



# DRUG AND ALCOHOL POLICY AND PROCEDURES

## 1. Purpose

The purpose of this policy is to establish City of Woodburn's commitment to providing and maintaining a safe and healthy work environment for all the employees. The City of Woodburn considers its employees to be its most valuable asset and is concerned about when drug and alcohol abuse affects an employee's ability to perform their work, threatens the safety of citizens and other employees, and creates a dangerous work environment.

## 2. Scope

This policy covers all employees, including seasonal and temporary, and all applicants of employment. To the extent any applicable collective bargaining agreement differs from the conduct and procedures set forth in this policy, employees represented by that bargaining unit will be subject to the terms set forth in that agreement. To the extent that police department specific policies differ from the conduct and procedures set forth in this policy, employees who work at the police department (both sworn and nonsworn) will be subject to the terms set forth by their department policies.

## 3. Policy

It is the policy of City of Woodburn to maintain a safe and healthy work place for all employees that is free from the effects of drug and alcohol abuse.

For the purposes of this policy, drugs and alcohol will be defined as alcohol and controlled substances as defined by ORS 475.005 (6) Controlled Substances Act and the Federal Controlled Substance Act (21 U.S.C. §812), including but not limited to opiates, cocaine, marijuana (THC), phencyclidine (PCP), amphetamines/ methamphetamines, and barbiturates. Marijuana is defined as a controlled substance for the purpose of this policy, regardless of whether or not the marijuana was distributed for medical purposes.

Under this policy, Controlled Substances does not include any substance lawfully prescribed for the employee's use as directed by a healthcare provider. Medical marijuana will not be considered a lawfully prescribed substance under this policy.

#### 4. Prohibited Conduct

The following conduct is strictly prohibited and will result in disciplinary action up to and including termination:

- A. The buying, selling, or providing of drugs or alcohol, including marijuana while on City property or in City vehicles or equipment, or during work hours, including rest and meal periods.
- B. Being at work under the influence of, or consumption of drugs or alcohol, including marijuana, or having such substances "present in the body" while on City property or in City vehicles or equipment, or during work hours, including rest and meal periods. An employee has a controlled substance "present in the body" when the employee tests "positive" in any blood or urine test administered.
- C. Possession of drugs or alcohol, including marijuana while on City property or in City vehicles or equipment at any time, or during work hours, including rest and meal periods.
- D. Failure to notify the City of an arrest and/or conviction under any criminal drug or alcohol statute within five (5) days of the arrest or conviction; entry into a drug court or diversion program; or loss or limitation of driving privileges when the employee's job is identified as requiring a valid driver's license (regular or CDL).
- E. Bringing onto City property, or possessing items or objects on City property that contain any Controlled Substance, including, for example, "pot brownies" and/or candy containing marijuana. This prohibition does not apply to employees engaged in law-enforcement work. No employee, regardless of position held, may knowingly serve items containing marijuana or any other Controlled Substance to co-workers, members of the public, or elected officials while on work time or on/in City property.
- F. Bringing onto City property, or possessing on City property, marijuana-related equipment or any devices marketed for use or designed specifically for use in ingesting, inhaling or otherwise introducing marijuana (among other drugs), such as pipes, bongs, "vape" pens, smoking masks, roach clips, and/or other drug paraphernalia. This prohibition does not apply to employees while engaging in law-enforcement work or training under this policy.
- G. Bringing onto City property, or possessing on City property, equipment, products or materials that are marketed for use or designed for use in planting, propagating, cultivating, growing, or manufacturing marijuana, including live or dried marijuana plants. This prohibition does not apply to employees while engaging in law-enforcement work or training under this policy.

## **5. Responsibilities**

Employees must comply with all aspects of this policy. An employee who uses prescription or over-the-counter drugs that may impair the employee's ability to safely perform the job, or that may affect the safety or well-being of others, must notify their supervisor of the side effects of such use (without disclosing the diagnosis or the medications) immediately before starting or resuming work. This includes, without limitation, medical marijuana. The use of marijuana, which is a Schedule 1 controlled substance under federal law, is expressly prohibited under this policy, even if its medical use is authorized under state law.

Managers and supervisors are responsible for consistent enforcement of this policy. Any supervisor who knowingly permits a violation of this policy by employees under their direct supervision shall be subject to disciplinary action.

