

CITY OF PORTLAND
GENERAL EMPLOYEES DRUG & ALCOHOL
PROCEDURE

Adopted by Ordinance 166997
September 29, 1993

A. PURPOSE

The purpose of this procedure is to provide instructions for Managers and Supervisors to carry out the City General Employees Drug & Alcohol policy in an efficient and legal manner.

B. OBSERVING EMPLOYEE BEHAVIOR

Assessing whether there appears to be a violation of the policy.

The following are some examples of behavior which could lead a supervisor to question an employee to determine if this policy has been violated. You should not hesitate to question employees about any odd behavior or any other circumstances which would lead you to believe there might be a violation of this policy. **THIS LIST DOES NOT LIMIT SUPERVISORS.**

- a. **ODD BEHAVIOR OF ANY KIND**
- b. Slurred speech;
- c. Alcohol odor on breath;
- d. Unsteady walking or movement;
- e. Inability to walk a straight line;
- f. Physical or verbal altercation;
- g. Behavior which is so unusual that it warrants summoning a supervisor or anyone else with authority;
- h. Possession of alcohol or drugs;
- i. Information obtained from a reliable person with personal knowledge;
- j. Employee is unconscious;
- k. Blurred vision;
- l. Sustained euphoria or disorientation;
- m. Pinpoint constriction of pupils.
- o. Observation of drugs or alcohol or their use.
- p. Changes in mood;
- q. Erratic driving

C. BASIC INVESTIGATION

If you should observe or be told of questionable behavior by an employee which leads you to believe he or she may be in violation of our drug and alcohol abuse policy, the following procedures shall be implemented to insure credible and proper enforcement of this rule.

1. Secure the assistance of another Supervisor, if one is available, and remove the employee from service but retain the employee on duty.
2. Should the other Supervisor concur that the employee appears to be in violation of the policy the following procedure should immediately be applied. (If no other supervisor is available, continue with the procedure):
 - a. Each manager or supervisor shall document in writing the facts which make it appear that the employee in question is intoxicated, or under the influence of drugs or is violating the rules against possession, sale, manufacture, or distribution of drugs or alcohol while on duty. This information should be stated on the Interview Report Form (Attachment A).
 - b. The two managers\supervisors shall take the employee to a suitable location which will ensure privacy, and be free from distraction.

- c. **If the employee is represented, suggest to the employee that they may have an available union representative or a bargaining unit employee present.**
 - d. **Advise the employee that you have reason to believe he/she is in violation of our policy, and ask him to explain. Take notes. Ask as many questions as necessary to get the facts. (Use the interview report form for documentation - Attachment A.)**
 - e. **Advise the employee that, under our policy, failure to respond truthfully to questions or to allow a search of property fully or jointly controlled by the City thereafter will be grounds for discipline up to and including dismissal. Therefore cooperation and compliance is required. If the employee refuses to answer, he/she should be ordered to answer or face the charge of insubordination and therefore discipline up to and including dismissal.**
 - f. **While interviewing, note the employee's behavior and appearance, especially any changes from the employee's usual and customary appearance or conduct, or any physical characteristics evidencing violation of this policy. (see section B. above)**
3. **Managers and supervisors shall not physically search employees.**
 4. **Managers and supervisors shall confiscate any drugs or alcohol found on City premises or property. Managers and supervisors shall not confiscate, without consent, prescription drugs or medications from an employee. Managers and Supervisors should take notes regarding what drug or alcohol was found.**
 5. **All drug and alcohol policy enforcement procedures should be kept as confidential as possible. Conversations with suspected employees should be held away from other employees, when possible. Accusations should, if possible, not be made in the presence of others.**
 6. **Whenever an employee approaches you with a report on some other employee's drug or alcohol use or violation of our policy, talk with the employee privately. Assure him/her that the information he/she gives and his/her identity will be kept confidential, up to the point of any legal proceedings such as arbitration. However, you cannot promise an employee absolutely that the information he/she gives you or his/her identity will never be revealed regardless of the legal circumstances. The law compels testimony by employees in some situations.**
 7. **You may wish to conduct a search in the following circumstances:**
 - a. **When you suspect an employee is in possession of drugs or alcohol in violation of our policy (see D. 3).**
 - b. **When you suspect that there are drugs or alcohol in work areas in violation of our policy. (Locker rooms, trucks, desks, etc.)**

D. AFTER THE COMPLETION OF THE INTERVIEW

One of the following situations applies:

1. **What to do if it does not appear that the employee violated the policy. Thank the employee for their cooperation and return them to duty if they are otherwise capable. Given that you had good reason to initiate an investigation in the first place, do not just forget about the employee. You should continue to observe the employee until you firmly believe no reasonable grounds will be revealed or until you do have reasonable grounds.**
2. **What to do if the employee admits violation of our policy. If the employee admits violation of our policy (coming to work after using alcohol or drugs, possession of alcohol or drugs), searching will in most cases not be necessary, and you should follow the procedures in Section F. of these guidelines, "What to Do After the Investigation is Complete."**

3. **What to Do If the Employee Denies Use or Possession of Drugs or Alcohol In Violation Of This Policy and it Appears that the Employee Has Violated the Policy.** If you have reason to believe he/she is not telling the truth and you believe the employee has violated the policy, you can utilize the procedure in Section F. Likewise, if the employee denies possession of drugs or alcohol on City premises or on duty, and you do not believe him/her, you can utilize the search procedures in Section E.1. & E.2.

If you have determined that an employee is under the influence of drugs, alcohol or a prescription medication you should ask the employee to wait a reasonable time until an authorized City representative can transport them home.

E. SEARCH GUIDELINES

1. SEARCH FOR PHYSICAL EVIDENCE OF POSSESSION OR USE IN AREAS OF JOINT OR FULL CITY CONTROL.

The following are the general guidelines for use in conducting a search of areas which can be searched without employee consent when you suspect possession or use of drugs or alcohol in violation of our policy.

- a. **Areas which can be searched without employee consent.**
You may search 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.

Managers and supervisors shall not physically search employees. Do not invade the privacy of the employee in question through a strip search, "frisk," or body pats, etc. (see Section F below)

- b. **Prior to Search.**
 - (1) Searches which are undertaken specifically to investigate violations of the 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.

This does not limit your right to examine City property used jointly by more than one (1) employee anytime you want.

- (2) You are under no obligation to reveal to the employee or union representative the exact source of your information, the exact nature of your evidence of a violation, or other such information prior to conducting the search. You should inform the employee, upon his/her request, of the general nature of the evidence or allegation against him/her, i.e, "We had a report that at the morning coffee break, you went to your car and drank a beer." Do not become involved in a situation where the employee is persistently challenging you about your right to make, or your factual basis for, the search. Inform an employee who persists in questioning your motive or right to make a search that this will be considered refusal to participate in the search and will subject him/her to discipline as outlined in the policy.
- (3) If time allows, you may ask guidance from the Personnel Analyst, who may in turn ask guidance from the City Attorney, before conducting a search. Make the request for a search and conduct a search in the company of another Supervisor.

- c. **The Search Itself.**
 - (1) Never use physical force to accomplish a search. If an employee refuses to allow a search, notify them that such a refusal constitutes a violation of the policy which may result in discipline up to and including discharge.

- (2) Search only areas and property in which the City maintains joint control with the employee or full control. For example, you may search a City car or work area but not the employee's suitcase.
- (3) Do not request or conduct a search in an abusive, humiliating or threatening way. Do not accuse the employee categorically of violation of the policy. Rather, merely state that the Bureau has evidence which leads it to believe that there may be a violation of its drug and alcohol policy, and therefore it is specifically requesting that the employee facilitate or permit the search requested, as required by the policy.
- (4) Try to conduct the search in such a way as to cause the minimum amount of disruption or employee curiosity. It is permissible to conduct a search during off-shift hours, even if this means that the employee in question and the supervisors in question must delay the search until such time as the majority of employees on any shift have left the premises.
- (5) If the employee denies that the particular item involved in the search on which alcohol or drugs is found (coveralls, lunch box, etc.) is his/her property, confiscate the item immediately and keep it in a safe place. The Bureau will then make further efforts to investigate whose property it is.
- (6) If the employee acknowledges that an item is his/hers, state that you intend to keep the item and give the employee a receipt with a description of the item, date, and time, evidencing that the item will now be in Bureau possession. Tell the employee that the item will be returned to him/her after the completion of the investigation. If the employee categorically refuses to let you keep the item in question, and insists upon leaving the premises with it, do not use force to restrain the employee from leaving. Never use force to confiscate an item from an employee who is unwilling to hand it over. However, document this refusal and notify the employee that this may be grounds for dismissal by itself.

Do not allow an employee to "clean out his/her locker" when he/she is suspended, particularly if his/her refusal to open the locker for your inspection generated the suspension.

d. After the Search.

