



**CITY OF PORTLAND**

**DRUG & ALCOHOL  
TESTING  
FOR  
COMMERCIAL DRIVERS  
LICENSES**

**DRIVER EDUCATION  
MATERIAL**

Revised 05/09/97.

G:\USERS\DCTU\CDL\CDL\_EE.305

## TABLE OF CONTENTS

SECTION	PAGE
OVERVIEW .....	1
IMPORTANT DEFINITIONS .....	2
PROHIBITIONS .....	5
TESTS REQUIRED .....	5
PRE-EMPLOYMENT & PRE-DUTY TESTING .....	5
POST-ACCIDENT TESTING .....	6
RANDOM TESTING .....	7
REASONABLE SUSPICION TESTING .....	8
RETURN TO DUTY TESTING .....	9
FOLLOW-UP TESTING .....	9
TESTING PROCEDURES .....	9
CONSEQUENCES .....	10
GENERAL PROCEDURES .....	12
EDUCATIONAL MATERIALS .....	12
DESIGNATED PERSON TO ANSWER QUESTIONS .....	12
CERTIFICATE OF RECEIPT .....	12
SUPERVISOR TRAINING .....	12
MEDICAL REVIEW OFFICER (MRO) NOTIFICATIONS TO THE CITY AND RECORD RETENTION FOR CONTROLLED SUBSTANCES .....	12
NOTIFICATIONS .....	13
INQUIRIES FOR DRUG AND ALCOHOL INFORMATION FROM PREVIOUS EMPLOYERS .....	13
REFERRAL, EVALUATION AND TREATMENT .....	13
RETENTION OF RECORDS .....	14
REPORTING OF RESULTS .....	14
CITY OF PORTLAND GENERAL EMPLOYEES DRUG & ALCOHOL POLICY	
ADOPTING ORDINANCE .....	15
CITY & DCTU DRUG POLICY AGREEMENT .....	16
GENERAL EMPLOYEES DRUG & ALCOHOL POLICY .....	17
EMPLOYEE ASSISTANCE PROGRAM (EAP) .....	21
EFFECTS OF DRUGS & ALCOHOL .....	23

## **PART 1 - OVERVIEW**

The City of Portland is committed to the establishment of a drug and alcohol misuse prevention program that meets all applicable requirements of the Omnibus Transportation Employee Testing Act of 1991.

All employees who are assigned to duties which require the possession of a Commercial Driver's License (CDL) are affected by this policy and subject to the rules and procedures which follow. All employees who are assigned to duties which require the possession of a Commercial Driver's License (CDL) are subject to the U.S. Department of Transportation drug and alcohol testing regulations for Commercial Drivers Licenses. This policy is written and is intended to comply with those regulations. The policy is intended to guide employees in the application of the regulations. Where the policy appears to differ from the regulations, the regulations will always apply. A copy of the actual regulations is attached.

The purpose for this policy and the federal drug testing regulations is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

"Drugs" as used in this policy refers to controlled substances as covered by the Omnibus Act and include marijuana, cocaine, opiates, amphetamines and phenocyclidine (PCP).

For purposes of this policy and as they apply to the federal regulations, the terms Employee and "driver" are the same.

All covered applicants and employees shall be subjected to pre-employment / pre-duty testing, reasonable suspicion testing, random testing, post-accident testing, return to duty testing and follow-up testing as required by the regulations.

Pre-employment drug and alcohol testing costs will generally be paid for by the City. All required drug and alcohol testing of employees including pre-duty, reasonable suspicion, random, return to duty, post-accident, and follow-up testing costs will be paid for by the City.

The City will comply with applicable collective bargaining agreements except where they may conflict with the federal regulations.

All offers of employment with the City of Portland will be made contingent upon testing results. A non-employee applicant who tests positive or who refuses to take required drug and alcohol tests will not be hired and will not be eligible for any employee assistance programs.

Assignments and/or promotions of employees to positions requiring a CDL will be made contingent upon testing results. An employee who tests positive or who refuses to take required drug and alcohol tests will not be appointed and will be removed from further consideration for permanent, temporary or working-out-of-classification assignments within the classification for which the assignment or promotion requiring a CDL was sought for a period of no less than twelve (12) months. Disciplinary action may also result.

In the event an employee or applicant is unable to provide an adequate urine or breath specimen, the Medical Review Officer (MRO) will determine if there is a reasonable medical explanation.

If there is no reasonable medical explanation, the inability will be recorded as a positive test result. However, no employee or applicant will be assigned to any safety sensitive function without first testing negative for drugs or alcohol.

Employees who test positive will be subject to disciplinary action up to and including discharge from the City of Portland. Employees who test positive will also be notified of referral services. Additionally, employees may be subject to CDL prohibitions and penalties under the Omnibus Act and applicable Federal Motor Carrier Safety Regulations.

Employees who refuse to comply with testing requirements will be discharged.

An employee will not be allowed to return to work in a regulated safety sensitive capacity following a drug or alcohol test under the regulations until the employee has a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 or a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use. The employee will be compensated for all time lost if the test results are negative. If the test results are positive, all time lost will be unpaid; or, at the bureau's discretion, the employee may be allowed to use vacation or compensatory time.

## **PART 2 - IMPORTANT DEFINITIONS**

The following important definitions are provided as a guide to understanding some of the terms used in this policy. A more complete listing of definitions is found in the regulations included at the end of this policy document. (ə 382.107 & 40.3)

***Alcohol*** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

***Alcohol use*** means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

***Breath Alcohol Technician (BAT)***. An individual who instructs and assists individuals in the alcohol testing process and operates an EBT.

