

Alcohol and Drug Testing

POLICY STATEMENT

The City of Lake Oswego is committed to providing a workplace where employees and the general public can safely conduct business. To ensure these standards, the City will not tolerate employees reporting to work with their ability to perform impaired by alcohol, illegal drugs, or inappropriately used prescription or over-the-counter drugs.

GUIDELINES

1. *Applicability*

This Policy applies to all non-represented and LOMEA represented employees.

Employees in safety-sensitive positions must comply with this policy, and the stricter standards incorporated in this policy as set forth in the DOT regulations. (See Attachment A for criteria and list of employees in safety-sensitive positions.)

2. *Prohibited Conduct*

Except as defined in the "Exceptions for Moderate Consumption" section of this Policy, the following conduct is prohibited:

- (a) Consuming alcohol or using drugs¹ (except pursuant to a lawful prescription issued to the employee) while "on duty" (defined to include breaks or meal periods), operating City vehicles or using City equipment;
- (b) Buying, selling, manufacturing, distributing, dispensing or possessing illegal drugs while on duty and/or on City

¹ 'Drugs' for purposes of this Policy includes all forms of narcotics, depressants, stimulants, hallucinogens, opiates, phencyclidine (PCP), cocaine and cannabis, or any other drug whose sale, purchase, transfer, use or possession is prohibited by law. See Attachment B for prohibited drug testing levels.

property;²

- (c) Reporting for work or being on duty with a prohibited level of alcohol or drugs present in the employee's body;³
- (d) Refusing to submit to a required drug or alcohol test⁴; interfering with any testing procedures; or tampering with any test sample or otherwise failing to comply with rehabilitation conditions or other restriction imposed by an SAP consistent with this Policy;
- (e) Consuming alcohol within 4 hours prior to performing job duties that require a commercial drivers' license (CDL)⁵
- (f) Consuming alcohol within 8 hours following a moving violation in connection with an injury or tow-away accident involving an employee with a commercial drivers license, or until the CDL-employee undergoes a post-accident test (whichever is first);
- (g) Buying, selling, distributing or possessing alcohol while on the job or on City

² 'City property' includes all property rented, leased owned or controlled by the City, including parking lots and adjacent areas. It also extends to City equipment and vehicles on or off City property.

³ Employees in non-safety-sensitive positions are prohibited from having an alcohol concentration of 0.08 or greater as indicated by an evidential breath test, and/or the employee tests positive for having drugs present in his/her body. Employees in safety-sensitive positions are prohibited from having an alcohol concentration of 0.04 or greater, and/or the employee tests positive for having drugs present in his/her body.

In the event an employee is called to report for unscheduled work without at least 8 hours advance notice and the employee has alcohol in his/her system in an amount that he/she feels may violate this section of the Policy, the employee may disclose that he/she is unable to report for the unscheduled work for that reason. Employees who make this disclosure will be excused from reporting for work.

⁴ A safety-sensitive employee who refuses to test will be treated as if he/she had a breath alcohol concentration of 0.04 and/or tested positive for drugs.

⁵ Commercially licensed drivers are considered to be performing their safety-sensitive duties when they are: waiting to be dispatched; inspecting, servicing or conditioning any commercial motor vehicle; at the driving controls of a commercial motor vehicle in operation; in a commercial motor vehicle, except when resting in a sleeper berth; loading or unloading, assisting or supervising in loading or unloading or attending the loading or unloading of a commercial motor vehicle; repairing or obtaining assistance for, or remaining in attendance upon a disabled vehicle.

property, except as permitted under the "Exceptions for Moderate Consumption" section of this Policy.

An employee will be found in violation of this policy if, upon testing, the employee has levels of prohibited substances in the employee's system that exceed the levels set forth in the Prohibited Conduct section of this Policy.

The City will apply this Policy in accordance with applicable law, including the State medical marijuana law, as integrated with State disability discrimination law, the Americans with Disabilities Act and Department of Transportation regulations.

3. *Disclosure of Medications*

It is not the intention of this Policy to prohibit the appropriate use of legally prescribed drugs and non-prescription medications. However, employees using prescribed drugs (including prescribed medical marijuana) or non-prescription medications that have side effects that could affect their ability to safely perform job duties must notify their supervisor or Human Resources of the substance taken and its side effects before reporting to work.

Medical verification of the ability to safely perform job duties may be required before the employee is allowed to continue his/her work assignment.

4. *Consequences of Prohibited Conduct*

The City provides for disciplinary action, up to and including discharge. Violations of this policy will be evaluated on a case-by-case basis under the following parameters:

(1) For violation of paragraphs (a), (b) & (d) above: discipline up to and including termination unless the City decides extenuating circumstances warrant some lesser form of discipline.

(2) For violation of paragraphs (c), (g) above: for a first violation, the employee shall be referred to a Substance Abuse Professional (SAP) to evaluate the

employee, and if necessary, the employee shall complete treatment.

