



## DRUG AND ALCOHOL

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### POLICY

The City of Newport is committed to maintaining a drug-free workplace. All employees have a responsibility to the public, and co-workers to ensure safe and efficient operating and working conditions. To satisfy these responsibilities, the city must establish a work environment where employees are free from the effects of drugs, alcohol, or other impairing substances. Additionally, this policy ensures the city's compliance with Department of Transportation, the Drug-Free Workplace Act, and other federal and state laws. Accordingly, the city has adopted the following zero-tolerance drug and alcohol policy:

The following conditions and activities are expressly prohibited:

1. The manufacture, distribution, sale, purchase, use or possession of any controlled or illegal substance (except strictly in accordance with medical authorization, not including medical marijuana) at any time.
2. Being under the influence of alcohol or any other substances that may impair job performance or pose a hazard during working hours, serving in "on call" status, while representing the city in any work-related fashion, or while on city premises or property. "Under the influence" is defined as any detectable level of alcohol or drugs in an employee's blood or urine or any noticeable or perceptible impairment of the employee's mental or physical faculties. The use of marijuana, which is a Schedule I controlled substance under federal law, is expressly prohibited under this Policy, even if its use is lawful under state law or is prescribed, recommended, or referred for medicinal purposes.
3. Reporting for work after having consumed alcohol or used illegal drugs or controlled substances at a time, or in such quantities, or in any manner that may impair work performance. For purposes of this policy, having any detectable level of an illegal or controlled drug or alcohol in one's system will be considered a violation of this policy.
4. On occasions where alcoholic beverages are served in conjunction with certain business or social events related to city business and approved by the City Manager, employees

may drink alcoholic beverages in moderate amounts, if at all. This includes attendance at approved conferences, seminars, and undercover police investigations. Employees must be fit to perform their duties and other responsibilities in a safe and efficient manner at all times, and employees must refrain from behavior that is disruptive, belligerent, argumentative, sloppy or unkempt in appearance, slurring of one's speech, inappropriate in personal interactions and/or behavior, or render the employee unable to operate a motor vehicle as required by law. Employees driving on city business are prohibited from consuming alcoholic beverages within four (4) hours prior to driving.

5. Failing to report (within 5 calendar days) and fully disclose to Human Resources all criminal charges and convictions (including no contest pleas and other plea bargains) for controlled substance and alcohol related offenses occurring after the effective date of this policy. Employees must immediately report any arrests for conduct relating to drugs or alcohol to Human Resources. (See "Drug/Alcohol Abuse Arrests" and "Drug Convictions" below.)
6. Bringing to city property, or possessing, items or objects on city property that contain any "controlled substance," including, for example, "pot brownies" and candy containing marijuana. This prohibition does not apply to employees engaged in law-enforcement work and are dealing with such items as part of an investigation. 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.
7. Bringing 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 engaged in law-enforcement work.
8. Bringing 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 to city property. This prohibition does not apply to employees engaged in law-enforcement work.

These standards of conduct apply to all employees during working hours, including lunch and rest periods or in an 'on-call status'. Employees who violate this policy will be subject to disciplinary action, up to and including termination of employment.

#### Prescription or Over-the-Counter Medication:

An employee who lawfully uses controlled substances pursuant to a prescription or who uses over-the-counter medication is responsible for consulting with his or her healthcare provider and pharmacist to determine whether there are any side effects that may affect the employee's ability to safely and competently perform the job duties. If the employee or his/her healthcare provider feels that he/she is experiencing any of these side effects, the employee must notify Human Resources of the side effects *prior to* performing or continuing to perform the job duties. Medical verification of the ability to safely perform job duties may be required before the employee is allowed to continue his/her work assignment. The employee need not disclose the medical condition for which the medication is being taken unless the city determines that this is necessary to comply with its legal obligations (e.g. properly designating FMLA/OFLA, evaluating reasonable accommodations, etc.).

Although the lawful use of prescription or over-the-counter medications is not grounds for disciplinary action by itself, failure to follow the reporting procedure discussed above may subject an employee to disciplinary action. Employees may also be disciplined for using medication that is unlawfully obtained, or for use that is inconsistent with the prescription or label (including but not limited to using medication prescribed to another person). Please also note that if an employee tests positive for alcohol, it will not be an acceptable excuse that the employee used an over-the counter medication (e.g. Nyquil) containing alcohol.

