

**CITY OF NEW ORLEANS
CHIEF ADMINISTRATIVE OFFICE**

Policy Memorandum No. 89 (R)

November 15, 2022

TO: All Departments, Boards, Agencies, and Commissions

FROM: Gilbert A. Montañó, Chief Administrative Officer



SUBJECT: **SUBSTANCE USE AND MISUSE**

I. PURPOSE

This memorandum is revised to update the City of New Orleans ("City") policy regarding substance use and misuse in order to align with Civil Service Rule V, Section 9; to remove specific references to marijuana in response to the legalization of medical cannabis in the State of Louisiana and the decriminalization of simple possession of cannabis by the City Council; to protect the health, welfare, and safety of City employees and the public; to promote efficient and effective service to the public; and to ensure reasonable hiring and employment practices.

II. SUBSTANCE USE AND MISUSE POLICY OBJECTIVES

- A. To deter and detect illegal and unauthorized substance use and contraband in the workplace.
- B. To assist in maintaining a safe and healthful working environment for City employees, visitors, vendors, suppliers, contractors, and members of the general public.
- C. To protect City property, City employees, and the general public by reducing the opportunities for accidents that affect safety or the City's operations.
- D. To minimize absenteeism and tardiness, improve productivity, and ensure quality workmanship.
- E. To protect the reputation of the City and employees within the community and State of Louisiana.
- F. To comply with the obligations of applicable federal, state, and local grants, agreements, regulations, and laws.

III. POLICY APPLICATION

This policy applies to all Classified and Unclassified Service employees, inclusive of regular full-time, part-time, commissioned, probationary, temporary, or contract employees, and to applicants for employment with the City.

Contractors' employees, while on City premises, are expected to comply with the City's intent to maintain a drug-free workplace.

The term "City premises" includes all City property, offices, facilities, land, buildings, structures, fixtures, installations, automobiles, trucks, and all other vehicles and

equipment, whether owned, leased, or used. This includes all areas under the City's control.

IV. ILLEGAL AND UNAUTHORIZED DRUGS AND PARAPHERNALIA

- A. City of New Orleans employees and applicants are hereby notified that the use of illegal or unauthorized drugs, controlled substances, or drug-related paraphernalia is strictly prohibited on City premises, while on City business, or during work hours. This prohibition includes the possession, illegal manufacture, distribution, dispensation, transfer, storage, concealment, transportation, promotion, or sale of such drugs, substances, or paraphernalia. This prohibition further includes the presence in the body of or reporting to work (or driving) under the influence of such drugs or substances. The term "unauthorized" includes prescribed drugs not legally obtained and prescribed drugs not being used for prescribed purposes as well as any abnormal or dangerous substances that may affect an employee's/person's mood, responses, motor functions, or alter or affect a person's perception, performance, judgment, reactions, or senses while working.
- B. Prescription and "Over-the-Counter" Medications. Employees and others covered by this policy may possess and use prescription drugs and over-the-counter medications on City premises, while on City business, or during work hours provided compliance with the following conditions:
1. The prescription drugs are prescribed by an authorized medical practitioner for the current use (within the past 12 months) of the employee/person in possession.
 2. Employees must not consume prescribed drugs more often than as prescribed by the employee's physician and they must not allow any other person to consume the prescribed drug.
 3. The drugs, both prescription and over-the-counter, must be kept in the original container.
 4. The use of drugs/medicine prescribed by a licensed physician for the individual employee is permitted provided that it will not affect work performance. However, any employee who has been informed that the use of medication could cause adverse side effects while working (or where the medication labels or packaging materials indicate such warnings) must advise his/her supervisor prior to using such substances on the job. The City reserves the right to have a licensed physician determine if use of a prescription drug or medication by an employee produces effects that may increase the risk of injury to the employee or others while working. If such finding is made, the City may consult the employee's doctor (with written permission from the employee) to see if other medications are available that would not seriously affect the employee's ability to work safely. If appropriate substitute medicine is not available, the City may have to limit or suspend the work activity of the employee during the

period that the physician advises that the employee's ability to perform the job safely may be affected adversely by the consumption of such medication.