***Canceled or invalid test***. In drug testing, a drug test that has been declared invalid by a Medical Review Officer. A canceled test is neither a positive nor a negative test. For purposes of this part, a sample that has been rejected for testing by a laboratory is treated the same as a canceled test. In alcohol testing, a test that is deemed to be invalid under ə 40.79 of the federal regulations. It is neither a positive nor a negative test.

***Collection site***. A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

***Collection site person***. A person who instructs and assists individuals at a collection site and who receives and makes a screening examination of the urine specimen provided by those individuals.

***Commercial motor vehicle*** means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle-

- (1) Has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or
- (2) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or
- (3) Is designed to transport 16 or more passengers, including the driver; or
- (4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, subpart F).

**Controlled substances** mean marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). (s 40.21)

**Disabling damage** means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

- (1) **Inclusions.** Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.
- (2) **Exclusions.**
  - (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
  - (ii) Tire disablement without other damage even if no spare tire is available.
  - (iii) Headlight or taillight damage.
  - (iv) Damage to turn signals, horn, or windshield wipers which make them inoperative.

**Driver** means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer.

**EBT (or evidential breath testing device).** An EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL), and identified on the CPL as conforming with the model specifications available from the National Highway Traffic Safety Administration, Office of Alcohol and State Programs.

**Licensed medical practitioner** means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

**Medical Review Officer (MRO).** A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

***Performing (a safety-sensitive function)*** means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

***Refuse to submit (to an alcohol or controlled substances test)*** means that a driver:

- (1) Fails to provide adequate breath for alcohol testing as required by part 40 of the federal regulations, without a valid medical explanation, after he or she has received notice of the requirement for breath testing in accordance with the provisions of the regulations,
- (2) Fails to provide an adequate urine sample for controlled substances testing as required by the federal regulations, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement for urine testing in accordance with the provisions of the regulations, or
- (3) Engages in conduct that clearly obstructs the testing process.

***Safety-sensitive function*** means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

- (1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- (2) All time inspecting equipment or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- (3) All time spent at the driving controls of a commercial motor vehicle in operation;
- (4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
- (5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

***Substance abuse professional.*** A licensed physician (Medical Doctor or Doctor of Osteopathy); or a licensed or certified psychologist, social worker, or employee assistance professional; or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse). All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

### **PART 3 - PROHIBITIONS**

All employees who are assigned to duties which require the possession of a Commercial Driver's License (CDL) are prohibited from:

- (a) Reporting for duty or remaining on duty while having an alcohol concentration of 0.04 or greater. (ə 382.201)
- (b) Using or possessing alcohol while on duty. (ə 382.205)
- (c) Reporting for duty within four hours after using alcohol. (ə 382.207)
- (d) Using alcohol for eight hours following an accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first. (ə 382.209)
- (e) Refusing to submit to a post-accident alcohol or drug test, random alcohol or drug test, reasonable suspicion alcohol or drug test, or a required follow-up alcohol or drug test. (ə 382.211)
- (f) Reporting for duty or remaining on duty when the employee uses any drugs except when the use is pursuant to the instructions of a licensed medical practitioner, who has advised the employee that the drug will not adversely affect the employee's ability to safely operate a commercial motor vehicle. The City may require an employee to inform the City of any therapeutic drug use. (ə 382.213)
- (g) Reporting for duty, remaining on duty or performing a safety-sensitive function, if the employee tests positive for controlled substances. (ə 382.215)

### **PART 4 - TESTS REQUIRED**

- (a) **Pre-Employment & Pre-Duty Testing.** (ə 382.301)

Prior to the first time an employee performs safety-sensitive functions for the City, the employee shall undergo testing for controlled substances as a condition prior to being assigned the safety-sensitive function. The City, at its sole discretion, may waive this requirement by complying with the exception provisions of ə 382.301 of the federal regulations.

The City reserves the right to institute pre-employment / pre-duty testing for alcohol as provided for in ə 382.301 of the federal regulations.

Pre-duty testing will also be required of covered employees each time an employee returns to work if the employee was removed from the random testing pool. As long as the employee remains in the random testing pool, additional testing will not be necessary following an absence. An employee will be removed from the random testing pool if they will be off the job for more than 60 calendar days.

Pre-duty testing will also be required of any employee transferred voluntarily or involuntarily to a position covered by these rules & procedures and the regulations.

(b) **Post-Accident Testing.** (382.303)

As soon as possible following an accident on a public road the City shall test the employee for alcohol and controlled substances, if the accident involved a fatality, or if the employee received a citation and the accident resulted in injury to any person who receives medical treatment away from the scene of the accident or any of the vehicles was damaged to the point that it had to be towed.

The following table from the regulations will assist employees and supervisors in understanding when a post-accident test is required:

Type of Accident Involved	Citation Issued to City Employee Driver	Test Must be Performed by City
Human Fatality	YES	YES
	NO	YES
Bodily Injury with immediate medical treatment away from the scene.	YES	YES
	NO	NO
Disabling damage to any motor vehicle requiring tow away.	YES	YES
	NO	NO

**Alcohol tests.** If a required test for alcohol is not administered within two hours following the accident, the City must prepare and maintain on file a record stating the reasons the test was not promptly administered. If a required test for alcohol is not administered within eight hours following the accident, the City must cease attempts to administer an alcohol test and shall prepare and maintain the same record.

