

REPORT TO: Mayor and Members of Council

PREPARED BY: William Davidson, Director of Emergency & Safety Services

DEPARTMENT: Emergency & Safety Services

MEETING DATE: Wednesday, February-06-19

SUBJECT: Fit for Duty Policy

RECOMMENDATION

Be it resolved that the report titled, "Fit for Duty Policy," be received and filed for informational purposes as presented and;

Be it further resolved that Council approve the Fit for Duty Policy #(TBD) as attached in Appendix 'A' and;

Be it further resolved that staff be directed to identify and present for Council approval, any corresponding municipal policy that may require updating as a result of the approval of this Fit for Duty Policy.

EXECUTIVE SUMMARY

This report supports the implementation of a Fit for Duty policy for all North Middlesex employees and all others that may work in municipally owned workplaces or worksites.

LINK TO STRATEGIC PRIORITIES

Leadership: To Create a Positive, Open Organizational Culture By Recruiting, Retaining and Supporting Highly Skilled Staff

BACKGROUND

Since the legalization of Cannabis there has been a growing concern among employers to ensure that all workers report fit for duty regardless of the workers occupation. This Fit for

Duty Policy was originally reviewed by the North Middlesex Policy Committee on November 15, 2018 with a recommendation to seek legal advice from the County of Middlesex. After receiving legal advice, the policy was again presented to the North Middlesex Policy Committee on January 17, 2019 with a recommendation from the committee at that time to present the Fit for Duty policy for Council approval.

DISCUSSION

The Municipality of North Middlesex is committed to providing its services in an efficient and professional manner in keeping with its strategic plan/vision, mission statement and Corporate Values and to deliver its services within a safe and healthy workplace.

The Municipality recognizes that substance use and/or abuse creates a safety risk and may lead to progressive discipline.

In keeping with its commitment to maintaining a safe and healthy workplace, the Corporation and its employees have a responsibility to maintain a safe workplace, free from the negative effects of Alcohol and other Drugs.

Furthermore, the Municipality recognizes that this Policy may be required to be revised from time to time to comply with changes in legislation should changes occur.

FINANCIAL

Not Applicable

ATTACHMENT

Fit for Duty Policy

Prepared By: William Davidson, Director of Emergency & Safety Services

Reviewed By: Nandini Syed, CAO/Director of Finance (Treasurer)

Approved By: Nandini Syed, CAO/Director of Finance (Treasurer)

Section: Health and Safety
Subject: Substance Abuse
Policy Number: (TBD) Fit for Duty Policy
Version: 1
Review Frequency: Annually
Approved by:
Approval Date:
Application:
Notes:

Legislative Authority: *Occupational Health and Safety Act, R.S.O. 1990, c. O.1*
Ontario Human Rights Code, R.S.O. 1990, c.H.19
Cannabis Act (Bill C-45)
Cannabis, Smoke-Free Ontario and Road Safety Statute
Law Amendment Act, 2017, S.O. 2017, c.26 (Bill C-174)
Cannabis Act, 2017, S.O. 2017, c.26, Sched. 1

1. POLICY STATEMENT

The Municipality of North Middlesex is committed to providing its services in an efficient and professional manner in keeping with its strategic plan/vision, mission statement and Corporate Values and to deliver its services within a safe and healthy workplace.

The Municipality recognizes that substance use and/or abuse creates a safety risk and may lead to progressive discipline.

In keeping with its commitment to maintaining a safe and healthy workplace, the Corporation and its employees have a responsibility to maintain a safe workplace, free from the negative effects of Alcohol and other Drugs.

This Policy may be revised from time to time to comply with changes in legislation should changes occur. Employees will be advised of amendments to this Policy if and when they are necessary.

2. STATEMENT OF PURPOSE

To ensure all North Middlesex employees are Fit for Duty at all times. This Policy applies to all Municipality employees as well as contractors and subcontractors engaged by the Municipality.