- (1) Document in detail all surrounding circumstances of the search, what evidence led you to believe a search would be appropriate, your request to search, what the employee said, what you said, what other witnesses listened to the conversations, and the like. Do this immediately after the incident in question. Write down exact times, places and dates, and exact words whenever possible. Do not abbreviate. The purpose of this document is to provide a complete record of what happened, not merely to "state the essentials"
- (2) Even though the City policy clearly provides for terminating an employee for refusal to submit to a search, suspend the employee with pay pending further investigation rather than to terminate him/her immediately upon such a refusal.
- (3) When property or evidence (pills, a bottle, etc.) is confiscated, store the item in a secure (i.e., locked) place and mark on it the date, time, and your initials. Make sure you store the item in such a way as to avoid spillage. If the item is later transferred to someone else, such as to a lab for testing, document the transfer (date, time, place, description of the item and person to whom it was given). In an arbitration, the Bureau must be able to show that an item offered as evidence is the same item that was taken from the employee, and that no unauthorized person has had access to it in the interim (i.e., that no one could have tampered with it).

2. AREAS NOT IN THE JOINT OR FULL CONTROL OF THE CITY

Managers and supervisors can not search areas not jointly or fully controlled by the City without the employees consent or probable cause. If you suspect possession of drugs or alcohol in violation of our policy in an area you can not freely search, follow the guidelines below.

- a. Areas not jointly or fully controlled by the City.**
These are areas or objects which are the employees personal property; things like personal cars, clothing, lunch boxes, and purses.
- b. Why you can't search these areas.**
The City, as a governmental agency can not search or seize the property of employees without consent or probable cause. The City has made the decision that it will leave probable cause determinations to the police.
- c. Process.**
If you have reasonable grounds to believe that a search of employee property is warranted, the following procedure should be immediately be applied:

- (1) Request that the employee allow you to search the personal property in which you believe the drugs or alcohol is located. Make the request for a search and conduct a search in the company of another Supervisor.**

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

Managers and supervisors shall not physically search employees. Request the employee to remove the outer garments (i.e. coats, jackets, gloves, not pants, shirts etc) of his/her clothing so that you may search them, and to empty out his/her pockets, etc. Do not invade the privacy of the employee in question through a strip search, "frisk," or body pats, etc.

- (2) Do not request or conduct a search in an abusive, humiliating or threatening way. Do not accuse the employee categorically of violation of the policy. Rather, merely state that the Bureau has evidence which leads it to believe that there may be a violation of its drug and alcohol policy, and therefore it is specifically requesting that the employee facilitate or permit the search requested.**

If the employee refuses to allow a search, see section d. below.

- (3) Try to conduct the search in such a way as to cause the minimum amount of disruption or employee curiosity. It is permissible to conduct a search during off-shift hours, even if this means that the employee in question and the supervisors in question must delay the search until such time as the majority of employees on any shift have left the premises.**
- (4) If the employee denies that the particular item involved in the search on which alcohol or drugs is found (coat, lunch box, etc.) is his/her property, confiscate the item immediately and keep it in a safe place. The Bureau will then make further efforts to investigate whose property it is.**
- (5) If the employee acknowledges that the item is his/hers, state that you intend to keep the item and give the employee a receipt with a description of the item, date, and time, evidencing that the item will now be in Bureau possession. Tell the employee that the item will be returned to him/her after the completion of the investigation. If the employee categorically refuses to let you keep the item in question, and insists upon leaving the premises with it, do not use force to restrain the employee from leaving. Never use force to confiscate an item from an employee who is unwilling to**

hand it over. However, document this refusal and notify the employee that this may be grounds for dismissal by itself. Do not allow an employee to "clean out his/her locker" when he/she is suspended.

- (6) Document in detail all surrounding circumstances of the search, what evidence led you to believe a search would be appropriate, your request to search, what the employee said, what you said, what other witnesses listened to the conversations, and the like. Do this immediately after the incident in question. Write down exact times, places and dates, and exact words whenever possible. Do not abbreviate. The purpose of this document is to provide a complete record of what happened, not merely to "state the essentials"

d. Searches for illegal drugs.

If you believe the violation of the policy involves illegal drugs see section (1) below, otherwise continue with your investigation including asking the employee specific questions about the information that led you to believe they were in violation of the policy.

- (1) If an employee refuses to consent to a search and you have reason to believe they are in possession of illegal drugs, follow the procedure below.
 - Order the employee to remain in a specific location where you can continue to watch them until the Police arrive.

 - Managers and Supervisors shall notify the Bureau of Police when they have "reasonable grounds"(see section (2) below) to believe that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the City.

(2) Establishing Reasonable Grounds.

Reasonable Grounds means the manager or supervisor has reliable evidence that the policy may have been violated. Mere suspicion may not be enough to establish reasonable grounds but absolute proof of a violation is not required either. Personal observation of violations is the best evidence, although reliable statements from other employees or citizens can also be the basis of reasonable grounds for a search.

