



<b>TITLE:</b>
Drug and Alcohol-Free Workplace Policy
<b>ADOPTED BY BOARD OF HARBOR COMMISSIONERS:</b>
February 11, 2019
<b>EFFECTIVE DATE:</b>
This Administrative Policy is effective upon approval and adoption by the Board of Harbor Commissioners.
<b>SUPERSESION:</b>
This Administrative Policy supersedes Administrative Policy No. 12303.1 approved and adopted-on November 22, 2004.
<b>PURPOSE:</b>
<p>This policy is applicable to all applicants and regular, temporary, part-time and contract employees of the District. This policy does not preclude any additional policies being issued regarding controlled substance abuse which are more stringent, broader in context, or address screening or testing for controlled substances or alcohol. In the event of any conflict with Federal and/or State law covering this policy, Federal and/or State law shall control.</p> <p>To the extent this Policy is inconsistent with the applicable collective bargaining agreement, the terms of the applicable collective bargaining agreement will control. However, if the terms of the collective bargaining agreement conflict with Federal and/or State law covering this policy, Federal and/or State law shall control.</p>
<b>POLICY:</b>
<p><b>FINDINGS</b></p> <p>The Board of Harbor Commissioners finds that drug or alcohol abuse has a negative impact on job performance and threatens harm to employees and others. Employees who are under the influence of a drug or alcohol while on the job compromise the District's interest and may endanger their own health and safety and the health and safety of others. Substance abuse in the workplace can also cause a number of work related problems including absenteeism and tardiness, substandard job performance, increased workloads for co-workers, behavior that disrupts other employees and</p>

inferior service to District's customers. The District has established this policy in order to further its interest in promoting and maintaining safe and efficient working conditions for its employees as well as to protect its business, property, equipment and operations. As a condition of continued employment with the District, each employee must abide by this policy.

**DISSEMINATION**

Every current employee will receive a copy of the District's Drug and Alcohol-Free Workplace policy upon issuance. At the time of employment, each new employee will be provided with a copy of the policy. On a periodic basis, the District will reaffirm this policy with employees.

**DRUG AND ALCOHOL-FREE WORKPLACE DECLARATION**

It is the intent and policy of the Oxnard Harbor District to provide a working environment free from substance and alcohol abuse. The District will not tolerate the manufacture, distribution, sale, purchase, dispensing, possession or use in the work place of controlled substances as defined in paragraph 9. No employee shall be under the influence of a controlled substance or alcohol while performing his/her duties or work. Furthermore, the District will not tolerate the unauthorized use of alcohol by an employee while on District premises. Any employee who unlawfully manufactures, distributes, sells, purchases, dispenses, possesses, uses, or is under the influence of controlled substances or violates any State or Federal laws applicable to controlled substances while on District premises or business, shall be subject to immediate disciplinary action up to and including termination of employment and/or satisfactory completion of a drug or alcohol abuse rehabilitation program approved for such purposes by a Federal, State, or local law enforcement agency or other appropriate health organization.

**PROHIBITED CONDUCT**

The prohibitions of this section apply whenever the interests of the District may be adversely affected, including any time an employee is: (1) on District premises; (2) conducting or performing District business, regardless of location; (3) operating or responsible for the operation, custody, or care of District equipment or other property; or (4) responsible for the safety of others in connection with, or while performing, District-related business.

The following acts are prohibited and will subject an employee to discharge:

- (1) The unauthorized use, possession, purchase, sale, manufacture, distribution, transportation, or dispensation of alcohol;
- (2) Being under the influence of alcohol from unauthorized consumption;
- (3) The use, possession, purchase, sale, manufacture, distribution, transportation, or dispensation of any illegal drug or other controlled substance;

(4) Being under the influence of any illegal drug or other controlled substance;

(5) The abuse of any legal drug;

(6) The purchase, sale, manufacture, distribution, transportation, dispensation, or possession of any legal prescription drug in a manner inconsistent with law; or

(7) Working while impaired by the use of a legal drug whenever such impairment might: (a) endanger the safety of the employee or some other person; (b) pose a risk of significant damage to District property or equipment; or (c) substantially interfere with the employee's job performance or the efficient operation of the District's business or equipment.

