COUNTY AGENDA REQUEST

Department:	Commissioners	Presenter(s):	Commissioner David Barlow
Meeting Date:	Thursday, January 10, 2013	Type of Request:	New Business

Wording for the Agenda:

Consideration of Commissioner David Barlow's recommendation that the members of the Fayette County Board of Commissioners be subject to random drug testing in the same manner required of Fayette County employees.

Background/History/Details:

Fayette County's Substance Abuse Policy 440.11 describes alcohol and controlled substances such as marijuana, cocaine, opiates, amphetamines, PCP, and prescription medication in excess of normal amounts as prohibited substances. The policy also permits pre-employment drug testing, random drug testing for employees whose job duties are considered "high risk", reasonable suspicion testing, and post-accident testing for employees.

Commissioner David Barlow is recommending that each member of the Fayette County Board of Commissioners be subject to random drug testing in the same manner required of Fayette County's employees.

What action are you seeking from the Board of Commissioners?

Direction regarding or approval of Commissioner David Barlow's recommendation that the members of the Fayette County Board of Commissioners be subject to random drug testing in the same manner required of Fayette County employees.

If this item requires funding, please describe:

Annual funding is budgeted in the Marshal Department's technical services account for random drug testing.

Has this request been considered within the past two years?	No	If so, when?	
Is Audio-Visual Equipment Required for this Request?*	No	Backup Provided with Request?	Yes

**** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.***

Approved by Finance	Not Applicable	Reviewed by Legal	
Approved by Purchasing	Not Applicable	County Clerk's Approval	
Administrator's Approval			

Staff Notes:

FAYETTE COUNTY

HR – SAFETY
Substance Abuse Policy
440.11

PURPOSE

The Fayette County Board of Commissioners is committed to providing a safe work environment and to fostering the well being and health of its employees. That commitment is jeopardized when any Fayette County employee illegally uses drugs on or off the job, comes to work under the influence, possesses, distributes or sells drugs in the work place, or abuses alcohol on the job. Fayette County has therefore established the following policy.

It is a violation of county policy for any county employee to use alcohol during or prior to working hours where the alcohol can be measured at the level of .02 grams or higher during working hours, said level being presumptively adverse to the safety of the workplace. Additionally, it is a violation of this policy for any county employee to manufacture, distribute, sell, use, or possess a controlled substance, marijuana, or dangerous drug in an unlawful manner, or to abuse prescription medication

POLICY

There shall be a consistent process for the determination of substance abuse by a County employee and a uniform process for disciplinary actions if warranted.

PROCEDURE

Prohibited Substances

1. Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication containing alcohol which, when consumed, causes an alcohol concentration in excess of the level prescribed in the policy.

2. Controlled Substance: Fayette County will conduct urinalysis to detect the presence of the following substances:

   a. Marijuana

   b. Cocaine

   c. Opiates

   d. Amphetamines

   e. Phencyclidine (PCP)

3. Prescription medication in excess of normal prescribed amounts.

Types of required testing

1. Pre-employment testing. All applicants considered for employment will be tested. Any applicant testing positive shall be removed from further consideration for employment.

2. Physical fitness testing. All employees are required to be tested as a part of any required annual physical fitness examination.

3. Random testing. Employees whose job duties are considered "high risk" and could adversely affect or injure the public or other employees shall be placed on an eligible list by the County Administrator for random testing. Each year, Fayette County will conduct a number of random tests equal to 50% of the total average number of employees at the county during the calendar year who are subject to random testing.

4. Reasonable suspicion testing. Employees demonstrating abnormal or erratic behavior or impaired ability to perform work related tasks sufficient to convince a supervisor that possible use of an illegal substance or alcohol abuse or abuse of prescription medication is involved shall be tested.

5. Post-accident testing. Employees involved in an accident shall be tested in the event one of the following occurs:

a. Personal injury to anyone

b. Property damage of a serious nature in the judgment of a supervisor occurred.

6. Voluntary admission testing. An employee who notifies the County prior to request to test or an arrest that the employee illegally uses a controlled substance, marijuana, or a dangerous drug or abuses alcohol or prescription medication shall be tested upon such notification.

7. Return to duty testing. All employees testing positive in any required alcohol or substance abuse test must pass a Return to Duty Test prior to returning to the workplace.

Drug Testing Process

All required substance or alcohol abuse tests shall be administered by the Fayette County Marshal's Office or a qualified testing agency selected by the County Board of Commissioners.