### Marijuana

Marijuana is a controlled substance under federal law even when authorized under state law or by a physician under a state medical marijuana program. Possession or use of medical marijuana, including having any detectible amount of marijuana in your system, will be treated the same as use or possession of any other controlled substance. Authorized use of medical marijuana is **not** a valid excuse for a positive drug test. An employee authorized to use medical marijuana due to a disability should contact Human Resources to discuss reasonable accommodations other than medical marijuana which would permit the employee to perform the essential functions of his/her job.

### **Testing**

As used in this policy, unless the context indicates otherwise:

The terms "test" and "testing" shall be construed to mean job impairment field tests, laboratory tests, breathalyzer tests, psychoneurological examinations and other tests of saliva, blood, and urine. No testing shall be performed under this rule without the approval of the City Manager, Human Resources, or the City Manager's designee.

"Reasonable cause", as used in this policy means an articulable belief based on specific facts and reasonable inferences drawn from those facts that an employee is more likely than not under the influence of controlled substances or alcohol, or has used drugs or alcohol in violation of this policy. Circumstances which can constitute a basis for determining "reasonable cause" may include, but are not limited to:

- a pattern of abnormal or erratic behavior;
- information provided by a reliable and credible source;
- a work-related accident;
- direct observation of drug or alcohol use;
- presence of the physical symptoms of drug or alcohol use (*i.e.*, glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes);
- unexplained significant deterioration in individual job performance;
- unexplained or suspicious absenteeism or tardiness;
- employee admissions regarding drug or alcohol use; and
- unexplained absences from normal work areas where there is reason to suspect drug or alcohol related activity.

Supervisors should detail in writing the specific facts, symptoms or observations that form the basis for their determination that reasonable cause exists to warrant alcohol or controlled substance testing of an employee or a search. This documentation shall be immediately forwarded to Human Resources. Whenever possible, supervisors should locate a second employee or witness to corroborate his/her "reasonable cause" findings.

An employee whose initial laboratory screening test for controlled substances yields a positive result shall be given a second test. The second test shall use a portion of the same test sample withdrawn from the employee for use in the initial screening test. If the second test confirms the initial positive test result, the employee shall be notified of the results in writing. The letter of notification shall state the particular substance identified by the laboratory tests. The employee may request a third test of the sample within 24 hours of receiving the letter of notification, but such testing will be paid for by the employee.

#### Pre-Employment

All potential employees who will be working in safety sensitive positions (CDL) will be required to pass a drug test subsequent to a contingent employment offer as a condition of their employment.

A signed Authorization/Consent Form will be obtained from the job candidate prior to testing.

#### Reasonable Suspicion Testing

Reasonable suspicion is where the city observes that the employee's behavior, conduct, or condition indicates that he or she may be under the influence of drugs or alcohol on the job. The city, in its sole discretion, reserves the right to determine if reasonable suspicion exists. Examples include, but are not limited to, strange or erratic behavior, non-typical work performance, or appearance including detectable odors or speech of the employee. The city may determine reasonable suspicion exists if an employee sustains or is involved in an on-the-job injury or accident requiring medical attention, beyond first aid, or which results in property damage.

CDL drivers who appear to be under the influence of drugs or alcohol can be immediately tested (§382.307).

Any provisions of this policy regarding testing are subject to applicable federal, state, and local laws or regulations. Information received through the city's drug and alcohol testing program will be treated as confidential, consistent with these laws and/or regulations. Individuals taking a drug and/or alcohol test must sign a consent form for the test that allows release of the test results to the city. Employees who refuse to sign a consent form will be subject to immediate suspension and/or termination of employment.

A signed Authorization/Consent Form will be obtained from the employee prior to testing.

Any member of management supervising a CDL employee must receive annual training to be able to detect the symptoms of driver impairment for both drugs and alcohol. (§382.603). This training will consist of a minimum of 60 minutes for alcohol training and 60 minutes for drug training.

#### Post-Accident

An employee who is involved in a work-related accident or incident that results in bodily injury to themselves or others, or that results in significant property damage, or a motor vehicle citation, is subject to immediate testing for the detection of drugs or alcohol. The city will decide, in its sole discretion, whether the property damage is considered "significant."

The city may also elect not to require post-accident testing if it determines that the employee's action or inaction was clearly not a factor causing the accident or injury.

If an employee is injured due to the accident or incident, the city's first concern is appropriate medical treatment for the employee. However, the employee is required to authorize testing as part of their medical treatment and is also required to authorize the release of appropriate records to enable the city to determine whether drugs or alcohol were present in the employee's system, in violation of city policy.

