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|  Orange County Sanitation District Personnel Policies | Policy Number: 5.20 |
| | Effective Date: March 22, 2023 |
| Subject: Substance Abuse | Supersedes: September 26, 2018 |
| | Approved by: General Manager |

1.0 PURPOSE

- 1.1 To establish and maintain a drug and alcohol-free workplace.
- 1.2 To reduce the incidences of accidental injury to person or property.
- 1.3 To reduce absenteeism, tardiness, and indifferent job performance.
- 1.4 To provide assistance towards rehabilitation for any employee who seeks Orange County Sanitation District (OC San) help in overcoming addiction to, dependence on or problems with alcohol or drugs.
- 1.5 To maintain a work environment free of alcohol and drug related performance problems, accidents, and injuries.

2.0 ORGANIZATIONAL UNITS AFFECTED

- 2.1 This policy applies to all OC San employees, regardless of their organizational unit. Additionally, all persons who perform any services for OC San, regardless of their employment status, are subject to the provisions of this policy while on OC San property or while performing OC San business.

3.0 DEFINITIONS

- 3.1 Criminal Drug Statute - Any state or federal criminal law involving the manufacture, distribution, dispensation, use, or possession of a controlled substance.
- 3.2 Illegal Drugs - Any drug (a) that is not legally obtainable or (b) that is legally obtainable but has not been legally obtained. The term includes, but is not limited to, cocaine, crystal methamphetamine, heroin, and PCP. It includes prescribed drugs not legally obtained and prescribed drugs not being used for prescribed purposes. It includes controlled substances as defined in the federal Controlled Substance Act. It also includes any substance, which a person holds out to another as an illegal drug, whether or not the substance itself is illegal.
- 3.3 Legal Drugs - Legal drugs include prescribed drugs and over-the-counter drugs, which have been legally obtained and are being used for the purpose for which they were prescribed and manufactured.
- 3.4 Need to Know - A term applied to persons who may reasonably be expected to base administrative managerial, or supervisory activity on a given piece of information to which they would not be otherwise entitled.
- 3.5 Paraphernalia - Drug paraphernalia may include pipes, hypodermic needles, bong, rolling papers, and other items used in the ingestion, consumption, or the preparation for

consumption of illegal drugs.

- 3.6 Reasonable Suspicion - Is a belief, based on objective facts or specific personal observations sufficient to lead a reasonably prudent person to suspect that an employee is under the influence of drugs or alcohol.
- 3.7 Under the Influence - Having the presence of any detectable level of drugs in the body or an alcohol concentration level of .02% or greater.
- 3.8 Controlled Substance – a drug or chemical whose manufacture, possession, or use is regulated under state and/or federal law.

4.0 POLICY

- 4.1 It is the policy of OC San to maintain a safe workplace, which is free of alcohol, marijuana and illegal possession and/or use of drugs. OC San is firmly committed to achieving a drug free workplace and will continue making a good faith effort to achieve an alcohol and drug free workplace by consistently enforcing every element of this policy.

5.0 PROCEDURE

5.1 ILLEGAL DRUGS

- 5.1.1 The sale, purchase, offer to sell or purchase, use, manufacture, distribution, dispensation, or possession of, or being under the influence of, Illegal Drugs during OC San time, or while engaged in OC San business, or on, or in, OC San premises, or property, is prohibited.
- 5.1.2 No employee shall bring drug paraphernalia onto OC San premises or property or into OC San vehicles.

5.2 OTHER DRUGS

- 5.2.1 If an employee has any question or concern as to his or her ability to safely perform the duties of his or her job while taking a legal prescription drug, the employee has an affirmative obligation to report the use of that drug to his/her supervisor, division management, Risk Management or Human Resources staff.
- 5.2.2 Upon receiving such notification, the employee may be temporarily assigned to alternative work duties and/or asked to provide a release to OC San from the employee's physician for a determination of the employee's ability to work while using that drug.
- 5.2.3 An employee may continue to perform his or her regularly assigned job duties, while taking a legal prescription drug, if OC San has determined, on a case-by-case basis, after consulting with the employee's physician, that the employee does not pose a threat to the employee's own safety or to the safety of co-workers, and that the employee's job performance is not adversely affected by the legal prescription drug. Otherwise, the employee may be required to take a leave of absence or comply with other appropriate action determined by management, such as adhering to an employer initiated fitness for duty testing.