**Controlled substance tests.** If a required test for controlled substances is not administered within 32 hours following the accident, the City must cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered.

**Employee Responsibilities.** An employee who is subject to post-accident testing must remain readily available for such testing or may be deemed by the City to have refused to submit to testing. This does not mean that necessary medical attention for injured people following an accident should be delayed or that the employee may not leave the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

**Use following an accident.** An employee required to take a post-accident alcohol test may not use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.



**City Responsibilities.** The City will provide employees with necessary post accident information, procedures and instructions, so that employees will be able to comply with the requirements of the post-accident testing regulations.

**Exception.** Post-accident testing does not apply as a result of an accident that occurs when:

- (1) only boarding or alighting from a stationary motor vehicle; or
- (2) involving only the loading or unloading of cargo; or
- (3) in the course of the operation of a passenger car or a multipurpose passenger vehicle by the City unless the motor vehicle is transporting passengers for hire or hazardous materials that require the vehicle to be marked or placarded.

(c) **Random Testing.** (382.305)

The City shall conduct random drug and alcohol testing annually in accordance with the minimum annual percentage rate set by the Federal Highway Administration.

**Alcohol tests.** The minimum annual percentage rate for random alcohol testing is currently 25% of the average number of covered employees.

**Controlled substances tests.** The minimum annual percentage rate for random controlled substances testing is currently 50% of the average number of covered employees.

**Process.** The testing process shall be random. All employees will remain in the pool of employees for each subsequent period, whether or not they have been chosen for testing in the past. The selection of employees for random testing shall be made by a scientifically valid method as provided for in the regulations. The process selected will ensure that all employees have an equal chance of being tested each time selections are made. The City, or its contractor, will use a computerized system in which a random number generating program will be loaded into a computer along with the names and employee's social security number. All random testing will be unannounced and dates selected spread reasonably throughout the calendar year to avoid predictability.

Employees shall be tested for alcohol just before the employee is scheduled to perform his/her safety-sensitive function, during or just after performing such function.

Employees off work due to leaves, vacation and short term layoffs (less than 60 calendar days) will be informed that they remain subject to random testing. Employees drawn for such testing will be notified and tested as soon as practicable upon return to duty.

**Employee Responsibilities.** Following notification of testing, selected employees shall proceed to the identified collection site immediately.

(d) **Reasonable Suspicion Testing.** (ə 382.307)

The City will conduct reasonable suspicion drug and alcohol testing as required under the regulations.

Reasonable suspicion should be confirmed by a second trained supervisor, if one is available, before testing is required. (*City Policy*)

***Alcohol tests.*** Covered employees will be tested for alcohol whenever there is reasonable suspicion to believe that the employee has engaged in prohibited alcohol use. Reasonable suspicion will be based on specific, contemporaneous, articulable observations made by a trained supervisor, concerning the appearance, behavior, speech or body odors of the employee.

Alcohol testing is authorized only if the observations resulting in reasonable suspicion are made during, just preceding, or just after the period of the work day that the employee is required to be in compliance with the regulations. An employee may be directed by the City to only undergo reasonable suspicion testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

The person who makes the determination that reasonable suspicion exists to conduct an alcohol test may not conduct the alcohol test of the employee.

If alcohol testing is not administered within two (2) hours, the bureau will prepare and forward to the Bureau of Personnel Services a record stating the reasons the test was not promptly administered. The Bureau of Personnel Services shall maintain on file all records stating the reasons a test was not promptly administered.

If alcohol testing is not administered within eight (8) hours, the bureau will cease attempts to administer an alcohol test and will prepare and forward to the Bureau of Personnel Services a record specifying why the test was not administered. The Bureau of Personnel Services shall maintain on file all records stating the reasons a test was not promptly administered.

***Controlled substances tests.*** Covered employees will be tested for controlled substances whenever there is reasonable suspicion to believe that the employee has engaged in prohibited controlled substances use. Reasonable suspicion will be based on specific, contemporaneous, articulable observations made by a trained supervisor, concerning the appearance, behavior, speech or body odors of the employee. The observations may include indications of the chronic and withdrawal effects of controlled substances.

A written record shall be made of the observations leading to a controlled substance reasonable suspicion test, and signed by the supervisor or City official who made the observations, within 24 hours of the observed behavior or before the results of the controlled substances test are released, whichever is earlier.

***City Responsibilities.*** The bureau will ensure that the employee under reasonable suspicion is transported to the designated collection or testing site.

(e) **Return to Duty Testing.** (ə 382.309)

***Return to work alcohol tests.*** An employee will not be allowed to return to work in a regulated safety sensitive capacity following prohibited conduct until the employee has a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. The employee will be compensated for all time lost if the test results are confirmed negative. If the test results are confirmed positive, all time lost will be unpaid; or, at the bureau's discretion, the employee may be allowed to use vacation or compensatory time.

***Return to work controlled substances tests.*** An employee will not be allowed to return to work in a regulated safety sensitive capacity following prohibited conduct until the employee has a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use. The employee will be compensated for all time lost if the test results are confirmed negative. If the test results are confirmed positive, all time lost will be unpaid; or, at the bureau's discretion, the employee may be allowed to use vacation or compensatory time.

(f) **Follow-up Testing. (ə 382.311)**

Employees who are allowed to continue employment following prohibited conduct shall be subject to the following follow-up testing requirements.

Follow-up testing will be conducted whenever a SAP determines that an employee is in need of resolving problems associated with drug use, and/or alcohol misuse.