A signed Authorization/Consent Form will be obtained from the employee prior to testing.

Random

All employees working in safety sensitive positions and all employees holding job-related CDL licenses are subject to random drug and alcohol testing under state and federal regulations such as DOT/FMCS testing.

DOT/Legally Required Testing

Employees are subject to drug and alcohol testing as required by federal or state regulations (such as DOT/FMCS testing). DOT/FMCS tests are conducted separately from testing under this policy. However, employees are considered to have violated this policy if a DOT/FMCS or other legally required test is positive.

Drug and alcohol tests may be required after accidents according to the following chart for CDL drivers (§382.303):

Type of Accident Involved	Citation Issued to the CDL Driver	Test Must Be Performed by Employer
Human Fatality	Yes	Yes
Human Fatality	No	Yes
Bodily Injury With Immediate Medical Treatment Away From the Scene	Yes	Yes
Bodily Injury With Immediate Medical Treatment Away From the Scene	No	No
Disabling Damage to Any Motor Vehicle Requiring Tow Away	Yes	Yes
Disabling Damage to Any Motor Vehicle Requiring Tow Away	No	No

Follow-up testing is required for CDL drivers who tested positive, refused, or otherwise violated the prohibitions of [49 CFR Part 382 Subpart B](#); and who have completed the return-to-duty process with a DOT-qualified substance abuse professional, and have tested negative for a return-to-duty test. This testing is prescribed by the substance abuse professional for a

minimum of six (6) directly observed tests in 12 months, but can be extended an additional four years (§382.311 and §40.307).

Return-to-duty testing is required for CDL drivers who tested positive, refused, or otherwise violated the prohibitions of 49 CFR Part 382 Subpart B; and who have completed the return-to-duty process with a DOT-qualified substance abuse professional. This test is directly observed, and a negative result is required before resuming driving duties (§382.309 and §40.305).

### **Pre-Employment Testing – FMCSA Clearinghouse**

An applicant who tested positive for this or any other city mandated pre-employment drug test after August 1, 2001, must provide documentation of his/her successful completion of DOT return-to-duty requirements (i.e. an evaluation by a substance abuse professional, education and/or treatment, and a negative DOT pre-employment test all of which meet the requirements of 49 CFR Part 40). The driver/applicant will be responsible to pay for the pre-treatment evaluation, education and/or treatment, and the subsequent pre-employment test.

Effective January 6, 2020, the city will be querying the Commercial Driver's License Drug and Alcohol Clearinghouse to determine any records exist for the driver. As a condition of employment, an applicant must submit an electronic consent through the Clearinghouse granting the city access to the following information:

- A verified positive, adulterated, or substituted drug test result;
- An alcohol confirmation test with a concentration of 0.04 or higher;
- A refusal to submit to any test required under Part 382;
- An employer's report of actual knowledge:
  - On duty alcohol use;
  - Pre-duty alcohol use;
  - Alcohol use following an accident;
  - Controlled substance use;
- A substance abuse professional (SAP) report of the successful complete of the return-to-duty process;
- Negative return-to-duty test(s); and
- An employer's report of completion of follow-up testing.

Results of the query may result in the withdrawal of the job offer.

### **Confidentiality**

In addition, the following personal information collected and maintained shall be reported to the Commercial Driver's License Drug and Alcohol Clearinghouse by the MRO or the city beginning January 6, 2020. As a condition of continuous employment, a driver must provide a written consent. The consent may be for multiple years or for duration of employment, granting the city access to conduct limited queries of the following information on an annual basis:

- A verified positive, adulterated, or substituted drug test result;
- An alcohol confirmation test with a concentration of 0.04 or higher;
- A refusal to submit to any test required under Part 382;
- An employer's report of actual knowledge:
  - On duty alcohol use;
  - Pre-duty alcohol use;
  - Alcohol use following an accident;
  - Controlled substance use;

- A substance abuse professional (SAP) report of the successful complete of the return-to-duty process;
- Negative return-to-duty test(s); and
- An employer's report of completion of follow-up testing.

If any of the above information is found in the Clearinghouse, the driver, within 24 hours, must submit a specific electronic consent through the Clearinghouse granting the city access this information.