F. WHAT TO DO AFTER THE INVESTIGATION IS COMPLETED

1. If there is no proof of violation:

If it is clear that the employee has not violated the policy, either after investigation, or search, tell the employee that the Bureau has not found him/her in violation of the policy and that there will be no discipline taken against him/her. Allow the employee to return to work if there is remaining time on his/her shift and he/she is otherwise fit for duty.

2. If there is proof of violation:

If it is not absolutely clear that the employee has not violated the policy, send him/her home for the day. Drive him/her if you have reason to believe he/she is under the influence. **DO NOT TERMINATE THE EMPLOYEE IMMEDIATELY REGARDLESS OF THE EVIDENCE OF VIOLATION.** Always send the employee home and tell them they are "suspended" with pay pending further discussions between Bureau officials as to how to proceed.

There are strong legal and practical reasons for suspending an employee who has violated the policy rather than terminating him/her. Under federal and state law, an employee, who is an alcoholic or a drug addict may claim a "disability". Employers may not discriminate against employees on the basis of a disability. If the employee is an alcoholic or an addict, we may have a legal duty to accommodate him/her by helping him/her set up a treatment or therapy program, or to arrange different work for him/her.

The decision as to whether or not to discipline or to "accommodate" an employee under this policy must be made only after consultation with the Personnel Bureau and the City Attorney.

When sending an employee home merely state that it appears that the Bureau's drug and alcohol policy has been violated (either from the employee's own admission, the search results, or his/her refusal to cooperate in the investigation) and that the employee should not report to work until he/she is contacted by the Bureau. The Bureau will be discussing the situation and deciding what to do. The Bureau may be calling him/her back for a further meeting. The employee must contact the bureau at the beginning of each regular work shift they are on suspension or as directed by the bureau.

3. Confidentiality

Keep all results of any investigation or search confidential. Keep all discussions as to what kinds of discipline to take, or what kind of accommodation to make in a particular case private and confidential. Discussions should be between supervisors and managers directly involved in the situation, members of the chain of command, the City Attorney's Office and the Bureau Personnel Services.

G. VEHICLE OR EQUIPMENT ACCIDENT INVESTIGATION

In the event of an accident resulting in injury to any person or significant damage to any property, the Managers and Supervisor shall interview the operator involved at the scene of the accident. If you determine there is no question of drug or alcohol abuse, discontinue your interview in short order. However, if you identify behavior or conduct which indicates that an employee has used alcohol or drugs in violation of this policy, (section B) conduct an investigation pursuant to section C. and fill out attachment A.

H. QUESTIONS OF IMPAIRMENT BY MEDICATIONS

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 prior to their working.

A question could arise because of an:

- employee's current or past behavior
- employee request for clarification on the use of a specific medication
- a medication's warning label applies directly to the employees work
- circumstance which leads the supervisor to be concerned about the employee's ability to perform the work safely an effectively.

Regardless of the determination of the physician, the Manager or Supervisor may determine that an employee's behavior demonstrates that he/she is not fit for duty.

I. POSITIVE PRE-EMPLOYMENT RESULTS FOR A CURRENT EMPLOYEE.

The City will be performing pre-employment drug and alcohol tests for certain classifications. A positive result for an applicant who is presently a City employee will be forwarded to his/her Supervisor for investigation. The results will include the time and date of the test.

Bureaus should particularly determine if the test occurred during or directly adjoining to the work day and investigate any situation where it appears the employee was under the influence during work. Other specific bureau concerns should also be investigated.

Follow the procedure in section C above.

Attachment A

INTERVIEW REPORT
(BUREAU NAME)
DRUG AND ALCOHOL POLICY

EMPLOYEE'S NAME: _____

SHIFT: _____ DATE: _____ TIME: _am _____pm

CITY VEHICLE (if any): _____ N/A: _____

FACTS OR BEHAVIOR OBSERVED THAT PRECIPITATED THIS INTERVIEW:

(be specific) _____

WITNESSES: _____

INTERVIEW LOCATION: _____

PARTIES PRESENT AT INTERVIEW: _____

Are you hurt? _____yes _____no Where are you hurt? _____

Have you been drinking alcoholic beverage? _____yes _____no

If yes, nature? _____ Quantity? _____

Began drinking? _____am _____pm Stopped drinking? _____am _____pm

Location? _____

Are you ill? _____yes _____no

Have you seen a doctor/dentist recently? _____yes _____no.

If yes, when? _____ Name of doctor/dentist? _____

Are you taking any medication or any drug? _____yes _____no.

If yes, what? _____ When? _____

For what condition? _____ How often? _____

If prescription medication, do you have a valid prescription? _____yes _____no.

Have you used a mouthwash recently? _____yes _____no.