Follow-up testing will be conducted only when the employee is performing safety sensitive functions, just before or just after the employee has performed safety sensitive functions:

Follow-up drug and alcohol testing will be unannounced. The number and frequency of such tests shall be determined by the SAP. Minimally, there shall be:

- At least 6 tests in the first 12 months following the employee's return to duty.
- Testing shall not exceed 60 months from the date of the employee's return to duty. The SAP, however, may terminate the follow-up testing at any time after the first 6 tests if s/he determines the testing is no longer needed.
- All follow-up testing will generally be at the City's expense.

See ə 382.311 and 382.605 of the regulations for more details of the requirements of follow-up testing.

## **PART 5 - TESTING PROCEDURES**

The City of Portland, in cooperation with contracted collection and testing facilities shall maintain drug and alcohol testing procedures in compliance with the federal regulations. See ə 40.1 through 40.111 of the regulations for details of the testing procedures which must be followed.

## PART 6 - CONSEQUENCES

An employee who has engaged in any of the conduct prohibited in the sections above shall be subject to the following consequences per DOT regulations and City of Portland policy:

- (a) The employee will be removed from performing safety-sensitive functions, including driving a commercial motor vehicle. (*§ 382.501*)
- (b) The employee will be advised of the resources available to the employee in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs. (*§ 382.605a*)
- (c) The employee must be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use. (*§ 382.605b*)
- (d) Before an employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by the regulations, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 if the conduct involved alcohol, or a controlled substances test with a verified negative result if the conduct involved a controlled substance. (*§ 382.605c1*)
- (e) An employee identified in paragraph (c) above as needing assistance in resolving problems associated with alcohol misuse or controlled substances use, shall be evaluated by a substance abuse professional to determine that the employee has properly followed any rehabilitation program prescribed and shall be subject to unannounced follow-up alcohol and controlled substances tests administered by the City following the employee's return to duty. The number and frequency of such follow-up testing shall be as directed by the substance abuse professional, and consist of at least six tests in the first 12 months following the employee's return to duty. The City may direct the employee to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that return-to-duty and follow up testing for both alcohol and controlled substances is necessary for that particular employee. (*§ 382.605c2*)
- (f) An employee who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall be removed from performing safety-sensitive functions, including driving a commercial motor vehicle. The employee will be relieved of duty, driven home and placed on unpaid status according to City procedures or temporarily placed in a non safety-sensitive assignment at the discretion of the employee's supervisor, until the start of the employee's next regularly scheduled duty period, but not less than 24 hours following administration of the test. (*§ 382.505a & City Policy*)

An employee who is found to have any alcohol concentration, but less than 0.04, will be subject to discipline, up to and including discharge. (*City Policy*)

- (g) An employee who is found to have an alcohol concentration of 0.04 or greater shall be removed from performing safety-sensitive functions, including driving a commercial motor vehicle. The employee will be relieved of duty, driven home and placed on unpaid

status according to City procedures. In addition the employee must be referred to a SAP for an evaluation and may not return to duty performing safety sensitive functions until the employee has a negative test for alcohol. (↗ 382.501, 382.605b&c & City Policy)

An employee who is found to have an alcohol concentration of 0.04 or greater will be discharged. (City Policy)

- (h) An employee who refuses to comply with any testing requirements will be discharged. (City Policy)
- (i) An employee who refuses to submit to drug and alcohol testing and/or to provide for the release of information as required by the City will be discharged. (City Policy)
- (j) A non-employee job applicant who tests positive or who refuses to take required drug and alcohol tests will not be hired and will not be eligible for any employee assistance programs. (City Policy)
- (k) An employee who tests positive or who refuses to take required drug and alcohol pre-employment or pre-duty tests will not be appointed and will be removed from further consideration for permanent, temporary or working-out-of-classification assignments within the classification for which the assignment or promotion was sought for a period of no less than twelve (12) months. The employee may also be subject to disciplinary action up to and including discharge. (City Policy)
- (l) An employee who tests positive for drugs following a post-accident test will be discharged. (City Policy)
- (m) In the event of a post-accident drug and alcohol test, the employee must remain readily available for testing or may be discharged. However, this should not be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit an employee from leaving the scene of an accident to obtain necessary emergency medical care. (↗ 382.303c & City Policy)
- (n) An employee who tests positive for drugs following a random test will be referred to a Substance Abuse Professional (SAP) and will be subject to discharge. An employee who agrees to enter into a Last Chance Agreement≡ drafted by the City of Portland, may be allowed to continue employment, at the City's sole discretion. (↗ 382.605 & City Policy)
- (o) An employee who is required to submit to a reasonable suspicion drug test will not be allowed to return to work in a regulated safety sensitive capacity until the test results have been reviewed by the MRO. The employee will be compensated for all time lost if the results are confirmed negative. If the test results are confirmed positive, all time lost will be unpaid; or, at the bureau's discretion, the employee may be allowed to use vacation or compensatory time. (↗ 382.309b & City Policy)
- (p) An employee who tests positive for drugs following a reasonable suspicion test will be discharged. (City Policy)
- (q) An employee who refuses to be evaluated by a SAP will be discharged. (City Policy)

- (r) An employee who has previously tested positive for alcohol or drug use must have a negative test result before returning to duty. An employee who has a positive return to duty drug or alcohol test will be discharged. (ə 382.309 & *City Policy*)
- (s) An employee who is allowed to continue employment following a positive drug or alcohol test will be subject to follow-up testing as required by the regulations. An employee who has a positive follow-up alcohol or drug test will be discharged. (ə 382.605 & *City Policy*)

## **PART 7 - GENERAL PROCEDURES**

The Personnel Director or his/her designee is designated as the City of Portland's drug and alcohol misuse prevention program coordinator. The Personnel Director or designee will coordinate the City of Portland's responsibilities and compliance efforts with the applicable provisions of the Omnibus Transportation Employee Testing Act of 1991. The Personnel Director or designee will coordinate the City's responsibilities and compliance efforts with the applicable provisions of the Omnibus Transportation Employee Testing Act of 1991.