#### Individualized Last Chance/Return to Work Agreement and Follow-Up Testing

Individual employees subject to a last chance agreement under this policy are required to submit to return-to-duty and individualized, random follow-up testing consistent with the terms of the last-chance agreement for each employee.

The city pays for the cost of all testing required and compensates employees for actual time required for testing.

#### **Employee Refusal to Test/Search**

An employee who refuses to consent to a test or a search when there is reasonable cause to suspect that the employee has violated this policy is subject to disciplinary action up to and including termination. The reasons for the refusal shall be considered in determining the appropriate disciplinary action.

An employee who refuses to cooperate with any and all tests required by this policy is also subject to discipline, up to and including termination. This includes, but is not limited to, tampering with, or attempting to tamper with, a specimen sample, using chemicals or other ingredients to mask or otherwise cover up the presence of metabolites, drugs or alcohol in a specimen, or providing a blood or urine specimen that was produced by anyone or anything other than the employee being tested.

#### **Safeguards**

Testing is done by city designated laboratories licensed by the State of Oregon (or otherwise meeting Oregon's testing standards), in accordance with standards disseminated by the National Institute of Drug Abuse, and Department of Transportation. When applicable, medication use is screened by a Medical Review Officer (MRO) and lawful medication used consistently with a prescription is reported as a negative test. All positive test results are confirmed using a confirmatory testing method approved by law.

Test results and other information concerning drug and alcohol investigations are treated confidentially and released only when there is a legitimate business reason, or as otherwise required by law.

#### **Inspections and/or Searches of City Premises and Property**

The city reserves the right to inspect and/or search all city property (including, equipment and furniture, such as lockers, desks, and cabinets), and city owned vehicles.

When reasonable cause exists to believe an employee possesses alcohol or a controlled substance (under state or federal law) on city property, fails to take reasonable steps to ensure his/her privacy, or has otherwise violated provisions of this rule regarding possession, sale, or use of controlled substances or alcohol, the City may search the employee's possessions located on City property, including, but not limited to, lockers, lunchbox, backpacks, and purses,

for alcohol, controlled substances or illegal drugs (under state or federal law), or as deemed necessary by the city for safety reasons.

Refusal to consent to such inspection or other refusal to cooperate in any investigation is in violation of this policy and may result in disciplinary action up to and including immediate discharge. Employees should have no expectation of privacy in any items placed in city owned property, equipment, or vehicles.

### **Consequences**

Any employee who engages in prohibited conduct, who tests positive for or is found to have any detectable amounts of alcohol or any illegal drug, is in violation of this policy. Any employee found to be in violation of this policy, or who refuses to submit to testing as required, or who refuses to cooperate, or attempts to subvert the testing process (including tampering with or adulterating a sample) will be subject to disciplinary action, up to and including immediate termination of employment.

The city may, at its sole discretion, allow the employee a one-time opportunity to enter into a Last Chance/Return to Work Agreement in lieu of discharge. In such cases, the city's decision is based on all of the surrounding circumstances, including the nature of the violation, the employee's position and length of service, and overall disciplinary record. A Last Chance/Return to Work Agreement will generally provide, among other things that the employee is subject to unannounced suspicion-less testing for a period of time after returning to work, as recommended by the substance abuse provider and consistent with applicable law. Any subsequent violation of the city's Drug and Alcohol Policy or the terms of the Last Chance/Return to Work Agreement is grounds for immediate discharge.

The city also reserves the right to involve law enforcement officials for any conduct that it believes might be in violation of state, federal or local law.

### **Drug/Alcohol Abuse Arrests**

If you are arrested for illegal drug activity or alcohol abuse off-the-job, including driving under the influence, you must report such arrests to Human Resources immediately upon reporting to work. In deciding what action might be taken, the city will consider the nature of the charges, your job, and length of service to determine whether the arrest could jeopardize the safety of other employees or the public. The city may also consider your record with the city, any ethics violation, and other factors relative to the impact that your arrest has upon the conduct of city business and/or its reputation or upon your ability to successfully perform your job duties.

Any member of management, who is aware of an employee's drug or alcohol related arrest, must immediately report it to Human Resources. Failure to report this information may result in disciplinary action, up to and including, termination of employment.

### **Drug Convictions**

In compliance with this policy, if you are convicted of violating any criminal drug law on or off duty, you must report the conviction to Human Resources within five (5) calendar days of the conviction. A protective services employee (Fire or Police) must notify his or her supervisor before reporting for duty. Once notified of any conviction, the city will take appropriate disciplinary action against the employee up to and including termination; or require such employee to satisfactorily participate in a drug-abuse assistance or rehabilitation program



approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

Any member of management who is aware of an employee's drug or alcohol related conviction must immediately report it to Human Resources. Failure to report this information may result in disciplinary action, up to and including, termination of employment.