3. SCOPE

This policy shall apply to all contractors and subcontractors engaged by the Municipality and all employees of the Municipality of North Middlesex, at all locations, including but not limited to permanent employees, temporary, casual, volunteers, elected officials and students.

4. DUTY TO REPORT FIT FOR WORK

Impairment can adversely affect the health, safety, performance and conduct of employees on the job and impose hardships on the Corporation, employees, colleagues, families and the general public. Given this, the Corporation has adopted this Policy as an important additional part of the overall Health & Safety program.

Impairment in the workplace is unacceptable. Employees are expected to report to work Fit for Duty.

5. OBJECTIVE

This Policy serves to:

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- (i) communicate the Corporation's expectations of the employees to report to work Fit for Duty;
 - (ii) communicate the Corporation's expectations of its Supervisory and Management staff in regards to the administration and enforcement of this Policy;
 - (iii) reiterate the Corporation's commitment to assist and accommodate employees with disabilities, including, by way of example only, those suffering from substance abuse.

While the Corporation has an obligation to maintain a safe and healthy workplace, employees have a corresponding obligation to work in a safe manner and to maintain safe and healthy work practices.

6. DEFINITIONS

6.1 **"Alcohol"** means beverage alcohol, ethyl Alcohol, such as beer, wine, distilled spirits and any mixture thereof.

6.2 **"Drug"** means any substance capable of changing or adversely affecting an employee's physical and/or cognitive abilities such as recreational cannabis and any drug or substance that the sale, possession, purchase or transfer of is restricted or prohibited under Canadian law including, without limitation cocaine, opiates, heroin, fentanyl and some cannabis products.

6.3 **"Fit for Duty"** means the ability (physical and mentally) to safely perform assigned duties and responsibilities to an acceptable standard, free from the impairing effects of the use or after effects of drugs and/or alcohol, and in a manner that does not compromise or threaten the employee's and/or other's health or safety. For greater certainty, the requirement to report Fit for Duty does not preclude an employee from reporting to work while afflicted by a minor, transient illness or injury such as a

headache, cold, etc...provided that the employee's illness or injury does not pose a reasonable, foreseeable threat of further injury to the employee or other person.

6.4 **"Medication"** means a drug legally obtained over the counter.

6.5 **"Prescribed Medication"** means a drug legally obtained through a treating medical practitioner's prescription or authorization.

6.6 **"Safety Sensitive Position"** means employment which incapacity due to drug or alcohol impairment could result in direct and significant risk of injury to the employee, others or the environment, and includes the following positions;

- a) a position requiring an employee to operate motorized vehicles, equipment, or machinery,
- b) emergency services personnel,
- c) and other positions as identified from time to time by the Corporation

6.7 **"Substance Abuse"** means the harmful or hazardous use of psychoactive substances, including alcohol and other drugs or medications.

6.8 **"Workplace/Worksite"** means offices, corporate buildings, lunchrooms, washrooms, work-sites, on-road vehicles and any other location where the business of the municipality is being conducted. Includes not only physical locations, but also any other location associated with the work of the Corporation.

7. POLICY

7.1 Expectations of Employees

- a) Employees are required to report for work and to remain throughout their workday, Fit for Duty, free from the negative impairing effects of alcohol, drugs, medication and/or prescription medications. Employees contacted to report to work for an emergency or other unscheduled reason shall refuse the assignment if they have reason to believe they could not report Fit for Duty. Employees whom are on-call for work shall abstain

from consuming any substance that could impair their ability to report to work Fit for Duty.

