

# Olivehurst Public Utility District

## Agenda Item Staff Report



**Meeting Date: June 18, 2026**

### **Item description/summary:**

#### **Adopt the Olivehurst Public Utility District Employee Cannabis Use & Testing**

**Policy:** Staff proposes that the Board adopt the attached Employee Cannabis Use & Testing Policy to establish clear standards for employee conduct related to cannabis, comply with recent changes in California law, and provide a framework for addressing workplace safety. The key elements of the proposed Policy are as follows:

- **AB 2188 / SB 700 Compliance.** California Government Code Section 12954 (AB 2188, effective January 1, 2024) prohibits employers from discriminating against employees based on off-duty, off-premises cannabis use or on the basis of drug tests that detect only nonpsychoactive cannabis metabolites. SB 700 prohibits employers from requesting information from applicants about prior cannabis use. The Policy incorporates these protections.
- **Impairment-Based Framework.** The Policy does not impose automatic termination for a cannabis-positive test result. Disciplinary action is based on impairment indicators, role sensitivity, incident context, prior history, and applicable law and collective bargaining agreements.
- **Oral Fluid Testing.** The Policy designates oral fluid (saliva) testing as the default method for cannabis testing. Oral fluid testing detects active psychoactive THC and is aligned with recent-use detection windows, consistent with the requirements of Government Code Section 12954.
- **Safety-Sensitive Positions.** The Policy defines Safety-Sensitive Positions narrowly, limited to roles where a momentary lapse in attention or coordination could result in serious injury, significant property damage, or substantial environmental or public health harm. Administrative and office-based positions are excluded unless their essential functions regularly include safety-sensitive tasks.
- **Progressive Discipline.** Violations are addressed through progressive discipline. First violations without aggravating factors result in a written warning, mandatory education, and Employee Assistance Program referral. Heightened discipline, including suspension or termination, is reserved for aggravating circumstances such as accidents causing injury, willful

misconduct, refusal to test, or repeated violations.

- **Prohibited Conduct.** Employees may not report to duty while impaired by cannabis, use cannabis during work time or on District premises, distribute cannabis on premises, or operate District vehicles or equipment while impaired.
- **Collective Bargaining.** Where a collective bargaining agreement applies, the Policy will be administered consistent with the CBA, and any mandatory subjects of bargaining will be addressed with the applicable union prior to implementation.

#### **Fiscal Analysis:**

There is no significant fiscal impact anticipated. Minor costs may be incurred for supervisor training on impairment recognition and for oral fluid testing supplies, which can be absorbed within existing operational budgets.

#### **Employee Feedback**

The Policy will be distributed to all employees upon adoption and reviewed during employee training sessions. Where a collective bargaining agreement applies, mandatory subjects of bargaining will be addressed with the applicable union prior to implementation.

#### **Sample Motion:**

That the Board of Directors adopt the attached Olivehurst Public Utility District Employee Cannabis Use & Testing Policy and direct the General Manager to distribute the Policy to all employees and to address any mandatory bargaining obligations with the applicable union(s) prior to implementation.

Prepared by:

Joan Cox, General Counsel

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# OLIVEHURST PUBLIC UTILITY DISTRICT

## *(Employee Cannabis Use & Testing Policy)*

### **1. Purpose and Scope**

This Policy establishes the Olivehurst Public Utility District (the “District”) standards for employee conduct related to cannabis, outlines testing methods and procedures, and sets forth an impairment-based framework for addressing workplace safety, performance, and conduct. The goals are to: (a) protect public and employee safety; (b) respect applicable employee rights under state and federal law, including protections for lawful off-duty cannabis use under California Government Code section 12954; (c) ensure compliance with federal, state, and local funding and regulatory requirements; and (d) provide clear expectations and procedures for supervisors and employees.

This Policy applies to all employees, interns, and volunteers of the District, including temporary, part-time, seasonal, grant-funded, and contract personnel where the contract requires adherence to agency policies. Where a collective bargaining agreement (CBA) applies, this Policy shall be administered consistent with the CBA, and any mandatory subjects of bargaining will be addressed with the Union prior to implementation to the extent required by California labor laws.