All management personnel are expected to take appropriate and immediate action in connection with any violations of this policy. Violation of this policy shall result in disciplinary proceedings that may include immediate termination of employment.

Please note that the District may provide alcohol for consumption at certain events, such as social functions. The consumption of alcohol at these events does not violate this Guideline.

#### **DRUG ALCOHOL FREE AWARENESS PROGRAM**

The District's Drug and Alcohol-Free Awareness Program will regularly inform employees about the:

- (a) District's Drug and Alcohol-Free Workplace Policy
- (b) Employee Assistance Program (EAP)
- (c) Dangers of workplace drug and alcohol abuse
- (d) Disciplinary action that may be imposed for violations of the policy

#### **PRESCRIPTION DRUGS AND OTHER MEDICATIONS**

Any employee taking a legal drug or medication, whether or not prescribed by a health care professional, which is known or advertised to affect judgment, coordination, impair senses or adversely affect the ability to perform work in a safe and productive manner, must notify his/her supervisor or the CEO/Port Director prior to starting work if the performance of his/her normal duties could affect his/her safety and welfare and that of others.

Supervisors shall monitor employee behavior and assess possible warning signs indicating that the employee's work performance while under the influence of a legal drug is impaired or is causing an unsafe work environment. If there is cause for serious concern with regard to an employee's behavior or performance, the employee's supervisor shall inform the CEO/Port Director. If it is established that that

the employee is impaired or unable to perform his/her work in a safe and productive manner, the employee shall be advised to take a leave of absence using accrued sick, annual, or compensatory leave, or leave without pay for all time away from work, until such time the employee can safely return to work.

As stated above, although California has legalized marijuana for medicinal and recreational purposes, marijuana remains illegal under Federal law. Accordingly, any such use, possession, etc., of marijuana, whether for medical or recreational purposes, is deemed as using an illegal drug in violation of this policy, is strictly prohibited, and employees will be disciplined accordingly.

#### **DRUG AND ALCOHOL TESTING GUIDELINES**

Drug and alcohol testing shall be conducted on: (1) all prospective employees to whom a conditional offer of employment has been made for designated safety-sensitive positions; (2) safety-sensitive employees for whom there is a reasonable suspicion that the employee is working in an impaired condition or otherwise engaging in conduct that violates this policy; and (3) on safety-sensitive employees after an accident under the circumstances noted below:

(a) Pre-employment Drug and Alcohol Testing for Designated Safety-Sensitive Positions

All individuals who submit applications for employment in a position in the Harbormaster Unit and/or the Facilities Maintenance Unit (the designated safety-sensitive positions) shall be informed at the time of the submission of their applications that, as a condition of an offer of employment, they will be tested for drugs and alcohol and shall be given a copy of this Administrative Policy. The District shall make an offer of employment subject to and conditioned on the prospective applicant taking a drug and alcohol test, the employee authorizing the disclosure of the test results to the District and a negative test result.

The District's industrial medicine provider will perform the collection of samples, testing, verification and reporting drug and alcohol testing results in compliance with the terms of these guidelines and applicable Federal and State laws and regulations. A prospective employee will be required to read and sign a pre-employment drug testing consent form prior to the collection of any sample. The signing of the consent form shall be voluntary. If a prospective employee refuses to sign the consent form, the refusal will be handled in the same manner as a positive test result.

(b) Reasonable Suspicion / Post-Accident Testing

An employee shall undergo drug and alcohol testing if:

1. Two or more trained members of the management team have a reasonable suspicion that the employee is working in an impaired condition or otherwise engaging in conduct that violates this policy; or
2. There is reasonable suspicion that the employee who may be a cause of an accident that causes damages to property or injury to persons while at work or on the District's premises or business was under the influence of a controlled substance or alcohol at the time or in violation of this policy.