- b) Without limitation, it is strictly prohibited to be on-duty while impaired by alcohol or drugs including the after-effects of the use of alcohol or drugs.
- c) Employees not Fit for Duty shall immediately advise their Supervisor/Manager of that fact and those occupying a safety sensitive position shall not assume or otherwise carry out their duties and responsibilities while not Fit for Duty.
- d) Employees shall not use, consume, possess, distribute, sell or transfer:
 - i) Alcohol – unless the sale thereof is an express requirement of their duties and responsibilities, and
 - ii) Drugs - while on duty (including breaks, on or off the Corporation’s property) or on the Corporation’s property including the Corporation’s owned, leased, and rented premises or in/out Corporate vehicles/equipment.
- e) Employees who are taking medications and/or prescribed medications (including medical cannabis) are required to use their medications/prescribed medications responsibly. The possession in the workplace (including Corporate vehicles) of prescribed medication (including medical cannabis) without a legally obtained prescription/authorization is prohibited. Furthermore, consumption of medical cannabis in any area of the Corporations enclosed workplace (including vehicles) is prohibited. The possession and consumption of medical cannabis, the place of consumption, during the workday, including on breaks, must first be the subject of an express, prior written accommodation plan with the Corporation.
- f) Given their potential for causing impairment, employees on medications/prescription medications (including medical cannabis) are required to investigate with their treating medical practitioner or pharmacist, the effects of their medications/prescription medications on their ability to report Fit for Duty. If the employee’s medications/prescription medications may reasonably adversely impair the employee’s

ability to report Fit for Duty, the employee is to immediately report, prior to assuming work, any risk, to his or her Manager/Supervisor so that the appropriate precautions (including time and place for consumption, if consumption is required during the work day including breaks) if any may be taken and accommodations arranged where possible. The Corporation, with the employee's prior consent and authorization, may ask the employee's medical practitioner and/or pharmacist to provide additional information on the impacts of the medications and/or prescribed medications on the employee's ability to safely perform his or her work or cause the employee to request from their medical practitioner such information and provide it to the Corporation.

- g) Employees must report to their Supervisors/Managers any person reasonably suspected of not being Fit for Duty while carrying out their duties and responsibilities for the Corporation. In addition, employees should encourage those individuals to report their condition to their Supervisor/Managers.

7.2 No Exemption

Impairment in the workplace is never justified regardless of whether the drug or substance is legal or not.

7.3 Accommodations for Employees

- a) The primary purpose of this Policy is the prevention of health and safety incidents and the provision of assistance and when required, accommodation to employees suffering from a disability including substance abuse.
- b) Consequently, the Corporation recognizes that employees may suffer from a disability (including substance abuse) from time to time preventing them from reporting to work Fit for Duty as this Policy requires.
- c) The Corporation is open and prepared to helping such employees.
- d) Employees who suffer from a disability, including substance abuse, and/or consume alcohol, drugs, prescribed medications and medications on account of a disability

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- and the consumption of which would render the employee not capable of reporting to work Fit for Duty or otherwise cause the employee to violate this Policy, are required to:
1. Before job safety is compromised and before violating any term of this Policy, communicate the need in confidence to the Corporation
 2. Inform the Corporation of the used products' effects on the employee's ability to safely perform his or her duties and responsibilities to an acceptable performance standard: and
 3. Generally cooperate with the Corporation in the accommodation process
- e) At all times, employees suffering from a disability, including substance abuse, have access to the Corporation's Employee Assistance Program for personal and confidential assistance
- f) The Corporation is prepared to provide an employee suffering from a disability with reasonable work accommodations. Accommodations will be considered on a case by case basis, taking in to account the employee's functional abilities, the costs of the accommodation, reasonable health and safety considerations and any other relevant factors. Accommodations may take various forms, including but not limited to modifications to tasks or work, re-assignment, and leave of absences.
- g) An employee who requires accommodation to perform the essential duties of a job, has a responsibility to communicate the need, in confidence, to the Corporation in sufficient detail and to cooperate in consultations to enable the person responsible for accommodation to respond to that request.
- h) An employee who seeks any accommodation from the Corporation on account of a disability, including substance abuse, prior to any job safety incident or performance issues arising and/or violation of this Policy, will not be subject to discipline or any other adverse employment consequences.