- (a) ***Educational materials.*** The City will provide educational materials to covered employees that explain the requirements of this part and the City's policies and procedures with respect to meeting the regulation requirements. The City shall ensure that a copy of these materials is distributed to each covered employee prior to the start of alcohol and drug testing and to each covered employee subsequently hired or transferred into a position requiring driving a commercial motor vehicle. The City shall provide written notice to representatives of employee organizations of the availability of this information. (ə 382.601)
- (b) ***Designated person to answer questions.*** The person designated to answer employee questions about the educational materials required to be made available to employees is David Shaff, Human Resources Coordinator, Bureau of Personnel Services, 823-3511. (ə 382.601b)
- (c) ***Certificate of receipt.*** The City will shall ensure that each covered employee is required to sign a statement certifying that he or she has received a copy of these materials described above. The City will maintain the original of the signed certificate and may provide a copy of the certificate to the employee. (ə 382.601d)
- (d) ***Supervisor training.*** The City will ensure that supervisors designated to determine reasonable suspicion receive at least 60 minutes of drug use training and an additional 60 minutes of alcohol misuse training. Training will include the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances. (ə 382.603)
- (e) ***Medical Review Officer (MRO) notifications to the City and record retention for controlled substances.***  
The City of Portland, in cooperation with contracted collection and testing facilities shall maintain notification and record retention procedures in compliance with the federal regulations. See ə 382.407 and 382.409 of the regulations for more details of the requirements of MRO notifications and record retention for controlled substances.

The Medical Review Officer (MRO) will report to the person designated by the Personnel Director to coordinate the City of Portland Drug and Alcohol Testing Policy. That person will then be responsible for notifying the appropriate management representatives in the employee's bureau of the results of any drug or alcohol test. The bureau representatives will then inform the employee of the results.

(f) ***Notifications.*** (ə 382.411)

The City shall notify an employee or job applicant of the results of a pre-employment controlled substance test conducted under this part, if the employee or job applicant requests such results within 60 calendar days of being notified of the disposition of the employment application.

The City shall notify an employee of the results of random, reasonable suspicion and post-accident tests for controlled substances conducted under this part if the test results are verified positive. The City shall also inform the employee which controlled substance or substances were verified as positive.

The City program coordinator shall make reasonable efforts to contact and request each employee who submitted a specimen under the City's program, regardless of the employee's employment status, to contact and discuss the results of the controlled substances test with a medical review officer who has been unable to contact the employee.

The designated management official shall immediately notify the medical review officer that the employee has been notified to contact the medical review officer within 24 hours.

(g) ***Inquiries for drug and alcohol information from previous employers.***

The federal regulations require that the City must, pursuant to the driver's written authorization, inquire about certain information on a driver from the driver's previous employers, during the preceding two years from the date of application, which are maintained by the driver's previous employers under the federal drug and alcohol testing regulations. See ə 382.413 of the regulations for details of these inquiries.

(h) ***Referral, evaluation and treatment.***

An employee who has engaged in prohibited conduct shall not perform safety-sensitive functions, including driving a commercial motor vehicle, unless the employee has met the requirements outlined in the paragraphs below. The City of Portland shall not permit an employee who has engaged in prohibited conduct to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the employee has met the requirements outlined in the paragraphs below. (ə 382.503)

(1) An employee who has engaged in prohibited conduct will be advised by the City of the resources available to the employee in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs. (ə 382.605a)

(2) An employee driver who engages in prohibited conduct must be evaluated by a substance abuse professional who shall determine what assistance, if any, the

employee needs in resolving problems associated with alcohol misuse and controlled substances use. (ə 382.605b)

- (3) Before an employee returns to duty requiring the performance of a safety- sensitive function after engaging in prohibited conduct, the employee shall undergo a return to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 if the conduct involved alcohol, or a controlled substances test with a verified negative result if the conduct involved a controlled substance. (ə 382.605c1)
  - (4) In addition, each employee identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use, must be evaluated by a substance abuse professional to determine that the employee has properly followed any rehabilitation program prescribed in paragraph 2 above, and shall be subject to unannounced follow-up alcohol and controlled substances tests administered by the City following the employee's return to duty. The number and frequency of such follow-up testing shall be as directed by the substance abuse professional, and consist of at least six tests in the first 12 months following the driver's return to duty. The employer may direct the driver to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that return-to-duty and follow up testing for both alcohol and controlled substances is necessary for that particular driver. (ə 382.605c2)
- (i) ***Retention of records.*** The City shall maintain records of its alcohol and drug use prevention programs as required by the regulations and will ensure its compliance with applicable provisions of the Omnibus Act's requirements regarding the City's management information system, retention and confidentiality of records. The records shall be maintained in a secure location with controlled access. See ə 382.401 to 382.413 of the regulations for details.
  - (j) ***Reporting of results.*** The City shall report test results as required by the regulations. See ə 382.303b and 382.403 of the regulations for details.