5.3 ALCOHOL AND MARIJUANA

- 5.3.1 No alcoholic beverages or recreational marijuana may be brought onto or

consumed on OC San time or property or while wearing an OC San identifiable uniform.

5.4 PROHIBITION AGAINST EMPLOYEES HAVING ILLEGAL DRUGS, MARIJUANA OR ALCOHOL IN THEIR BODIES DURING WORKING TIME

5.4.1 All employees of OC San are expected to report for work with no residue or metabolite of Illegal Drugs or marijuana in the body or alcohol concentration level of .02% or greater. Employees must not have any residue or metabolite of Illegal Drugs or marijuana in the body or alcohol concentration level of .02% or greater at any time while on the job. Compliance with these rules is considered an essential job qualification for all employees.

5.4.1.1 Employees still under the influence of a medication legally prescribed to them that cause a loss of motor skill, reaction time, or decision making must report the use to their supervisor.

5.4.2 When an alcohol screen test indicates an alcohol concentration level of .02% or greater, the employee will be prohibited from performing the duties of his or her job for twenty-four (24) hours. Employees may also face disciplinary action for being under the influence of alcohol if they test positive for alcohol concentration of .02% or greater, subject to the exceptions set forth in Section 14.0.

5.4.3 When a marijuana screen test indicates a marijuana concentration of any amount, the employee will be prohibited from performing the duties of his or her job for twenty-four (24) hours. Employees may also face disciplinary action for being under the influence of marijuana if they test positive for marijuana.

5.4.4 Employees may be subject to discipline up to and including termination for any marijuana test indicating any amount of marijuana or alcohol screen test that indicates an alcohol concentration level of .02% or greater. Refer to Section 14.3 for further information on alcohol screen tests.

5.5 ENFORCEMENT OF RULE PROHIBITING EMPLOYEES FROM HAVING ILLEGAL DRUGS OR ALCOHOL IN THEIR BODIES DURING WORK TIME

5.5.1 POST-EMPLOYMENT OFFER ALCOHOL/DRUG SCREENING

5.5.1.1 After OC San extends a conditional employment offer to a candidate selected through a recruitment process, it will require the prospective employee to pass an alcohol/drug screen test, for specific job classifications, administered by a medical facility designated by OC San.

5.5.1.2 Any prospective employee refusing to submit to such examination shall not be hired by OC San.

5.5.1.3 Any prospective employee failing the alcohol/drug screen test shall be rejected from further consideration from employment with OC San for at least six (6) months.

5.5 REASONABLE SUSPICION ALCOHOL/DRUG SCREENING

5.5.1 Reasonable suspicion shall be determined by a supervisor or manager and, where possible, corroborated by a trained Human Resources representative or other trained management representative.

- 5.5.2 Specific personal observations must be based on a supervisor, manager, or Human Resources representative's direct observations and not hearsay.
- 5.5.3 Objective facts and specific personal observations may be based upon, but are not limited to, the following:
 - 5.5.3.1 Direct observations of substance abuse or symptoms of being under the influence such as: an employee's manner, disposition, muscular movement, appearance, behavior, speech, or breath odor.
 - 5.5.3.2 An employee's possession or use of Illegal Drugs, recreational marijuana, alcohol, or Paraphernalia while on duty, in the workplace or on OC San property, including evidence that an employee has used, possessed, sold, solicited, or transferred drugs while on duty or while on OC San property or while operating an OC San vehicle, machinery, or equipment that is the property of or leased/rented by OC San.
- 5.5.4 The objective facts and specific personal observations upon which reasonable suspicion is based must be documented.
- 5.5.5 When OC San has a reasonable suspicion that an employee is under the influence of drugs or alcohol, the employee shall be required to undergo an alcohol/drug screen test as soon as reasonably achievable. Prior to being transported to the alcohol/drug screen test facility, employees will be given a copy of this policy and informed of their rights to contact an employee representative.
 - 5.5.5.1 An employee's refusal to submit to an alcohol/drug screen test may constitute insubordination and the employee may be subject to discipline up to and including termination.
 - 5.5.5.2 Any employee failing such a test, or who tampers with the test specimen, may be subject to discipline up to and including termination.
 - 5.5.5.3 The Human Resources Department shall arrange for the employee to be transported to the testing facility and then driven home. The employee shall not be permitted to drive while subject to reasonable suspicion testing.
- 5.5.6 Reasonable Suspicion Training
 - 5.5.6.1 OC San shall ensure that managers, supervisors, Human Resources and Risk Management representatives, and/or other designated staff receive training on reasonable suspicion. The training shall include, but will not be limited to, the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