The following process will be followed to accomplish the random testing requirements:

1. The Marshal's Office will randomly choose a select number of days for each month for testing. The testing will take place during both normal business hours and either before 8:00 a.m. or after 5:00 p.m. one day a month to accommodate those employees on other shifts.

2. On the day of the test the Marshal's Office will gather a list of employees to be tested using a random generating software program. This list will include a number of alternates in the case of the selected employee being on leave or on another work shift schedule.

3. The Marshal's Office will notify the appropriate department head or designee that their employee has been selected and will assign an appointment time for the testing.

4. If the department head or designee is unable to locate the employee, the department head will contact the Marshal's Office with this information, so the employee will not be reported as a failed test.

5. On arrival at the Marshal's Office the employee will be logged in, will be given an informational handout concerning the testing procedures and possible outcomes and will be sent to the employee break room to await the start of the testing process.

6. The employee will be escorted from the waiting area, through the rear door into the alcohol testing area. After the alcohol testing is completed the employee will then be escorted to the drug testing area.

7. After this sample is collected, the employee will be given a (completed testing form(indicating that the employee successfully complied with the Fayette County Substance Abuse Policy.

8. The employee will be given instructions to return the (completed testing form(to his/her department head or designee for that department's internal records.

9. At this point the employee will be allowed to leave and will be given the option of leaving the complex either by the rear outside stairs or thru the employee break room.

10. The alcohol results are immediate while the drug results will take from 24 to 36 hours depending on the collection time of the last sample. Only positive test results will be forwarded for corrective action.

Alcohol – Negative Test

A Fayette County employee whose alcohol breath test results in a level below the .02 grams (BAC) level will be deemed as passing this section of the test and will be given directions for the next step in the testing procedure.

Alcohol – Positive Test

A Fayette County employee whose alcohol testing results in a level of .02 grams or higher will be directed to a waiting area where the employee will be observed for a period of not less then 15 minutes. After this waiting period the employee will be given a second (confirmation) test.

If this confirmation test is below .02 grams the employee is deemed to have passed this section of the test and will be given directions for the next step in the testing procedure.

If the confirmation test is .02 or higher the employee has failed the alcohol test and the employee will be advised that they are in a suspended status without pay and the County Administrator and Human Resource Director will be notified.

The employee's supervisor and/or department head will also be immediately notified of the failed test and will be reminded that the employee is now in a "leave without pay status" pending a review of possible termination by the County Administrator.

The employee will be advised of the following:

1. The employee will not be allowed back to work until a "Return to Duty Test" is completed no sooner then (5) days or no later then 10 days from the date of the failed test. This time off is in: "without pay status."

2. The employee will be directed to the Human Resources Department for information concerning contacting the County's Employee Assistance Program (EAP) for any treatment, counseling or educational programs required by the EAP personnel. This referral is mandatory and the employee must bring back to the Marshal's Office proof that the employee has had or will have an appointment with the EAP provider before a retest can be scheduled.

3. If the employee drove a county owned vehicle to the testing location, arrangements will be made to return the vehicle back to the employee's office and the employee will be assisted in making transportation arrangements back to their place of employment. The Marshal's Office will provide transportation if required.

4. If the employee drove their own vehicle (POV) to the testing location and the failed test level was 0.06 grams or higher the employee will not be allowed to leave the complex in their POV. Instead the Marshal's Office will assist the employee in making transportation arrangements and their vehicle will be secured.

5. If the employee's level is .06 grams or above the employee may be subject to criminal prosecution depending on the results of any independently required investigation. The results of the random testing will not be used as evidence in a criminal case.

6. Any future positive test will result in the immediate and automatic termination of the employee.

Drug – Negative Test

When the Urine Sample is collected it is immediately forwarded to a certified testing facility where the testing takes place. All negative results are emailed to the Marshal's Office and the employee is not notified of the results. The results are then stored in a secure storage area in the Marshal's Office.

Drug – Positive Test

If the results of the original test are positive, a second confirmation test is conducted and a Medical Review Officer (MRO) reviews both tests. If the tests are confirmed, the results are immediately forwarded to the Marshal's Office. This testing procedure may take up to 36 hours.

The Chief Marshal or his designee will contact the employee's supervisor and/or department head with the positive results and the results will be forwarded to the Fayette County Administrator and the Director of Human Resources.