## **ORDINANCE No. 166997**

\*Authorize the Mayor and the City Council to adopt a Drug & Alcohol Policy and related Procedures for the General Employees of the City of Portland.

The City of Portland ordains:

Section 1. The Council finds:

1. The City of Portland recognizes illegal drug use and excessive use of legal drugs and alcohol as a threat to the public welfare and the health, safety and productivity of the employees of the City.
2. The City of Portland has a strong commitment to its employees to provide a safe work environment and to promote high standards of employee fitness. Consistent with the intent of this commitment, the City establishes this policy regarding drug and alcohol abuse.
3. While the City of Portland has no intention of interfering with the private lives of its employees, the City expects its employees to report to work in a condition to perform their duties in a safe, effective and efficient manner.
4. It is the goal of this policy to establish and maintain a work environment that is free from the effects of drug and alcohol abuse.
5. The policy and procedures are attached to this Ordinance marked Exhibit "A" which by this reference are made a part hereof.
6. The City of Portland has completed its bargaining obligations under the law by bargaining the impact of this policy with the DCTU, Recreation, BOEC and COPPEEA bargaining units.

NOW, THEREFORE, the Council:

- a. Adopts the Drug & Alcohol Policy and related Procedures for General Employees of the City of Portland and applicants for certain classified positions in the City.
- b. Directs the Personnel Director to sign the Drug Policy Agreements with the affected bargaining units and implement the Procedures herein adopted.

Section 2. The Council declares that an emergency exists because prompt action is necessary for the orderly implementation of the provisions of the drug policy for general employees in a timely fashion; therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, September 29, 1993

**BARBARA CLARK**  
Auditor of the City of Portland  
By

Deputy

## Drug Policy Agreement

1. In discussions between the parties, both the City and the Unions have a strong commitment to the employees of the City to promote a safe work environment and encourage the highest standards of employee fitness. The goal of the parties is to establish and maintain a work environment that is free from the effects of drug and alcohol abuse.
2. The City's General Employees Drug and Alcohol Policy is attached hereto as Attachment 1. The parties have bargained to completion on all issues pertaining to the policy which are mandatory subjects of bargaining.
3. The parties agree that the issue of when the City might contact the Police is not a mandatory subject of bargaining.
4. The Union representatives present at the negotiations have reviewed the City's procedures manual attached and dated January 30, 1993 for implementation of this policy and have not raised any objections that it is inconsistent with the policy.
5. The Union has expressed its understanding and agreement that the City has the right to change its policies concerning the issues of physical examinations as part of its selection process since selection criteria are not mandatory subjects of bargaining. The Union understands and accepts that the City may in the future begin giving physical examinations to employees to be selected for intra-bureau promotions.
6. The City provided the attached list of standards for a positive drug test. The City and Union understand that there may be bargaining obligations if the City wishes to change standards, techniques or laboratories.
7. There are no agreements or understandings which prohibit the City from investigating whether an employee with a positive drug or alcohol test violated the attached policy or other rules of the City and taking appropriate disciplinary action on its findings.
8. The City agreed to remove "truthfully" from the policy because the Union has agreed that an employee must respond truthfully as required by City Code.
9. Under Section F of the policy outlining employee disclosure responsibilities, the employee does not necessarily have to divulge the medical condition or the medication they are taking - just the impact on work. As an alternative, the employee may provide a current physician's statement stating the employee can safely work given the condition or medications.
10. The only information forwarded from a positive pre-employment drug test will be that the test was positive and what drug was identified.
11. Any disciplinary action taken under the attached policy will be taken pursuant to the parties collective bargaining agreement.
12. This shall be considered the City's final offer and the Union will waive its rights to factfinding and agree that the City has completed its bargaining obligation under the law. Therefore, the parties agree that the City is within its rights to unilaterally implement the policy under the conditions outlined above.

R. Kirk Berger, Interim Personnel Director

Larry Attinger, DCTU Spokesperson

Rebecca C. Gunther, Sr. Human Resources Analyst

Glen Feuerborn, DCTU Spokesperson

**APPROVED AS TO FORM:**

City Attorney

# **CITY OF PORTLAND GENERAL EMPLOYEES DRUG & ALCOHOL POLICY**

**Adopted by Ordinance 166997  
September 29, 1993**

## **A. GENERAL**

The City of Portland recognizes illegal drug use and excessive use of legal drugs and alcohol as a threat to the public welfare and the health, safety and productivity of the employees of the City.

The City of Portland has a strong commitment to its employees to provide a safe work environment and promotes high standards of employee fitness. Consistent with the intent of this commitment, the City established this policy regarding drug and alcohol abuse. The City's goal is to establish and maintain a work environment that is free from the effects of drug and alcohol abuse.

While the City of Portland has no intention of interfering with the private lives of its employees, the City expects its employees to report to work in a condition to perform their duties in a safe, effective and efficient manner.

It is the goal of this policy to prevent substance abuse and rehabilitate rather than terminate the employment of workers.

**However, all persons covered by this policy should be aware that violations of the policy will result in discipline, up to and including termination, or in not being hired.**

## **B. COVERED EMPLOYEES**

This policy covers all City of Portland employees in the classified service, excluding sworn members of the Portland Fire and Portland Police bureaus who are covered by separate bureau level drug and alcohol policies, and also covers applicants for certain classified positions.

The policy, with the exception of section I and J, also covers all temporary and seasonal employees outside the classified service.

