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Article \_\_\_\_\_

## Reasonable Suspicion of Drug or Alcohol Use

**Section 1, Definitions.** For purposes of this Article, the following definitions apply.

- a. Reasonable suspicion: a legal standard of proof that is less than probable cause, but more than a “hunch.” It must be based on specific, contemporaneous, articulable observations by a trained manager or supervisor concerning the appearance, behavior, speech, or odors from an employee.
- b. Alcohol: colorless, volatile and flammable liquid that is the intoxicating agent in fermented and distilled liquors. Includes, but is not limited to, beer, wine, and liquor.
- c. Drugs: any controlled substance included in ORS 457.005, including marijuana, or prescribed drugs which have not been legally obtained or are not being used for the purpose for which they were prescribed.
- d. Drug paraphernalia: any item which is clearly intended for use for the administering, transferring, manufacturing, testing or storing of a drug.

**Section 2, Reasonable Suspicion.** The City reserves the right to determine whether reasonable suspicion exists. Only managers and supervisors trained in the signs and symptoms of drug and alcohol use may refer employees for reasonable suspicion testing. Circumstances which constitute a basis for determining “reasonable suspicion” may include, but are not limited to, direct observation of any of the following:

- a. on-duty use or possession of alcohol;
- b. on-duty use or possession of drugs or drug paraphernalia;
- c. on-duty odor of alcohol;
- d. on-duty physical symptoms of drug or alcohol use (e.g., glassy or bloodshot eyes, slurred speech, poor coordination or reflexes);
- e. ~~on-duty indications of chronic and/or withdrawal effects of alcohol or drugs;~~
- f.e. pattern of abnormal conduct, erratic behavior or deteriorating work performance which can be reasonably attributed to alcohol or drug use.

For purposes of determining reasonable suspicion, the City prefers two supervisors observe and document behavior; however, if two are unavailable, then one supervisor may take action.

**Section 3, Refusal to Consent to Testing.** Where the City has reasonable suspicion to believe that an on-duty employee possesses or is under the influence of alcohol or drugs, including marijuana, the City may require that the employee immediately consent and submit to a urine and breathalyzer test. The City shall pay the cost of the tests, and employees will be paid for time spent in the testing process. A refusal to consent and

submit to such tests shall subject an employee to discipline up to and including termination. Refusal to consent and submit means:

- a. refusing a directive to submit to a required test;
- b. inability to provide a urine specimen or breath sample within a reasonable time without a valid medical reason confirmed by a physician;
- c. tampering, adulterating, or substituting a specimen or any other attempt to defeat or obstruct an alcohol or drug test;
- d. leaving the collection site before the testing process is complete;
- e. failing to permit an observed collection when required;
- f. failing to submit to a second test when required;
- g. failing to undergo a medical evaluation when required;
- h. failing to cooperate with any part of the testing process.

An inability to provide a urine specimen or breath sample does not constitute a refusal where the employee has a valid medical reason for the inability to provide a specimen or sample that is confirmed by a physician.

When an employee is notified that testing is required, the employee may request the presence of a Union representative. Testing may not be delayed for more than 15 minutes in order to wait for a representative. The absence of a representative shall not be grounds for the employee to refuse to consent and submit to testing. The presence of a representative shall not disrupt or interfere with the tests.

For purposes of drug testing, the City will use the Department of Transportation concentrations described in Rule 49 CFR Part 40 Section 40.85. The parties recognize that urinalysis testing for cannabis metabolites and THCA does not provide conclusive evidence of employee intoxication at the time of the test.