



IN CAMERA

ADMINISTRATIVE REPORT

Report Date: February 5, 2018
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Meeting Date: February 20, 2018

TO: Vancouver City Council
FROM: Andrew Naklicki, Chief Human Resources Officer
SUBJECT: Revision to Policy AE-021-01 (Substance Abuse Policy)

IN CAMERA RATIONALE

This report is recommended for consideration by Council on the In Camera agenda as it relates to Section 165.2(1) of the *Vancouver Charter*: (c) labour relations or other employee relations.

RECOMMENDATION

- A. THAT Council approve revisions to the City's Corporate Policy: *Substance Abuse Policy* as reflected in Appendix A, including its updated name: *Alcohol, Controlled Drugs, and Medications Policy*.
- B. THAT Council delegate authority to the Office of the Chief Human Resources Officer to make future amendments to the Policy as required.

REPORT SUMMARY

The City is committed to promoting a healthy and safe working environment for all its employees and members of the public who interact with the City. As part of that commitment, Human Resources has recently updated its *Substance Abuse Policy* and renamed it: *Alcohol, Controlled Drugs, and Medications Policy* to reflect those updates and aligns with best practices various legislation.

The revised Policy also contemplates the federal *Cannabis Act* and the potential impacts on the workplace when it becomes law. Cannabis, though legal, will be a highly controlled and regulated substance. This is reflected in the Definitions under **Controlled Drugs** well as in **Possession** under Responsibilities. The Policy remains a zero tolerance Policy with fitness for work and safety paramount.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

The current Policy was approved by Council - 1998/03/05

REPORT

Background/Context

There have been many developments in the field and case law has evolved since the current Policy was implemented in 1998. The current Policy no longer aligns with what progressive employers are doing nor does it reflect the City's current accommodation practices and obligations in that regard.

Labour Relations engaged in a consultation process with various stakeholders: Law (internal/external), Human Resources Consultants, Driver Services, Organizational Health & Safety and the City's Union Executives. The Union consultation process was thorough and positive with their feedback contemplated and incorporated where appropriate.

Strategic Analysis

The revised *Alcohol, Controlled Drugs, and Medications Policy* incorporates key best practices drug & alcohol policy clauses:

Scope

- Applies to all City employees, volunteers and contractors

Purpose Statement

- Sets clear expectations and the City's commitment to promoting a safe workplace.

Definitions

- Clearly defines and differentiates Alcohol, Controlled Drugs and Medications. Also provides a Substance Use Disorder definition as per the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5)

Employee Responsibilities

- Sets-out employee duties regarding fitness for work, refraining from using, selling, distributing and possession.

Encouragement for Self-Reporting

- Encourages employees affected by a Substance Use Disorder to seek treatment and other appropriate help.

Statements of Support/Accommodation

- The City recognizes its duty to accommodate employees affected by a Substance Use Disorder to the point of undue hardship.

Consequences of Non-Compliance

- A clear statement that culpable conduct is subject to discipline up to and including termination.
**Allows for flexibility for case-by-case analyses taking relevant circumstances into account.

Drug & Alcohol Testing (supplementary process)

- Outlines reasonable cause test for Post Incident/Near-Miss events.

Implications/Related Issues/Risk (if applicable)

Human Resources/Labour Relations /Legal

The current Policy does not align with Workplace Law, Human Rights legislation and accommodation obligations. Given this inconsistency, managers and Human Resources/Labour Relations staff do not rely on the current Policy to guide daily operational decisions.

In developing the recommended policy changes, Labour Relations staff engaged in a comprehensive consultation with the executives from CUPE 15, CUPE 1004, IAFF Local 18, IBEW and IATSE. The unions were provided a draft of the revised Policy and invited by the Chief Human Resources Officer to provide feedback. Staff also met with representatives of each union individually to walk through the rationale and construction of the Policy. CUPE 15, CUPE1004 and IAFF Local 18, in particular, provided extensive feedback, much of which was incorporated in the final draft. Labour Relations staff also conducted follow-up meetings with CUPE 15, CUPE 1004 and IAFF Local 18 to review the amendments, including fulsome discussions regarding intent and application of the revised policy.

CONCLUSION

The proposed Policy promotes a healthy and safe workplace for its employees while outlining clear responsibilities and expectations coupled with consequences for contravention. The proposed amendments align with human resource best practices, workplace safety regulations and obligations as well as current human rights legislation.

The Chief Human Resources Officer recommends that the City Council approve the recommended updated draft Policy.

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SUBJECT: Alcohol, Controlled Drugs, and Medications Policy - DRAFT 2017	
CATEGORY: Employment	POLICY NUMBER: AE-021-01

A. SCOPE

This policy applies to all City employees, volunteers and contractors performing work on behalf of the City.

B. DEFINITIONS

Alcohol: includes wine, beer, distilled spirits and any liquid containing ethyl alcohol, whether or not intended as a beverage. It is not intended to include other products containing alcohol which are not intended for consumption, provided such products are used as directed.