## **C. DEFINITIONS**

1. For the purpose of this policy "Managers and Supervisors" shall refer to all Nonrepresented Supervisory employees and Police Captains and Lieutenants.
2. The "City" is the City of Portland and its Bureaus.
3. The "Bureau" is the particular City bureau in which the employee involved works.
4. A "Prescription medication" is a medication for which an employee has a valid prescription from a qualified physician.
5. "Drugs", as used in this policy, are all illegal drugs.

## **D. RULES**

1. No employee shall:
  - a. Unlawfully manufacture, distribute, dispense, possess or use a controlled substance in the workplace;
  - b. Report for duty under the influence of alcohol or drugs;
  - c. Absent him/herself from duty or be unfit to fully perform duties for reasons attributable to, or produced by, indulgence in alcohol, drugs, or the excessive or other improper use of prescription medications.
  - d. Bring or cause to be brought onto City property any alcohol or drugs;
  - e. Use any prescription or nonprescription medications which may interfere with the safe and effective performance of duties or operation of City equipment or vehicles, without notifying his or her supervisor prior to beginning work or operating the equipment or vehicle.

- f. Refuse to respond to questions.
  - g. Refuse to allow a search of all areas and property in which the City maintains joint control with the employee or full control including any City Vehicle.
2. While on duty, operating a City vehicle (on or off duty) or wearing a City uniform, no employee shall:
    - a. Have the odor of alcohol or drugs on their breath;
    - b. Use alcohol or drugs;
    - c. Have their ability to work impaired as a result of the use of alcohol or drugs;
    - d. Possess alcohol or drugs;
    - e. Provide, manufacture, deliver, transfer, offer, or sell alcohol or drugs to any other employee or to any person while on duty;
  3. In the event there is a question regarding an employee's ability to work safely and effectively while using prescription or nonprescription medications, clearance from a qualified physician will be required. The City will continue to retain the right to make the final determination of the fitness of an employee to perform work.

#### **E. SEARCHES**

##### **1. AREAS AND PROPERTY IN WHICH THE CITY MAINTAINS JOINT CONTROL OR FULL CONTROL**

The City reserves the right to search, without employee consent, all areas and property in which the City maintains joint control or full control. All City vehicles, equipment, offices, desks and lockers are subject to search by management. 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, a reasonable time will be allowed for the Representative to be present before a search is made. The limitations on the City's right to examine City property contained in this paragraph does not apply to property used jointly by more than one (1) employee.

**Managers and supervisors shall not physically search employees.**

##### **2. AREAS AND PROPERTY NOT JOINTLY CONTROLLED OR FULLY CONTROLLED BY THE CITY**

The manager or supervisor shall first ask the employee to consent to a search of the area where the manager or supervisor believes there is evidence of violation of this policy.

For DCTU, Recreation and BOEC employees, the manager or supervisor shall contact a union representative and they shall jointly ask the employee to consent to a search of the area where the manager or supervisor believes there is evidence of a violation of this policy. The union representative will encourage the employee to comply with the request.

#### **F. RESPONSIBILITIES OF EMPLOYEES**

An employee must:

1. Comply with the rules set out in section D above.
2. Notify his/her supervisor, before beginning work, when taking any prescription or non-prescription medications which may interfere with the safe and effective performance of duties or operation of City equipment.
3. If he/she has any question regarding whether the use of a particular prescription or nonprescription medication is allowed by this policy, consult with the supervisor for approval. Note:(This policy is not intended to prohibit the safe and legal use of prescription and nonprescription medications.)

4. Provide, as soon as possible and no later than within 48 hours of a request, proof of a valid prescription for any medication identified by the employee as the cause of his/her behavior. The prescription must be in the employee's name.
5. Notify the Bureau of any felony drug arrest or conviction.
6. Notify the Bureau of any drug conviction for acts occurring on City premises or on duty.

#### **G. RESPONSIBILITIES OF BUREAUS**

1. Notify and provide a copy of this policy to all current and future covered employees.
2. Provide training on the implementation of this policy's procedures to all Managers and Supervisors within the bureau who supervise covered employees.
3. Provide ongoing administration and enforcement of this policy.

#### **H. RESPONSIBILITIES OF MANAGEMENT**

1. Managers and supervisors are responsible for consistent enforcement of this policy. Any supervisor who knowingly permits a violation of this policy by employees under his/her direct supervision shall be subject to disciplinary action.
2. Investigate any question which arises about an employee's fitness to work due to use of prescription or nonprescription medications.
3. Investigate any employee who appears to be in violation of this policy.
4. If management conducts an investigatory interview regarding a possible violation of this policy, the employee shall be advised of his/her right to have either an available union representative (if any) or another employee present during the interview.

#### **I. EMPLOYEE ASSISTANCE**

The City has established an Employee Assistance Program (EAP) to assist employees with the full range of personal issues including alcohol and drug abuse problems. The EAP provider can evaluate an employee's case and determine the appropriate level and type of treatment, if any.

1. Employees are encouraged to voluntarily seek professional assistance for alcohol and drug abuse with or without contacting management.
2. Employees are encouraged to utilize chemical dependency programs offered under benefit plans.
3. A manager or supervisor who has reason to believe that an employee may have a drug or alcohol problem which is affecting the employee's work performance, can suggest that the employee go to the City's EAP provider for an assessment. Participation in the assessment is not mandatory.
4. Contact between the employee and the EAP provider shall be confidential between the employee and the EAP provider unless otherwise authorized by the employee.