### **Professional Assistance**

Employees are encouraged to seek professional help for a drug or alcohol problem. Generally, employees who voluntarily request assistance in dealing with a personal drug and/or alcohol problem may do so without jeopardizing employment as long as this assistance is sought **before** work performance has deteriorated or disciplinary problems have begun. Employees who delay seeking help will not be excused from the consequences of their performance deficiencies. Additionally, where, in the city's sole discretion, it appears that rehabilitation is likely; the city may require an employee to be evaluated by a professional alcohol and drug counselor and participate in any education or rehabilitation programs as recommended by the counselor as an alternative to termination of employment. Treatment programs may be available through the city's health insurance coverage or Employee Assistance Plan (EAP). Employees are responsible for any medical costs not covered through the city's health insurance.

When an employee voluntarily reports a drug or alcohol use problem and seeks assistance **before** violating city policies, that employee may be placed on a leave of absence or adjusted working hours to allow for in-patient or outpatient rehabilitation treatment. The employee is not permitted to work until such time as a qualified medical authority has verified the employee is able to safely perform his/her job assignment. The time an employee is off work undergoing rehabilitation may qualify as family leave under federal or Oregon law, and is unpaid. (However, employees are required to use their unused sick, vacation leave benefits and/or comp time before unpaid time off is granted consistent with those policies.) Also, employees who are receiving health insurance coverage are eligible for insurance benefits as outlined in the plan and consistent with applicable law.

The city reserves the right to deal with each case under this policy in its discretion in light of the specific circumstances involved, including but not limited to the conduct at issue and whether an employee should be given the opportunity to participate in a drug or alcohol program. Such decision will be based partly on the circumstances of the employee; the manner the city obtained the information; and the seriousness and frequency of other city policy violations.

The city reserves the right to require all employees who seek treatment to sign and comply with a return to work agreement as a condition of continued employment. See "Consequences," above, for more information about the city's last chance agreement details.

Nothing in this policy is to be interpreted as a waiver of the city's right to impose disciplinary action or terminate employment in the case of poor performance, misconduct, or violations of this or other city policy.

### **Confidentiality**

All information from an employee's drug and alcohol evaluation is confidential and only those with a need to know are to be informed of test results. Disclosure of such information to any

other person, agency, or organization is prohibited unless written authorization is obtained from the employee.

## **Definitions**

For purposes of this policy, the following definitions apply:

**Controlled substance** means all controlled substances, other than a legal prescription or nonprescription medication, that (1) may affect an employee's ability to work safely and effectively; (2) is defined as a "controlled substance" under the federal Controlled Substances Act and designer drugs not approved for use by the U.S. Food and Drug Administration; or (3) is otherwise prohibited or restricted by state or federal law. Controlled substances include but are not limited to: narcotics, hallucinogens, stimulants, sedatives, marijuana, and prescription drugs that are not medically authorized or that are used inconsistently with the prescription.

**Over-the counter drugs** are those which are generally available without a prescription from a medical doctor, approved for use by the U.S. Food and Drug Administration, and are limited to those drugs which are capable of impairing the judgment of an employee to safely perform his or her duties.

**Prescription drugs** are defined as those drugs which are used in the course of medical treatment, ingested during a period as prescribed by the doctor, and have been prescribed and authorized for use by a licensed practitioner/physician or dentist.

**City premises** include all city property (including rest rooms), facilities, parking lots, garages, workplaces, storage structures, and city-owned equipment and vehicles.

**Safety-Sensitive positions –Random Testing.** When deciding whether a specific position is "safety-sensitive," the city evaluates, among other factors, the likelihood of a threat to the employee or others posed by a potential drug-induced mistake or failure in the performance of the position's duties.

**Under the influence** is defined as having any detectable levels of alcohol or illegal drugs (under state or federal law) in an employee's body, or any noticeable or perceptible impairment of the employee's mental or physical faculties.

**Reasonable Cause** exists when sufficient facts and circumstances exist that would lead a reasonable person to believe that the policy has been violated. Reasonable cause includes, but is not limited to, employee admissions and/or comments about drug or alcohol use in violation of this policy.