Controlled Drug: includes any substance which affects physical or mental capacity (other than Alcohol, Medication or food), the possession, use, or sale of which is prohibited, restricted or controlled by law.

Medication: means a drug that is intended by the manufacturer, a physician, or the user for the treatment of a physical or mental condition, whether or not the drug is prescribed by a physician.

Substance Use Disorder: As defined by the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5) and commonly referred to as "addiction".

C. PURPOSE

1. The City of Vancouver (the "City"), and those who perform services on its behalf, have a shared responsibility to maintain a safe and healthy work environment. The use of Alcohol, Controlled Drugs and Medications can have a serious adverse effect on the health, safety and productivity of City employees, on the work environment and the public.
2. The purpose of this policy is to:
 - a. Set expectations regarding the use of Alcohol, Medication or Controlled Drugs that may render an employee unfit for work, impair performance or cause risk of harm to health and safety; and
 - b. Ensure employees are aware of the City's commitment to a safe workplace, and the potential serious consequences which may flow from breaches of this Policy.
3. Considering the foregoing, the City is committed to:
 - a. Promoting a safe, healthy and productive working environment for all of its employees, contractors, volunteers, and members of the public who interact with the City.
 - b. Providing encouragement and opportunities for individuals affected by a Substance Use Disorder to seek early assistance and pursue recovery.
 - c. Effectively managing substance use issues which:
 - i. Impact the workplace, or

- ii. Affect an individual's ability to safely, reliably and efficiently perform their duties.
 - d. Working with all parties to accommodate individuals affected by a Substance Use Disorder and managing the associated risks, particularly in safety sensitive positions.
- 4. The City's commitment is supported by its:
 - a. Corporate vision, mission, values, and corporate direction.
 - b. Occupational Health and Safety Policy (AE-010-02).
 - c. Safe Driving Policy (AE-027-02).
- 5. Further support to this policy is provided by:
 - a. The City's Employee & Family Assistance Program (EFAP) provider.
 - b. Supplementary Processes which may be developed as required, or in response to changes in the law or applicable jurisprudence.

D. RESPONSIBILITIES

- 1. **All City employees, volunteers and contractors performing work on behalf of the City** are to familiarize themselves with this Policy and adhere to it. This includes specific responsibilities, in respect of:
 - a. **Possession:**
 - i. To not cultivate, manufacture, distribute, offer or sell Controlled Drugs while at work or on break, while attending at City premises in their capacity as a City employee, or while operating a City vehicle.
 - ii. To not possess a Controlled Drug while at work or on a break, while attending at City premises in their capacity as a City employee, or while operating a City vehicle, unless:
 - a. the Controlled Drug is legally in the possession of the employee, volunteer, or contractor; and
 - b. the Controlled Drug is contained in its original, sealed and unopened packaging.
 - iii. To not possess open Alcohol while at work or on break, while attending at City premises in their capacity as a City employee, or while operating a City vehicle. An exception can be made for business or protocol functions where Alcohol consumption is specifically authorized in advance by Human Resources or a General Manager.
 - iii. To not distribute, offer or sell Medication for which a prescription is required while at work or on break, while attending at City premises in their capacity as a City employee, or while operating a City vehicle.
 - b. **Consumption:**
 - i. To abstain from use of Alcohol, Medication or Controlled Drugs prior to commencing work in a manner that could render them unfit to perform their duties safely and efficiently.
 - ii. To abstain from use of Alcohol and Controlled Drugs while at work or

on break, while attending at City premises in their capacity as a City employee, or while operating a City vehicle. An exception can be made for business or protocol functions where Alcohol consumption is specifically authorized in advance by Human Resources or a General Manager.

- iii. To act responsibly with regard to the use of Medication, whether over-the-counter or prescribed by a physician, to prevent adverse effects on work performance. Individuals are responsible to consult a physician or pharmacist when the potential effects of a Medication or combination of Medications on work performance are unknown to the individual. Any potential mental or physical impairment or other adverse effect associated with the use of a Medication which affects work performance must be brought to the attention of a responsible manager immediately.

c. Performance:

- i. To report fit for duty whenever attending work, and remain fit for duty while on City business and premises.
- ii. To notify a supervisor or manager, in responding to a call-in situation, that they are not fit for duty.
- iii. To notify a supervisor or manager if they observe another employee, volunteer or contractor whose ability to work appears to be affected by alcohol, a drug or other substance so as to endanger the person or anybody else.

d. Treatment and Accommodation:

- i. To assume responsibility for substance use issues, seeking advice and following appropriate treatment to address substance use issues. Employees may access assistance through the City's EFAP, their personal physician or appropriate community services for help with any Alcohol or drug use issues that may be affecting work performance or attendance.
- ii. To co-operate in the accommodation process, including providing necessary medical information in a timely manner, and making all reasonable efforts to treat Substance Use Disorder. If an employee refuses or fails to disclose relevant information, this may result in delay, either in accommodation or return to work, or may impede the City's ability to accommodate any disability.