A referral to the City's EAP program is separate from any disciplinary action which may result from the employee's violation of this policy and does not increase the employee's EAP benefits.

## **J. DISCIPLINE**

Disciplinary processes for represented employees shall be carried out in accordance with the applicable collective bargaining agreement. Disciplinary processes for nonrepresented employees shall be carried out in accordance with Personnel Rules. Violation of this policy shall be grounds for discipline, up to and including discharge.

## **K. TESTING FOR USE OF ALCOHOL OR DRUGS**

### **1. Employees:**

- a. Employees may be tested pursuant to the terms of an agreement between an employee, the employee's union representative (if any), and his/her bureau which is designed to address the employee's substance abuse and work behavior problems. (Example: Last Chance Agreement which suspends Disciplinary Proceedings pending successful completion of a program.)
- b. A last chance agreement shall only remain in force for a period not to exceed eighteen (18) months following the employees first date of return to work.

### **2. Applicants:**

Applicants for positions covered by this policy may be tested for drug usage as part of the physical examination process.

- a. Testing of applicants for an examination will occur at the request of a Bureau Manager and concurrence of the Risk Manager, Personnel Director and City Attorney.
- b. Factors to consider when determining which examinations will have pre-employment testing shall be:
  - (1) Working with or operation of vehicles or other machinery.
  - (2) Public safety related work.
  - (3) Work with children.
  - (4) Work around hazardous areas and/or hazardous materials.

### **3. Testing Procedure:**

- a. All drug and alcohol testing will be performed by a laboratory or laboratories selected by the City and certified by the State for drug and alcohol testing.
- b. The laboratory or laboratories shall retain a sample for retesting for a minimum of six (6) months.

### **4. Results of Pre-employment Drug Analysis**

- a. A positive result from a drug and/or alcohol analysis may result in the applicant not being hired where the applicant's use of drugs and/or alcohol could affect requisite job standards, duties, or responsibilities.
- b. If a drug screen is positive at the pre-employment physical, the applicant must provide as soon as possible but no later than within 48 hours of request bona fide verification of a valid prescription for the drug identified in the drug screen. If the prescription is not in the applicant's name or the applicant does not provide acceptable verification, or if the prescription medication is one that is likely to impair the applicant's ability to perform essential job functions, the applicant will not be hired.
- c. A positive result for an applicant who is presently a City employee will be forwarded to his/her Supervisor for investigation.

### **5. Confidentiality**

Laboratory reports or test results shall appear in an employee's 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. Disclosures, without patient consent, may also occur when: (1) the information is compelled by law or by judicial or administrative process; (2) the information has been placed at issue in a formal dispute between the employer and employee or applicant; (3) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.



# **CITY OF PORTLAND**

## **EMPLOYEE ASSISTANCE PROGRAM**

### **PROVIDED THROUGH**

# **CAPE**

**What is an EAP?** An Employee Assistance Program (EAP) is a benefit many employers provide for their employees. The program provides confidential counseling services for you and your family. This counseling is paid for by your employer.

CAPE EAP has served thousands of Oregon and Washington employees and their families since 1976. We are an independent company, not affiliated in any way with your employer.

**What Benefits Do I Receive From CAPE EAP?** You and your family can receive up to six free confidential counseling sessions per year from our counselors. If you and your counselor feel that additional counseling is necessary, your counselor can refer you to these services. We'll help you maximize the use of your health insurance benefits to pay for these services.

**Why Do People Use CAPE?** Here are some examples of the things people use CAPE for:

- ! **FAMILY CONCERNS:** Conflict with teens, blended family issues, couple problems, chemical dependency of family members or yourself.
- ! **PERSONAL PROBLEMS:** Depression, death of a loved one, work conflicts, relationships, divorce, approaching retirement.

At CAPE we can help you:

- ! identify your problems and plan ways to address them.
- ! provide counseling help to deal with most problems without cost to you.
- ! find community resources, and help you to use your insurance to pay for needed services.
- ! find legal services, and we can provide you with one free legal consultation from select attorneys.
- ! find resources to deal with financial problems.

We also provide consultation to supervisors and managers about work issues and employee relations.

**If I Use CAPE, Will My Employer Find Out?** No. CAPE services are strictly confidential. Your employer will not receive any information about individuals using CAPE. If you want CAPE to communicate with others (a personal physician, former counselor, etc.), we'll do so only after you've given us written permission.

(By law, however, appropriate action must be taken in cases involving suicide or homicide risk, and instances of child or elder abuse.)

**How Do I Reach CAPE?** Appointments are easy to makeX

In Portland call

243-6970

Outside the Portland area call

1-800-258-6616

TDD/V

You can talk to a counselor by phone. Our crisis workers can be reached at this number 24 hours a day.

An appointment can be scheduled for you within one week. In an emergency, you can be seen within one working day. Evening hours are available.

**Where are CAPE's Offices Located?** We have several locations for your convenience. Our main office is in downtown Portland in the Pittock Block Building at 10th and Washington (921 SW Washington St., Suite 550). Our other offices are in Vancouver, Beaverton, Gresham, Oregon City and Salem.

CAPE services are also conveniently available in communities throughout Oregon and Washington.

If you want more information about CAPE, please call us. We're here with confidential counseling for you and your family . . . when you need it. Give us a call. We can help!

***CAPE***

Employee Assistance Program  
921 SW Washington St, Suite 550  
Portland, OR 97205

In Portland call  
243-6970

Outside the Portland Area call  
1-800-258-6616