The Human Resources Department shall make this policy available to all employees and provide regular training on the implementation of this policy and procedures to all supervisors and managers.

## **6. Testing**

An employee may be tested for drugs and alcohol under the following circumstances:

- A. Employees who have a Commercial Driver License (CDL) shall be tested as required by state and/or federal Department of Transportation (DOT) law, in addition to any other testing required by this policy.
- B. Employees who perform safety sensitive functions in transit division shall be tested as required by Part 655 under the FTA regulations, in addition to any other testing required by this policy.
- C. Employees in positions or classifications that are required by law, licensing, or grant funding, such as police department employees, to be tested.
- D. Following an on-the-job or motor vehicle accident which results in death or serious physical injury or extensive property damage.
- E. Where an employee is observed using alcohol, or using or possessing drugs while on City property or in City vehicles or equipment, or during work hours.
- F. Where reasonable suspicion exists that the employee is under the influence of drugs and/or alcohol while on City property or in City vehicles or equipment, or during work hours.
- G. Employees holding safety sensitive positions who are off the job for more than 30 calendar days, regardless of the cause, shall be required to submit to testing before returning to work. This means any leave for any reason in excess of more than 30 calendar days, including vacation in excess of 30 days.

- H. Pre-employment drug and/or alcohol testing shall be performed for applicants who are given a conditional offer of employment in a safety sensitive position or a position where pre-employment testing is statutorily required by state or federal law.

## **7. Reasonable Suspicion**

Reasonable suspicion exists when the employer holds a belief that it is reasonable under the totality of the circumstances existing at the time and place that the employee is more likely than not under the influence of drugs and/or alcohol.

The term "under the influence" of drugs or alcoholic intoxicants, including marijuana, covers not only all the well-known and easily recognized conditions and degrees of impairment and intoxication, but any perceptible abnormal mental or physical condition which is the result of indulging to any degree in drugs or alcohol which perceptibly tend to deprive the use of that clearness of intellect and control the employee would otherwise possess.

Circumstances which constitute a basis for determining reasonable suspicion may include, but are not limited to:

- i. A pattern of abnormal or erratic behavior;
- ii. Direct observation of drug or alcohol use; or information provided by a reliable and credible source;
- iii. Presence of the mental or physical symptoms of drug or alcohol use (e.g., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes); or
- iv. A work related accident in conjunction with other facts which together support reasonable suspicion.

An employee is considered under the influence when reasonable suspicion has been demonstrated and confirmed with a drug test and/or alcohol test.

Supervisors may require an employee to be drug and/or alcohol tested on the basis of reasonable suspicion only after consultation with a second trained City supervisor, the appropriate department director, or the Human Resources Director. An employee required to test due to reasonable suspicion shall be transported by a supervisor to the testing location.

## **8. Testing Process**

Any testing shall be conducted in such a way as to ensure maximum accuracy and reliability. Any alcohol or controlled substance testing shall be conducted in an environment that affords personal privacy to the maximum extent practicable.

Testing procedures for employees who have a CDL or perform safety sensitive functions shall be performed in accordance with Federal Motor Carrier Safety Administration and/or Federal Transit Administration requirements as applicable.

All other testing will be governed by industry practices for non-DOT testing. The standards include utilizing a Department of Health and Human Services certified laboratory that demonstrates experience and capacity of quality control, documentation, chain of custody, technical expertise and demonstrated proficiency testing. All alcohol tests will be performed by a Certified Breath Alcohol Technician using a breathalyzer for both initial and confirmation testing.

Represented employees may request a union steward or representative to be present. The test will not be delayed for more than one hour in order to wait for a union representative. The absence of a union representative shall not be grounds for the employee to refuse to consent and submit to such tests or searches.

Refusing to Test shall mean any one or more of the following:

- i. Failure to provide a urine specimen within three hours of the notice of the requirement to be tested under the City's policy, without a genuine inability to provide a specimen as determined by a medical evaluation;
- ii. Substituting, manipulating, tampering with, or adulterating a specimen;
- iii. Failing to cooperate with the collection process in a manner that allows a sample to be collected;
- iv. Failing to remain at the testing location until the testing process is complete.

## **9. Results**

An applicant who tests positive for drugs or alcohol will not be considered for hire where the applicant's use of drugs and/or alcohol could affect requisite job standards, duties, or responsibilities.