5.6 POST ACCIDENT TESTING

- 5.6.1 An employee who directly contributes to a job-related accident or an accident involving OC San property shall be subject to a drug/alcohol screen test as soon as practicable when the accident results in:
 - 5.6.1.1 A fatality;

- 5.6.1.2 The issuance of a citation under State or local law for a moving traffic violation and bodily injury that requires immediate medical treatment away from the scene; or
- 5.6.1.3 The issuance of a citation under State or local law for a moving traffic violation and disabling damage to any vehicle that requires tow away.
- 5.6.1.4 Property damage that occurs on OC San facilities and there is a direct observations of substance abuse or symptoms of being under the influence such as: an employee's manner, disposition, muscular movement, appearance, behavior, speech, or breath odor.

5.7 **EMPLOYEE ASSISTANCE PROGRAM**

- 5.7.1 OC San policy is to help employees with substance abuse problems who voluntarily seek assistance. Accordingly, OC San provides a method by which employees may come to management without fear of reprisal and seek assistance.
- 5.7.2 Any employee who feels that he or she has developed an addiction to, dependence upon or problem with the use of alcohol or drugs, is encouraged to seek assistance. Assistance may be sought by writing in confidence to, or asking for a personal appointment with the Director of Human Resources.
 - 5.7.2.1 Each request for assistance shall be treated as confidential. Only those persons with a need to know shall be made aware of such requests.
- 5.7.3 Human Resources shall refer employees seeking assistance to an appropriate treatment organization.
- 5.7.4 Rehabilitation is the responsibility of the employee, but any employee seeking medical attention for alcoholism or drug addiction shall be entitled to benefits available under OC San's group medical insurance plans with the restrictions and limits stated in the applicable plan summary. Employees on rehabilitation leave shall be subject to the extended Medical Leave and General Leave of Absence provisions in OC San's Personnel Policies and Procedures.
- 5.7.5 To be eligible for continued employment after rehabilitation, the employee must provide certification that he/she was continuously enrolled in a treatment program and actively participated in that program.
 - 5.7.5.1 Any employee suffering from an alcohol or drug problem who rejects treatment or who leaves a treatment program prior to being properly discharged therefrom shall be dismissed from employment with OC San.
- 5.7.6 Any employee returning to active employment from rehabilitation shall be required to sign a Return to Work Agreement providing:
 - 5.7.6.1 Unannounced testing for a minimum of twelve (12) months to ensure that the employee is free from the alcohol or drug problem.
 - 5.7.6.2 Notice that failure of, or refusal to take, such a test during this period shall constitute just cause for immediate dismissal of the employee.

5.7.6.3 Notice that the employee shall maintain an acceptable attendance and performance record and comply with all other OC San policies upon his/her return to work. Failure to maintain an acceptable attendance and performance record shall constitute just cause for immediate dismissal.

5.7.7 No disciplinary action shall be taken against any employee who, for the first occurrence, comes forward to OC San with his/her problem prior to 1) OC San becoming aware of a violation of the drug and alcohol policy, or 2) a request by OC San to undergo drug testing. However, once OC San learns of a violation of the drug and alcohol policy or the employee tests positive in a drug test, or if there is a reoccurring problem, OC San is not obligated to grant the employee General Leave for rehabilitation. All testing procedures shall be in conformance with National Institute on Drug Abuse standards, and shall be conducted at a reasonable time at OC San's expense.

5.8 **INSPECTIONS**

5.8.1 In order to ensure the safety of the workplace and the workforce, and to protect and preserve OC San's property, OC San may from time to time inspect OC San's vehicles, tool boxes, lockers, desks, file cabinets and other OC San property.

5.8.2 These inspections may not be announced and employees should have no expectation of privacy with respect to items brought onto OC San property and/or stored in such OC San facilities.

5.8.3 It is a condition of employment for employees to cooperate with these inspections. Refusal to consent to such an inspection amounts to insubordination and may constitute cause for termination.