- C. Drug-related paraphernalia. Possession or use of illegal or unauthorized drug-related paraphernalia is prohibited on City premises, while on City business, or during work hours. The term "drug-related paraphernalia" means any material or equipment item used or designed for use in testing, packaging, storing, injecting, ingesting, inhaling, or otherwise introducing a controlled substance into the human body.

V. ALCOHOLIC BEVERAGES

City of New Orleans employees and applicants are hereby notified that the use of alcoholic beverages is strictly prohibited on City premises, while on City business, or during work hours. This prohibition includes the presence in the body of or reporting to work (or driving) under the influence of alcoholic beverages. This prohibition further includes the unlawful manufacture, distribution, dispensation, promotion, or sale of alcoholic beverages. However, the moderate use of alcohol at authorized City functions is not prohibited by this policy.

An employee whose blood alcohol concentration (BAC) is at or over 0.04% during work time or while operating City vehicles or equipment is in violation of this policy.

Employees regulated by the Federal Highway Administration (FHA), United States Department of Transportation (DOT), Louisiana Department of Public Safety (LDPS), or commercial driver's license regulations also shall be subject to disciplinary action and disqualified from operating a commercial motor vehicle if they are discovered working with a BAC at or above 0.04%, having an open container of alcohol in a commercial vehicle, or possessing or using unauthorized or illegal drugs.

Additionally, by law, no operator of a commercial motor vehicle may consume an intoxicating beverage, regardless of its alcoholic content, or be under the influence of an intoxicating beverage or controlled substance within four hours before going on duty or operating or having physical control of a commercial motor vehicle. Further, no operator of a commercial motor vehicle may consume an intoxicating beverage, regardless of its alcoholic content, or be under the influence of an intoxicating beverage or concentration of a controlled substance while on duty, while operating a commercial motor vehicle, or while in physical control of a commercial motor vehicle.

VI. POLICY ENFORCEMENT ACTIVITIES

- A. Substance Testing. The City may require applicants for City employment, City employees, and other persons subject to this policy to participate in substance testing such as urinalysis or blood tests to assist the City in providing a safe, healthful, and productive working environment, and to comply with existing federal and state laws as a condition of employment.

1. All substance testing (screenings) shall be conducted in accordance with Rule V, Section 9 of the Civil Service Rules of the City of New Orleans.

2. All applicants (without current consecutive active service with the City) for Unclassified Service positions must undergo substance testing prior to appointment. Prospective Unclassified Service personnel may be scheduled for substance testing by agency personnel who coordinate testing of Classified Service personnel with the Civil Service Department.

No appointments to the Unclassified Service shall be made officially until test results are received by the department/agency that desires to hire the applicant. Upon receipt of written confirmation from the laboratory of a positive test result of an applicant for the Unclassified Service, the Appointing Authority shall take such action as in its discretion is deemed appropriate with regard to making an official appointment to the Unclassified Service position, after giving deference and consideration to the factors enumerated in Civil Service Rule V, Section 9.15.

3. Departments, boards, agencies, and commissions may request that Unclassified Service classifications be placed in the category of sensitive positions. These classes would be subject to the same procedures relative to substance screening as Classified Service classes of work that have been designated as sensitive positions. The final decision to declare if a position is to be placed in this category will be made by the Chief Administrative Officer.
4. In order to comply with the provisions of the Council's February 16, 1989, resolution, R-89-32, the Mayor, the Chief Administrative Officer, and the department heads will participate in voluntary testing as outlined in this memorandum.

B. Workplace searches and inspections. When probable cause or reasonable suspicion exists, the City reserves the right at all times to conduct unannounced searches and inspections of City facilities and properties, as well as employees' and other persons' effects. Such searches can include, for example, lockers, baggage, briefcases, boxes, bags, parcels, lunch boxes, food/beverage containers, desks, toolboxes, clothing, and vehicles for the purpose of determining if such employees or other persons are in possession, use, transportation, or concealment of any of the prohibited items and substances cited in this policy.

