov)

Cocaine Helpline  
1-800-COCAINE

Center for Substance Abuse Workplace Helpline  
1-800-WORKPLACE

National Clearinghouse for Alcohol and Drug Information  
1-800-729-6686

Tennessee Department of Health Alcohol and Drug Abuse Service  
1-615-741-1921

Tennessee Alcohol and Drug Association Clearinghouse  
1-800-889-9789

Tennessee Drug-Free Workplace Program  
1-800-332 2667

**Local Resources include**

Alcoholics Anonymous  
Call 974-9888 for information on local meetings at four immediate area churches, or the 24-hour  
hotline at 522-9667

Greater Smoky Mountain Area Narcotics Anonymous  
Call 1 (866) 617-1710 or visit [www.knoxvillena.org](http://www.knoxvillena.org) for area meeting times and places

## **MEDICAL REVIEW OFFICER**

Peter G. Stimpson, M.D., FAAFP, PC  
The Medical Center  
901 Grove Street  
Loudon, TN 37774  
Phone: (865) 458-4847  
Fax: (865) 458-9412

## **COLLECTION SITES**

Primary: The offices of Peter G. Stimpson, M.D. (see above address)

First Alternate: Fort Loudon Medical Center  
550 Fort Loudon Medical Center Drive  
Lenoir City, TN 37772

## **LABORATORY**

MEDTOX Scientific, Inc.  
402 West County Road D.  
Saint Paul, MN 55112  
(800)-832-3244  
(651)-636-7466

**APPENDIX B TO EXHIBIT B  
LOUDON COUNTY DEPARTMENT OF TRANSPORTATION  
DRUG AND ALCOHOL ABUSE POLICY**

**Covered Positions**

**Positions Subject To Drug Testing  
Pursuant To FHWA Regulations**

Superintendent of Roads/Highway Commissioner (elected official)

Highway Foreman

Truck Drivers

Equipment Operators

Mechanic

Mowers, including side and boom mower

Laborer