"Positive Result" shall mean:

- i. Any breath alcohol test whose result shows a breath alcohol content that exceeds 0.02%.
- ii. Any drug test whose result indicates that the employee has more than the levels prescribed by the testing protocols present in the body.

In the event that the blood or urine test results are positive for controlled substance(s), including marijuana, the City shall require that a second confirmatory test from the same sample be conducted, using gas chromatography mass spectrograph techniques or equivalent, which also must be positive before concluding the employee has such substance(s) present in their body.

If a blood or confirmed urine test is positive, the City will instruct the laboratory to retain the blood or urine sample for a period of not less than 30 calendar days from the date the tests are complete for the purpose of allowing the employee to conduct an independent test at his or her own expense at a laboratory approved by the City.

The drug testing company will contract with a certified medical review officer (MRO).

The MRO will review preliminary non-negative drug test results with the employee and any relevant health care provider(s) before the results are reported to the City. If an employee disagrees with the results of a drug test, the employee may request the sample be retested at the employee's expense. The request for retesting must be submitted in writing to the testing facility and human resources within five (5) business days. The result of any retest will be deemed final and binding and not subject to any further test. Failure to make a timely written request for a retest shall be deemed an acceptance of the test results. If an employee requests a retest, disciplinary action shall be held pending receipt of the results of the retesting.

The employee may be placed on administrative leave pending results of retesting. Employees who test positive for drugs or alcohol shall be required to undergo assessment at the earliest opportunity, regardless of whether disciplinary action has been taken. The City will verify an employee's attendance and that the assessment has been completed.

The City may offer an employee, diagnosed as having an alcohol and/or chemical dependency by a SAP, continued employment under the terms of a last chance agreement. The City is under no obligation to extend a last chance agreement. Last chance agreements for employees who possess a CDL must comply with DOT regulations.

Laboratory reports or test results will be retained in an employee or applicant's confidential medical file. The reports or test results may be disclosed to City management on a strictly need-to-know basis and to the tested employee upon request.

## **10. Searches**

The City may conduct searches of City property, or search any area directly connected to the City's operation, for any reason reasonably related to City business. The City may request that an employee submit to an inspection of his or her person, personal property, clothing, or vehicle, or search an area where an employee has an expectation of privacy (i.e., desk or locker) when the City has reasonable suspicion to believe that an employee is in improper possession of drugs or alcohol containers located in the area to be searched. Managers and supervisors shall not physically search employees.

Searches, which are undertaken specifically to investigate violations of this policy, shall be conducted in the presence of the employee if practical. If the employee is not available, or if the employee so requests, the employee may request a witness, union steward or representative to be present. The search will not be delayed for more than one hour in order to wait for a witness, union steward or representative. Refusal to submit to such an inspection may result in discipline, up to and including suspension or discharge.

An employee shall be considered to have committed Prohibited Conduct when a search reveals the presence of drugs or alcohol, including marijuana, and excluding any

substance lawfully prescribed for the employee's use, in an area under the control of the employee. The City shall use appropriate chain of custody procedures.

### **11. Training**

All covered employees will receive training regarding the effects and consequences of substance abuse on personal health and safety, and the work environment. Training will also be provided regarding the manifestations and behavioral cues indicating substance abuse.

All supervisors who will be responsible for determining when it is appropriate to administer reasonable suspicion drug and/or alcohol tests will receive training on the physical, behavioral, and performance indicators of probable drug use and alcohol misuse every two years.

### **12. Employee Assistance Program**

The City will maintain an Employee Assistance Program (EAP) at no cost to the employees. The general purpose of the EAP will be to reduce problems in the workforce and retain employees. The EAP will offer limited professional assistance to employees in dealing with problems of a personal nature, including substance dependency that may have an adverse effect on job performance.

### **13. References**

[ORS 475.005 \(6\) Uniform Controlled Substances Act](#)

[Federal Controlled Substance Act \(21 U.S.C. §812\)](#)

[Federal Motor Carrier Safety Administration Drug and Alcohol Testing Program](#)

[Federal Transit Administration Drug and Alcohol Program](#)

### **14. Review of Policy and Procedures**

This policy will be reviewed every three years or as state and federal regulations are revised and necessitate a change in the policy or procedures.

Adopted: June 2017