The SAP determines if the employee has successfully complied with the recommended treatment.

The employee shall have a written reprimand placed in his/her file with a notation that any further violations of the policy may result in his/her immediate discharge. The written reprimand for violations of this policy shall be retained in the employee's personnel file for twenty four (24) months.

(3) For violation of paragraphs (e) & (f) above: the employee shall comply with the requirements in this policy regarding safety sensitive positions.

In determining the appropriate sanction or corrective action, the City shall consider an individual's work record, the seriousness of the violation, the safety-sensitivity of the individual's position, whether the individual's behavior violated any other City policy, whether a sanction or corrective action is permissible under law (such as the Americans with Disabilities Act) and any other relevant factors.

In addition, employees in safety-sensitive positions who test positive for alcohol with a blood alcohol concentration between 0.02 and 0.039 cannot be returned to their safety-sensitive job duties until at least 24 hours have elapsed from the time of their testing.

At the time an employee is tested, the employee shall be informed that the employee shall have the right to representation at the time the test results are shared with the employee and at any subsequent interviews regarding violations of the policy.

An employee shall also be told of his/her right to representation at the time test results are shared with the employee and told again at any subsequent interviews regarding violations of the policy.

Employees in safety-sensitive positions who test positive for controlled substances, or have a blood alcohol concentration of 0.04 or above cannot return to their safety-sensitive job duties until:

- A Substance Abuse Professional (SAP) evaluates the employee, and if necessary, employee seeks treatment;
- The SAP determines the employee has successfully complied with the recommended treatment;
- The employee passes a return to duty test with a blood alcohol concentration below 0.02 and/or a negative drug test result.

5. *Exceptions for
Moderate
Consumption*

Alcohol may be consumed in moderation at City sponsored events and professional functions (including receptions or dinners); at business entertainment meetings held during business hours; or at municipal locations where service of alcohol has been approved in advance by the City Council.

In addition, it will not be considered a violation of this Policy for an employee to be in possession of unopened alcoholic beverages on the job, if the purpose of the possession is limited to giving or receiving of gifts. (See also the City's Ethics Policy.)

Moderate alcohol consumption must not violate any other provisions of this policy, including remaining professional and fit for duty.

If there is a possibility that employees' consumption of alcohol will render them in violation of laws regulating the operation of motor vehicles, the employees are prohibited from driving City vehicles or City-rented vehicles following such meetings or events.

6. *Types of Tests*

Pre-Employment and Pre-Placement

Applicants who are offered employment will be tested for drug use as a condition of employment.

Additionally, employees in safety-sensitive positions returning from layoff or seasonal employment will also be required to test for drugs prior to assuming their job duties.

Employment is contingent upon receipt of a verified negative test result from the City's authorized Medical Review Officer.

Reasonable Suspicion

Any employee of the City may be required to undergo testing for 'reasonable suspicion'.

'Reasonable suspicion' is defined as cause based on specific and articulated observations concerning the appearance, unusual behavior, speech, breath odor, body symptoms or other reliable indicators that an employee has reported to work or returned to duty with alcohol or drugs present in his/her body.

Whenever practicable, the decision to test for 'reasonable suspicion' will be made by the employee's supervisor and confirmed by another supervisory or management employee.

Random

Employees in safety-sensitive positions that require a commercial driver's license will be tested for alcohol and illegal drugs on an unannounced, random basis reasonably spread throughout the year.

Employees selected must proceed immediately to the testing site upon notification.

Alcohol testing will be limited to time periods just before, during or just after performance of CDL-covered duties.

Return to Duty

Employees in safety-sensitive positions who violated the City's Alcohol and Drug Policy and tested positive for controlled substances, or had a blood alcohol concentration of 0.04 or greater must pass a return to duty test with a blood alcohol concentration below 0.02 and/or a negative drug test result.

Follow-up

Conducted when an employee in a safety-sensitive position has engaged in prohibited conduct regarding alcohol or drug misuse, these tests are performed after the employee has been evaluated by a Substance Abuse Professional, and has followed the recommended treatment plan.

The employee, upon returning to duty, will be subject to a minimum of six unannounced follow-up tests over the first 12 months following the employee's return to work.

The actual number and frequency of the tests are to be determined by the Substance Abuse Professional. Moreover, the City may require follow-up testing under its own authority.

Post Accident

Both drug and alcohol testing will be performed following any on-the-job accident involving a fatality, or an accident in which the driver in a safety-sensitive position receives a citation under state or local law for a moving violation arising from the accident.

For the purpose of this policy, an accident is defined as an incident involving a vehicle in which there is a fatality, an injury treated away from the scene, or a vehicle that must be towed from the scene.

Employees will generally be required to undergo testing for alcohol within two hours of the accident, but no later than 8 hours after the accident.

Employees will be required to undergo testing for

drugs within 32 hours after the incident.

An employee who is subject to post-accident testing is required to remain readily available for testing.