7.4 Supervisor/Managers Responsibilities

Supervisors and Managers are:

1. Responsible for communicating this Policy to their employees and addressing their employees' questions and concerns;
2. Observing and monitoring their employees for signs of impairment, and if impairment is observed, determine the cause of the observation with the employee privately and taking appropriate action if the employee's work performance has deteriorated to an unacceptable level or their actions or condition can jeopardize their safety or that of others;
3. Assess an employee reporting for work not Fit for Duty to determine whether the employee can safely perform his or her regular duties and if not taking the appropriate action including sending the employee home. (with the appropriate transportation precautions);
4. Prohibit any employee from performing the duties and responsibilities of safety sensitive position whom is observed and/or reported not Fit for Duty
5. Receiving and addressing any reports from other employees or others suspecting an employee to be impaired and taking appropriate action to safeguard the safety of the employee, co-workers and the public and;
6. Coordinate accommodation requests with Human Resources for any employee suffering from a disability and whom because of that disability, and absent reasonable accommodation, cannot perform the essential duties of their employment;
7. Coordinate with Human Resources any appropriate disciplinary response for violations of this Policy

8. Testing

In an effort to maintain a safe and healthy workplace, the Corporation reserves the right to require an employee to submit to drug and alcohol testing in the following circumstances:

8.1 Reasonable Cause

The Corporation may require an employee in a safety sensitive position to undergo testing where a Supervisor/Manager has reason to believe that there is reasonable cause to suspect violation of this Policy.

The decision to test will be made by Human Resources upon a report from the Manager/Supervisor whom has observed the employee presenting in such ways that are considered consistent with impairment. These personal observations, such as, but not limited to:

- (a) Observed use or evidence of a substance (odour, flushed face, glassy eyes, unsteadiness, etc.)
- (b) Erratic or atypical behaviour,
- (c) Changes in the physical appearance or in the behaviour of the employee,
- (d) Changes in speech patterns, etc...

8.2 Post-Accident/Incident

The Corporation may require an employee to undergo testing where a Supervisor/Manager has reason to believe, acting reasonably, that the cause of a significant accident, incident or near miss is unexplained and may involve or is likely to involve a Policy violation. Significant accident, incident or near miss generally involves incidents resulting in an injury, death, damage to property and incidents that could have resulted in the same.

8.3 Return to Work

As part of any condition of continued employment, or as part of an accommodation, the Corporation may require testing as a condition of reinstatement to active duty in a

safety sensitive position in accordance with the terms and conditions of reinstatement set out on a case by case basis.

8.4 Testing Protocols

Testing shall be conducted by a third party of the Corporations choice.

9. Loss of Driver's License/Impaired Driving

Employees who operate motorized vehicles as part of their duties must immediately advise their Supervisor of a loss of Driver's License due to administrative suspension under the Highway Traffic Act or criminal conviction under the Criminal Code. For greater clarity, this section pertains to suspension or loss of driving privileges whether while using a County or personal vehicle during work hours or while using a County or personal vehicle outside of work hours.

Failure to report the suspension or loss of Driver's License by an employee who is required to operate a motor vehicle as part of their duties will result in the termination of employment for cause.

10. Confidentiality

Information provided to the Corporation by employees seeking accommodations will be kept confidential and private and will only be used by the Corporation for the purposes of accommodations and disclosed on an "as needed basis" subject to any disclosure requirements imposed by law.

Individuals who report to their Manager/Supervisor their suspicion of another person being not Fit for Duty may do so in confidence and the reporting individuals name and identity will be kept confidential to the extent possible but subject to any disclosure requirements imposed by law.

11. Interpretation

This Policy is to be interpreted and implemented in a manner that:

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1. fosters a safe and healthy workplace
 2. protects employees and others from unnecessary risks of harm, and
 3. respects employees' dignity, self-worth and privacy

12. Contacts

- a) Employees have access to fully confidential assistance at any time, 24-hours a day, through the Employee Assistance Program at 1-800-387-4765
- b) Any questions or advice regarding the intent of this policy can be directed to Human Resources.
- c) Employees may wish to consult with the Human Rights Commission or their union steward for further information on their legal rights and entitlements.