1. Searches (including urine sampling or drug screening conducted in conformance with Civil Service Rule V, Section 9) and inspections may be initiated without prior notice and may be conducted at times and locations as deemed appropriate by City officials and/or their designated representatives. At no time will employees or other persons be touched, nor will any clothing be removed during these searches and inspections. These searches may take place when employees and other persons enter or depart from City premises. When reasonable suspicion exists, the Appointing Authorities or their properly authorized non-law-enforcement representatives (who may use drug detection dogs to assist in the search) will perform the searches.

2. All searches, inspections, and urine samplings will be performed with concern for each employee's or person's personal privacy, dignity, and confidentiality. The results of any program testing will be considered a confidential record disseminated strictly on a need-to-know basis as may be legally required. Records shall not be maintained in personnel files. Illegal substances, drugs, stolen property, and other prohibited items discovered through these searches and inspections may result in the proper law enforcement personnel being advised in this regard (as required by law).
- C. Federal or State Requirements. In addition to the substance testing established by this policy, government-required testing will be conducted as mandated by the United States Department of Transportation (DOT), the Louisiana Department of Public Safety (LDPS), or other agencies for those employees working in regulated or safety sensitive positions. These positions are classified by DOT/LDPS regulations as drivers of commercial motor vehicles operated in interstate/intrastate commerce. Affected employees will be notified accordingly if their jobs fall within the definition of a regulated or safety sensitive position.

VII. GOVERNMENT CERTIFICATION/REPORTING REQUIREMENTS

The federal Drug-Free Workplace Act of 1988 and the State of Louisiana's drug-free workplace laws are applicable to many of the City's operations. These laws place several requirements on grantees covered by these laws. Each employer or contractor covered by these acts must certify to the contracting agency that it has published a statement to employees alerting them that drug use is prohibited in the workplace and that abiding by these terms is a condition of employment or agreement.

- A. Employer Notification Requirements. Federal law requires the City to remind employees about their ability to participate confidentially in self-help programs, such as an Employee Assistance Program (EAP) and the City's health care plan(s) (if eligible). Employees should be aware that many local hospitals, medical clinics, and other social services agencies offer alcohol and drug abuse counseling and rehabilitation programs. The City will publish or will provide from time to time information informing employees of the dangers of alcohol and drug abuse in the workplace.
- B. Employee Report/Notification Requirements. Federal law requires as a "condition of employment on a government contract" that employees are required to abide by this policy and must report a criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction. In addition, the City's policy requires the employee to report any conviction for drug-related offenses, regardless of whether the violation occurs in the workplace. "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body with the responsibility to determine violation of federal, state, or local criminal statutes. The City is required to notify the appropriate contracting agency within 10

working days after receiving notice from an employee or law enforcement agency of a criminal drug statute conviction.

- C. Disciplinary Action. An employee's failure or refusal to report such a conviction as outlined in the above sections will be grounds for termination of employment.

VIII. SUBSTANCE USE AND MISUSE PROGRAM POLICY – RELATIONSHIP TO EMPLOYEE ASSISTANCE PROGRAMS AND OTHER SELF-HELP PROGRAMS

- A. It is the intent of the City to provide employees with the City's viewpoint on behavioral-medical disorders, to encourage an enlightened viewpoint toward these disorders, and to provide guidelines for consistent handling of alcohol- and drug-related incidents throughout the workforce.
- B. Progressive disciplinary measures may be utilized as motivation for employees to seek assistance. However, it is the responsibility of each employee to seek help before alcohol and drug problems lead to disciplinary action up to and including discharge from employment. Employees should notify their supervisors of the need for help. Once a violation of this policy occurs, subsequently using self-help programs voluntarily will not necessarily lessen disciplinary action and may have no bearing on the determination of appropriate disciplinary action.

The employee's decision to seek prior assistance from the program shall not be used as the basis for disciplinary action and shall not be used against the employee in any disciplinary proceedings except as otherwise provided in this policy. On the other hand, using the self-help programs will not be a defense to the imposition of disciplinary action where either facts proving a violation of this policy are obtained outside of the Employee Assistance Program or other self-help programs once the employee has been notified that he/she is to be tested.