The employee will be advised of the following by their supervisor:

1. The employee will be placed in a suspension status, pending a review by the County Administrator for possible termination. The employee will not be allowed back to work until a "Return to Duty Test" is completed no sooner then 5 days and no later then 10 days from the date of notification of the positive test.

2. The "Return to Duty Test" will not be scheduled until the employee contacts the EAP for any treatment, counseling or educational programs required by the EAP providers. The EAP provider information is available at the Fayette County Human Resources Department.

3. The EAP referral is mandatory and the employee must bring back to the Marshal's Office proof that the employee has had or will have an appointment with the EAP provider before a retest can be scheduled.

Any future positive test will result in the immediate and automatic termination of the employee.
Refusal to Submit to an Alcohol or Drug Test

IF THE EMPLOYEE FAILS TO REPORT FOR THE SCHEDULED TESTING IT WILL BE CONSIDERED A POSITIVE TEST UNDER THIS POLICY.

Refusal by an employee of Fayette County to complete and sign the Breath Alcohol / Drug Testing Form, to provide breath or urine, to provide adequate amount of breath or urine or otherwise fail to cooperate with the testing process in any way that prevents the completion of the test(s) will be considered a positive test and the employee will be subject to disciplinary action up to and including termination.

Additionally, the refusal to test for either alcohol or controlled substances reasonably close in time to an on – the – job injury may adversely affect an employee's entitlement to workers' compensation benefits.

Duties of Directors, Department Heads or their Designees after an Employee's Positive Test:

As soon as the results of a positive test are known (alcohol immediate, drug up to 36 hours) the Chief Marshal or his designee should immediately notify the employee's supervisor and/or department head of the failed test and will email a copy of this Substance Abuse Policy Handout for departments/directors upon request.

The County Administrator should also be notified and will review for possible termination.

If the failed test was the alcohol test, the Marshal's Office will arrange transportation for the employee back to their place of employment.

The employee's supervisor and department head / director will meet with the employee in a private meeting and officially advise the employee the following:

1. The results of the failed test

2. Will notify the employee both verbally and in writing, that s/he is suspended without pay (LWOP) for at least 5 days and up to 10 days pending:

   a. the initial meeting with the EAP representative has been met or scheduled;

   b. the "Return to Duty Test" has been completed; and

   c. A return to work notice has been received from the Department of Human Resources.

3. The Department Head will further advise the employee that any future positive test will result in the employee's immediate and automatic termination.

The supervisor will assist the employee in contacting the Human Resources Department for EAP contact and appointment information. The contact with the EAP representative must be completed BEFORE a retest can be scheduled.

The supervisor will process and sign all disciplinary action paperwork before submitting it to HR. The LWOP leave slip for payroll should include the comment "Failure to Comply with County Policy."

The supervisor will provide to the employee Marshal's Office contact information to schedule a retest and the supervisor will arrange any required transportation for the employee.

The supervisor must wait for notification from HR on the eligibility of the employees return to work status. Upon the return to work or termination notice the department head will consult with the division director and contact the employee with either a return to work day or a termination of employment notice.

The supervisor will send the appropriate return to work or termination date to the Director of Human Resources.

The supervisor must ensure the confidentiality of the employee's status at all times

Policy Certification

The Fayette County drug free program is certified by the Georgia Workers Compensation Board in accordance with Title 34, Chapter 9, and Article 11 of the Official Code of Georgia Annotated.

State of Confidentially

All information received through substance abuse testing is confidential, but may be used or received in evidence, or obtained in discovery, or disclosed in any civil or administrative proceeding when the information is relevant to Fayette County's defense, e.g., worker's compensation hearing.

Employee Assistance Program

Fayette County offers resource information on various means of employee assistance in our community, including but not limited to drug and alcohol abuse programs. Employees are encouraged to use this resource file, which is located in the break room and is available at the Marshal's Office or Department of Human Resources. In addition, we will distribute this information to employees for their confidential use.

Federal Drug Free Work Place Act of 1988

As a condition of employment, employees must abide by the terms of this policy and must notify Fayette County in writing of any conviction of a violation of a criminal drug statute no later than five calendar days after such conviction.

Employee Education

Every employee of Fayette County should receive a minimum of two hours of education on substance abuse and its effects on the work place.

Supervisor Training

Supervisor training is critical to the overall success of the substance abuse program at Fayette County. The supervisor is the first line of defense in recognizing and dealing with the employee who may be affected by the drugs or alcohol.

Each supervisor will receive training in recognizing abuse problems and to make decisions dealing with such situations. All supervisors will receive the same training as employees.