(c) Testing Protocol

All samples shall be collected at facilities that comply with strict Department of Health and Human Services / Substance Abuse & Mental Health Services Administration (DHHS/SAMHSA) guidelines. All drug and alcohol testing will be performed at a DHHS/SAMHSA certified laboratory and shall be forwarded to a licensed Medical Review Officer (MRO). The MRO shall be chosen by the industrial health clinic and shall only report the final results to the District's CEO/Port Director. The MRO (or designee) will inform the CEO/Port Director of negative test results within 24 hours of receipt of the results. A Federally certified laboratory must verify all positive test results. The District will pay the cost of the test and reasonable transportation costs to the testing facility.

The final results shall be reported to the District in writing and in a confidential manner and shall be limited only to whether the employee passed or failed the drug test. Employees who fail the drug test will be considered to have violated this policy and will be disciplined, up to and including termination, accordingly.

Any employee subject to testing under this policy will be asked to sign a form acknowledging the procedures governing testing and consenting to (1) the collection of samples of urine for the purpose of determining the presence of alcohol or drugs, and (2) the release to the District of medical information regarding the test results. Refusal to sign the agreement and consent form, or to submit to the drug test, will result in either the revocation of a prospective employee's job offer or discipline of a current employee up to and including immediate termination.

(d) Prescription and Non-Prescription Medications

Individuals shall have the opportunity to provide to the MRO information related to the use of legal drugs, including prescription or nonprescription medications, or other relevant medical information that may affect the outcome of the test. A negative test result shall be reported to the District if the prospective employee or employee provides medical information that is determined by the MRO to be valid, substantiated or relevant based on the MRO's professional medical opinion and/or fact that the positive test result was not caused by a controlled substance as defined

in this Administrative Policy or by excessive amounts of alcohol.

All information from an applicant's or an employee's drug and alcohol tests will be confidential to the extent required by law. Records will be securely maintained in order to prevent disclosure of information to unauthorized persons.

#### **VOLUNTARY USE OF COUNSELING AND REHABILITATION PROGRAMS**

An employee with a drug and/or alcohol problem is encouraged to voluntarily participate in a counseling and/or rehabilitation program that may be available through the employee's health insurance plan or the Employee Assistance Program (EAP). An employee with a drug or alcohol problem that has not resulted in, and is not the immediate subject of, disciplinary action may request approval to take unpaid time off to participate in a rehabilitation or treatment program. An unpaid leave of absence may be granted if the employee agrees to successfully complete his/her participation in the rehabilitation or treatment program; abides by all District policies, rules, and prohibitions relating to conduct in the workplace; and if granting the leave will not cause the District any undue hardship.

#### **REPORTS OF VIOLATION OF POLICY AND INVESTIGATION PROCESS**

##### (a) Reporting Requirement

All employees are required to report a violation of this policy. The CEO/Port Director, or his or her designee, will investigate violations of this policy. It is the responsibility of all trained members of the management team who have reasonable cause to believe that there has been a violation of this policy to make an immediate oral report to the CEO/Port Director.

##### (b) Mandatory Referral

If upon direct observation by a trained member of the management team and confirmation by a second trained member of the management team, an employee appears to be under the influence of a controlled substance, alcohol or prescription medication that is interfering with or likely to interfere with the employee's work performance, conduct or safety or the safety of others, the supervisor or manager shall report his/her observations, and escort the employee to the CEO/Port Director, or his or her designee. Upon such referral, the CEO/Port Director, or his or her designee, may conduct an investigation and take action including arranging for drug or alcohol testing as deemed appropriate.

If an employee refuses a mandatory referral to the CEO/Port Director under escort by the employee's manager or supervisor, the employee will be disciplined up to and including immediate termination.

#### **CONFIDENTIALITY**

The District will make every effort to safeguard the privacy and confidentiality of employees' protected health information and medical records. All counseling, rehabilitation or medical information originated in accordance with this policy will be maintained in files separate from employees' personnel files.

Exceptions to this confidentiality provision are limited to a decision maker in an arbitration, litigation or administrative proceedings arising related to a drug test or refusal to drug test. Furthermore, an exception to complete confidentiality may be made by the CEO & Port Director (or designee) in conference with Legal Counsel if an employee's safety or the safety of others is endangered or if required by law.