- C. Accordingly, the purposes and practices of this policy and the Employee Assistance Program and other self-help programs are not in conflict and are distinctly separate in application.
- D. No employee's job will be placed in jeopardy, nor will any employee be subject to disciplinary action, for voluntarily requesting help due to substance use and misuse problems prior to being tested. If an employee voluntarily seeks assistance of the City by admitting that he/she has either a drug or an alcohol related problem, then the employee must place himself/herself in a counseling/rehabilitation program recognized and approved by the City. Also, the employee will need to sign a counseling or rehabilitation contract that has been drafted by the City. The employee's job will be held for him/her until the successful completion of the rehabilitation or a counseling program is certified by the proper medical authorities. However, the employee's job will be held for a maximum of 6 months from the beginning of the counseling program. Absences from work due to rehabilitation will be permitted up to the maximum time allowed under this policy and will be charged to authorized leave.

Leave for rehabilitation shall be recorded as leave without pay, except that an employee may choose to charge leave against accumulated annual and/or sick leave, or use a combination of annual leave, sick leave, and leave without pay, subject to Civil Service rules and regulations and City policy.

- E. The employee's counseling/treatment will be at the employee's own expense. If the employee is enrolled in the City's health care plan, then the City's health care plan may be used to cover some of these costs in accordance with the health care plan document, plan benefit allowance, and limitations and exclusions existing at the time that voluntary help is sought. A maximum of two rehabilitation contracts will be permitted during an employee's period of employment with the City. All employees who participate in the City's Assistance Program or other self-help or rehabilitation program will still be expected to maintain acceptable job performance.
- F. The terms and conditions of Paragraphs VIII(D) and VIII(E) do not apply to commissioned personnel of the Police Department who engage in the use of illegal or unauthorized drugs, controlled substances, or drug-related paraphernalia. Such persons who voluntarily admit to the use or misuse of any of the aforementioned substances shall be allowed to resign from current employment.

IX. PROGRAM ADMINISTRATION

- A. This policy shall be amended as necessary to meet the requirements of any federal, state, parish, or City law (requirements or regulations). Any additions or deletions to this policy shall be communicated in writing to all affected employees as necessary. Amendments and exceptions to the policy must have prior approval of the Chief Administration Officer.
- B. This policy as a whole, or any provision, guideline, or procedure contained herein, is not to be considered or interpreted as a binding contractual commitment on the part of the City. Through this policy, the City of New Orleans does not assume or offer to assume any obligations beyond those which may be imposed by applicable law. The City further reserves the right to alter, amend, or discontinue this policy or any procedure, guideline, or provision contained therein, with or without notice, at its sole discretion.
- C. All City vendors, contractors, and subcontractors shall be responsible for monitoring the safety, performance, and behavior of their personnel working on City premises. Vendors, contractors, and subcontractors shall initiate proper procedures and take necessary actions as required by contract, applicable laws, or when a reasonable suspicion or belief of prohibited substance use exists with those in their employ.

X. EMPLOYEE'S OFF-THE-JOB CONDUCT

Any employee whose off-duty conduct that is related to the use, sale, manufacture or abuse of any drug, prescription drug, controlled dangerous substance, or alcoholic beverage that may or may not result in criminal charges or conviction shall be subject to disciplinary action up to and including immediate termination if the City believes that this

POLICY MEMORANDUM NO. 89 (R)

REVISED AS OF 11/15/2022

PAGE 7 OF 8

off-duty conduct possibly could affect such individual's safe performance of the job; jeopardize the safety of the other employees, the general public, or the City's property; or reduce the community's trust in the ability of the City to carry out its responsibilities due to the notoriety or adverse effects of the employee's conduct.

XI. NOTICE OF DISCIPLINARY ACTION

Failure to comply with the provisions of this policy shall be grounds for constructive disciplinary action up to, but not limited to, written reprimands, suspensions, or discharge from employment. In certain situations, and in conformance with Civil Service Rules, discharge may occur even for a first offense.

XII. INQUIRIES

Questions regarding this memorandum should be directed to the Chief Administrative Office, Employee Relations Division at 658-8600.

Attachment:

Employee Statement of Receipt of Substance Use and Misuse Policy