5.8.4 A representative from Human Resources must be present during any inspection of OC San property due to a reasonable suspicion that the Substance Abuse policy has been violated.

5.9 **DRUG CONVICTIONS**

5.9.1 All OC San employees or persons performing services for OC San who are convicted under a criminal drug statute for a violation occurring in the workplace are required to notify the Human Resources Department in writing within five (5) calendar days after such conviction.

5.9.2 Pursuant to the Drug Free Workplace Act, the Human Resources Department shall notify the appropriate contracting authority within ten (10) calendar days after learning of an individual's drug conviction from either the individual or any other source. Within thirty (30) calendar days of learning of an individual's drug conviction, OC San shall take appropriate corrective action.

5.10 **DEPARTMENT OF TRANSPORTATION (DOT) REGULATIONS**

5.10.1 Every driver who operates a commercial motor vehicle in interstate or intrastate commerce, and is subject to the commercial driver's license requirements of the Department of Transportation (DOT), Federal Highway Administration CFR Part 382 is subject to OC San's Anti-Drug and Alcohol Program. OC San will ensure that all alcohol or controlled substances testing conducted under the Substance Abuse and Alcohol Misuse Plan complies with the procedures set forth in CFR

Part 40.

5.10.2 Any employee promoted, reassigned or transferred into a classification subject to the Department of Transportation requirements will be required to successfully complete alcohol and controlled substance testing prior to assuming the position.

5.11 **DRUG FREE AWARENESS PROGRAM**

5.11.1 OC San shall require all employees to attend biannual Reasonable Suspicion Training which shall include a module on Drug Free Awareness informing employees about the dangers of drug abuse in the workplace, OC San's Substance Abuse Policy, available counseling, rehabilitation, and employee assistance programs available through OC San, and the penalties for violating OC San's Substance Abuse Policy.

5.12 **POLICY DISTRIBUTION**

5.12.1 Copies of this policy shall be disseminated to current employees in biannual Prevention of Workplace Violence training and later hired employees in New Employee Orientation. Acknowledgement forms shall be included with the policy copy to be signed by employees and filed in personnel files. Temporary/contract workers shall receive a copy of this policy and an acknowledgment form through their employers. Signed temporary/contract worker acknowledgement forms shall be filed in the Human Resources Department.

5.13 **DISCIPLINARY ACTION**

5.13.1 Except as otherwise provided in Section 5.7, violation of the Substance Abuse Policy may result in disciplinary action, up to and including termination, even for a first offense.

6.0 EXCEPTIONS

6.1 If any portion of this policy is found to be at variance with the provisions of an approved Memorandum of Understanding (MOU), the MOU provisions shall prevail with respect to employees in the affected bargaining unit.

6.2 It will not be considered a violation of this policy for employees to store sealed alcoholic beverages in their personal vehicle as long as such storage is out of public view and does not remain in the vehicle for more than the period of one (1) consecutive work day. Further, sealed alcoholic beverages must remain in the employee's vehicle out of public view at all times while on OCSD property.

6.3 If an alcohol screen test indicates an alcohol concentration level of .02% or greater but less than .04%, the employee will not be subject to discipline if the following conditions apply:

6.3.1 The employee holds a position that is not subject to DOT regulations; and

6.3.2 It is the first time the employee has received an alcohol screen test indicating an alcohol concentration level of .02% or greater.

7.0 PROVISIONS AND CONDITIONS

7.1 No employee shall be eligible for rehabilitation under the employee assistance program

more than one time. The reoccurrence of an alcohol or drug problem shall be cause for dismissal.

- 7.2 Under no circumstances shall the testing process be delayed due to the unavailability of an employee representative.

8.0 RELATED DOCUMENTS

- 8.1 OC San's Substance Abuse and Alcohol Misuse Plan - DOT CFR Part 40
- 8.2 Drug Free Workplace Act
- 8.3 Substance Abuse Policy Acknowledgement Forms
- 8.4 Reasonable Suspicion Checklist
- 8.5 Policy 1.4, Recruitment & Selection
- 8.6 Policy 4.8, Employee Assistance Program
- 8.7 Policy 5.1, Rules of Conduct
- 8.8 Policy 5.2, Discipline
- 8.9 Policy 5.19, Vehicle Usage
- 8.10 Safety Policy 202 – (Accident Investigation and Reporting)
- 8.11 The Americans with Disabilities Act Amendments Act of 2008