#### **DISCIPLINARY PROCEEDINGS**

The District will implement all disciplinary proceedings in accordance with policies and procedures for the administration of employer-employee relations. Any violation of this policy will result in immediate suspension of employment without pay for at least a period of three (3) days subject to further disciplinary proceedings up to and including termination of employment.

Additionally, failure to notify the CEO & Port Director or his/her designated representative of any criminal drug statute conviction of such employee for a violation occurring in the work place no later than five (5) days after such conviction

will result in immediate suspension of employment without pay for at least a period of three (3) days subject to further disciplinary proceedings up to and including termination of employment.

#### **COMPLIANCE AND NOTIFICATION**

Compliance with the Drug-Free Workplace Act of 1988 (Title 41, U.S.C. section 702 et.seq.) is a condition of Federal and State grants to the District. The notification requirements of this Act are to be strictly adhered to, in addition to all other components of this policy.

As a condition of employment and continued employment, each employee shall abide by the District's Drug and Alcohol-Free Workplace Policy. An employee must notify the District of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction. In compliance with the Drug Free Workplace Act of 1988 and the Controlled Substance Act, the CEO & Port Director or designee shall notify any and all appropriate Federal agencies within ten (10) days after receiving an employee notice of a criminal drug statute conviction.

The District will impose corrective measures on an employee convicted of a drug abuse violation in the workplace within thirty (30) days after receiving notice of his/her conviction and:

- Implement disciplinary proceedings up to and including termination of employment against the employee, or

- Require the employee to satisfactorily complete a drug abuse rehabilitation program approved for such purposes by a Federal, State, or local law enforcement agency or other appropriate health organization.

**ADMINISTRATION AND INTERPRETATION**

It is not possible for this policy to anticipate every situation that may arise in connection with controlled substance abuse or alcohol abuse and its effect on the District and its employees. The District reserves the right to respond to specific situations in a way permitted by law that may not be contemplated by these guidelines when circumstances warrant. Authority for the interpretation of this policy is the responsibility of the CEO & Port Director in consultation with Legal Counsel.

**RELATED POLICIES:**

N/A

**DEFINITIONS:**

**Controlled Substance and Illegal Drugs:**

The terms "controlled substance" or "illegal drugs" means any drug or substance that (a) is not legally obtainable; or (b) is legally obtainable but has not been legally obtained; or (c) has been legally obtained but is being sold or distributed unlawfully. This includes a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, of Part B of 21 U.S.C., Section 812 — Schedule of Controlled Substances and in regulations adopted to pursuant to such Act set forth in Title 21 CFR Parts 1300.01 and 1308 unless exempted from application by the Controlled Substance Act. Furthermore, despite its legal status in California, marijuana remains an illegal drug under Federal law. Accordingly, marijuana is considered an illegal drug for the purpose of District policy.

**Legal drug:**

The term "legal drug" means any drug, including any prescription drug or over-the-counter drug, that has been legally obtained and that is not unlawfully sold or distributed.

**Abuse of any legal drug:**

The term "abuse of any legal drug" means the use of any legal drug (a) for any purpose other than the purpose for which it was prescribed or manufactured; and (b) in a quantity, frequency, or manner that is contrary to the instructions or recommendations of the prescribing physician or manufacturer.

**Conviction:**

The term "conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

**Criminal Drug Statutes:**

The term "criminal drug statutes" means a Federal or State criminal statute involving the manufacture, sale, distribution, purchase, possession or use of any controlled substance.



**Reasonable Suspicion:**

The term "reasonable suspicion" means a suspicion that is based on specific personal observations such as an employee's manner, disposition, muscular movement, appearance, behavior, speech or breath odor; information provided to management by an employee, by law enforcement officials, security service or by other persons believed to be reliable; or suspicion that is based on other surrounding circumstances.

**Possession:**

The term "possession" means that an employee has the substance on his or her person or otherwise under his or her control.