Rehabilitation and Treatment

Employees who undergo rehabilitation in lieu of discharge or other disciplinary action are required to test pursuant to a Rehabilitation and Return to Work Agreement imposed by the City (see Attachment C).

7. *Transportation to
Test Site*

Employees who are required to submit to reasonable suspicion and/or post-accident testing are prohibited from transporting themselves to or from the collection site. A management or supervisory employee will transport the employee.

The time an employee spends traveling to and from the collection site, as well as time spent in testing and waiting for testing will be treated as "hours worked" for pay purposes except for split sample testing requested by the employee.

8. *Testing Safeguards*

All testing will be conducted at a laboratory certified by the Department Of Transportation (DOT) in accordance with the standards disseminated by the National Institute of Drug Abuse (NIDA).

All drug tests will be conducted through collection of a split sample. All positive drug tests will be confirmed by a second confirming test from the same sample using gas chromatography/mass spectrometry (GC/MS) testing methodology before the test result is reported as positive.

Drug and alcohol test results will be reported to the Human Resources Department and the Department Director. The City will disseminate test results on a need-to-know basis.

Any employee who tests positive for drugs may request a second test of the remaining portion of the split sample within 72 hours of notification of a positive test result. All requests for second tests

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- must be made to the Human Resources Department.
- The cost of split sample retesting will be borne by the employee. In the event the second test is negative, the employee shall be reimbursed for the cost of the follow up test.
9. *Administration of Testing*
- To ensure this policy is applied consistently, the Human Resources Department will be responsible for the coordination and administration of the Alcohol and Drug Testing Program.
- It will serve as a liaison with the collection facility, the laboratory, and the Substance Abuse Professionals. Moreover, it will advise employees who have engaged in prohibited conduct of the resources available for evaluating and resolving the problems associated with his/her violation.
10. *Confidentiality*
- All medical information including drug or alcohol test results or treatment procedures will be treated as confidential medical information and will be accessible only to those designated personnel with a specific need to know.
11. *Rehabilitation Options*
- The City attempts to provide employees the opportunity to deal with drug and alcohol related problems.
- Any employee who voluntarily requests assistance in dealing with a drug and/or alcohol problem is encouraged to seek professional counseling for an assessment with an accredited alcohol and drug professional.
- Professional counseling and treatment programs for drug and/or alcohol problems may be available through City-provided health insurance or the City's Employee Assistance Program (EAP).
- Any cost not covered by the health insurance or the EAP is the employee's responsibility.

Before Committing a Policy Violation

When an employee voluntarily reports a drug or alcohol dependency to his/her supervisor, Department Director or HR Director and seeks assistance before violating this Policy, that employee will be placed on a leave of absence or adjusted working hours as recommended by a Substance Abuse Professional (SAP) to allow for in-patient or out-patient rehabilitation.

Employees in safety-sensitive positions who voluntarily inform the City prior to a Policy violation or testing requirement that they have a drug or alcohol-related problem will be removed from their duties to allow for rehabilitation and treatment.

The employee will not be permitted to return to their regular duties until such time as the authorized Substance Abuse Professional provides the City with appropriate return-to-duty documentation.

Employees in safety-sensitive positions may not self-refer for treatment or rehabilitation services in lieu of taking required tests.

After Committing a Policy Violation

Employees who claim drug or alcohol dependencies after violating this Policy are subject to discipline consistent with this policy, irrespective of such dependencies.

The City may, however, at its discretion, allow an employee to undergo evaluation and rehabilitation in lieu of discharge, or other disciplinary action provided the employee agrees to all treatment, rehabilitation, testing and other conditions as set forth in a written Rehabilitation and Return to Work Agreement required by the City (see Appendix C). Any employee who violates the terms of the Agreement is subject to immediate termination.

An employee may be required to participate in a drug and/or alcohol treatment program and follow-up care because of disciplinary action arising from a drug and/or alcohol problem, or as a condition of

continued employment. A Substance Abuse Professional (SAP) must first evaluate an employee who is so required and determine any necessary assistance.

12. *Cost of Testing*

The City will be responsible for payment of all alcohol and drug tests required by the City. If an employee requests a split specimen test or decides to undergo a retest, follow-up test or any other test not required by the City, the employee will be responsible for the cost of the test. If the follow up test is negative, the employee shall be reimbursed for the cost of the follow up test.

The City may deduct payment for these tests from the employee's wages upon receipt of a written consent to deduct the cost of the test from the employee. Employees who do not provide written authorization must pay for the test directly.

13. *Related Policies*

- > Personnel Policy No. 1-6: Appropriate Workplace Conduct
- > Personnel Policy No. 2-5: Corrective Action
- > Personnel Policy No. 4-3: Family and Medical Leave
- > Personnel Policy No. 4-4: Leaves of Absence (Other)
- > Personnel Policy No. 4-5: Employee Insurance
- > Personnel Policy No. 5-1: Employee Safety and Health

Approved by: _____
City Manager HR Director

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