2. Employees who are subject to a License Check under the City's Safe Driving Policy, Policy Number AE-027-02 are additionally responsible for:

- a. Immediately advising their exempt supervisor of any loss or suspension of their driver's license when such loss or suspension:
 - i. Is required to be reported under the National Safety Code (NSC). (The NSC governs commercial vehicles licensed with a gross weight of more than 5,000 kg or has a seating capacity of 10 or more passengers plus the driver) and/or;
 - ii. Impacts work-related driving.

- b. Immediately informing their supervisor if they have been charged with any impaired driving offence (whether for drugs or Alcohol). Impaired driving includes (but is not restricted to) refusing to provide a sample for testing at the request of a police officer.

E. ACCOMMODATION

1. The City recognizes its duty to accommodate employees with disabilities, including Substance Use Disorder, to the point of undue hardship.
2. All parties have a shared responsibility concerning Substance Use Disorder treatment. The City:
 - a. Recognizes that Substance Use Disorder is a treatable disability, subject to relapse, where early intervention greatly improves the probability of a lasting recovery.
 - b. Encourages employees affected by Substance Use Disorder to seek treatment and rehabilitation as soon as possible.
 - c. Depending on the circumstances, may assist employees with their treatment and rehabilitation efforts.
3. The City is:
 - a. Not obligated to accommodate beyond the point of undue hardship.
 - b. Not required to continue to employ any person whose job performance is impaired beyond the limit of reasonable accommodation because of a Substance Use Disorder.
 - c. Not required to continue to employ or to re-employ any person who has participated in treatment and/or rehabilitation if that person's job performance remains impaired beyond the limit of reasonable accommodation as a result of addiction to Alcohol, Medication or Controlled Drugs.

F. CONFIDENTIALITY

1. Medical information is the property of the employee; however, failure to provide may impact an employee's Return to Work, Stay at Work or entitlement to benefits or the accommodation process.
2. Unless the employee otherwise provides consent, the City will:
 - a. Maintain the confidentiality of information obtained under this Policy. The City will use obtained information only for the purposes of administering this Policy, where limited disclosure is necessary for related health and safety concerns (e.g. where there is deemed to be a potential for risk to self, others or the City), or as required by law.
 - b. Only disclose to the employee's supervisor and superior managers information related to the employee's fitness for work and any applicable restrictions; and further, such disclosure will only be undertaken where necessary for a legitimate work purpose.

G. CONSEQUENCES OF NON-COMPLIANCE

1. Consequences flowing from a contravention of this Policy will be determined on a case by case basis, taking into account the relevant circumstances. However, in general:
 - a. Employees who contravene this Policy may be subject to:
 - i. In the case of culpable conduct, discipline up to and including termination of employment.
 - ii. In the case of non-culpable conduct, measures such as, but not limited to: removal from active duty; drug and/or Alcohol testing; transfer to non-safety sensitive duties; medical assessment; monitoring programs.
 - iii. In the case of hybrid conduct (e.g. Substance Use Disorder related conduct which contains elements of culpable and non-culpable behavior), any combination of the measures outlined in (i) and (ii) above, depending on the circumstances of each case.
 - b. Employees who are in safety sensitive positions are additionally responsible for understanding that more significant consequences may result from their contravention of this policy, as impaired performance creates more serious safety risks for themselves and others.
 - c. Contractors who contravene this policy may be subject to termination of their contract.
 - d. Volunteers who contravene this policy may be subject to consequences up to and including termination of their voluntary assignment.

H. RELATED POLICIES

AE-010-02 Occupational Health and Safety
AE-027-02 Safe Driving Policy

I. APPROVAL HISTORY

ISSUED BY: Director of HR	APPROVED BY: Council	DATE: 1998/03/05
REVISED BY:	APPROVED BY:	DATE: yyyy/mm/dd

Supplementary Processes

SP.1 Drug and Alcohol Testing

- SP.1.a. Alcohol and/or drug testing may be used in the investigative process regarding Alcohol and drug issues at the work place.
- SP.1.b. An employee will not be unreasonably asked to undergo Alcohol or drug testing.
- SP.1.c. The City may decide to require that an employee undergo Alcohol or drug testing in three situations:
 - SP.1.d.i **Reasonable cause**, where an employee exhibits, or evidence points to, behavior sufficient to give the City reason to believe that the employee may not be fit for duty due to alcohol or drugs. Observed behaviours may include slurred speech, smelling of Alcohol, etc.
 - SP.1.d.ii **Post incident / Near miss**, where an event has occurred and there is a need to inquire into that a significant event to determine the cause. This is done only in cases where there is a possibility that the event may have been caused by an employee's substance use. Testing is only completed by a qualified service provider and paid for by the employee's business unit.
 - SP.1.d.iii **Post treatment** (random testing for monitoring abstinence), where a medical professional has recommended testing as part of relapse prevention or post treatment regime. In most cases monitoring is recommended following treatment, to mitigate safety risks, especially when the employee is returning to a safety sensitive position or where supervision is limited. Depending on the circumstances, abstinence monitoring may be recommended in non-safety sensitive positions. Testing is only completed by a qualified service provider and paid for in accordance with the employee's individual Return to Work Agreement and/or other plans.