### **2. Definitions**

2.1 Cannabis: All parts of the plant *Cannabis sativa* L. and any derivative or product containing cannabinoids, including THC and CBD, whether lawful or unlawful under state and federal law, excluding FDA-approved prescription medications containing cannabinoids when used as prescribed.

2.2 THC: Delta-9-tetrahydrocannabinol and psychoactive THC analogs, including synthetic equivalents and isomers as classified under California Health and Safety Code section 11054, subdivision (d)(20), subject to testing under this Policy. For purposes of this Policy, “THC”

includes Delta-8-tetrahydrocannabinol, Delta-10-tetrahydrocannabinol, and other psychoactive cannabinoid isomers regardless of derivation source (plant-derived or synthetic).

2.3 On Duty/Work Time: All periods when an employee is performing services for the District, including paid standby, overtime, and time on the District's premises or worksites, whether owned, leased, or controlled by the District, and when operating agency vehicles or equipment. Authorized meal and rest breaks taken off premises are not Work Time unless the employee is on call or required to remain available for immediate return to duty.

2.4 Premises: All property, buildings, facilities, vehicles, worksites, and field locations owned, leased, managed, or controlled by the District.

2.5 Impairment: A state in which an employee's faculties are diminished to the extent that the employee's performance, judgment, safety, or conduct is adversely affected, as indicated by contemporaneous, articulable observations of appearance, behavior, speech, bodily control, or performance; corroborated where appropriate by testing indicating recent use of psychoactive THC. Impairment determinations shall be based on a totality-of-the-circumstances assessment, which may include comparison to the employee's established baseline performance and conduct where such baseline documentation is available.

2.6 Safety-Sensitive Position (Narrowly Tailored): A job classification in which a momentary lapse of attention, judgment, or motor coordination could reasonably result in serious injury or death to the employee or others, significant damage to property or critical infrastructure, or substantial environmental or public health harm. Safety-Sensitive Positions are limited to roles that routinely and as an essential function involve one or more of the following:

- a) Operation of heavy machinery, commercial motor vehicles, emergency vehicles, or equipment requiring a commercial driver's license;
- b) Firefighting, emergency medical response, or direct patient care in emergency settings;
- c) Work on energized electrical systems, at heights, in confined spaces, or with hazardous materials where errors can cause catastrophic injury;
- d) Control room/dispatch functions integral to public safety communications, power/water treatment plant operations, or critical infrastructure monitoring;
- e) Any role subject to specific federal mandates requiring stricter substance standards as a condition of funding, certification, or licensure.

Positions primarily administrative, clerical, professional, or office-based, including those limited to computer, phone, and routine office equipment use, are not Safety-Sensitive unless the

position's essential functions regularly include tasks described in (a)–(f). Hybrid or blended-role positions in which an employee performs any Safety-Sensitive duties as a regular part of their responsibilities—even if the employee also performs administrative or office-based tasks—shall be classified as Safety-Sensitive. An employee's classification is determined by the highest-risk essential function of the position.

2.7 Reasonable Suspicion: Specific, contemporaneous, articulable observations concerning an employee's appearance, behavior, speech, odors, performance, or involvement in a workplace incident suggesting impairment while on duty or on Premises.

2.8 Post-Incident: Following a workplace accident, near-miss, injury, property damage, or safety-related event.

2.9 Designated Testing Vendor/Lab: The certified third-party provider selected by the District to collect and analyze specimens consistent with this Policy and state and federal requirements.

2.10 Employee Product Verification Responsibility: Employees are responsible for verifying that any cannabis, hemp, or cannabinoid products they use do not contain THC at levels that could result in a positive test under this Policy. The District recognizes that gray-market and mislabeled products may enter the marketplace with inaccurate labeling regarding THC content. Employees bear the responsibility to exercise due diligence in selecting products and should be aware that products marketed as "THC-free" or "CBD-only" may nonetheless contain detectable levels of THC.

2.11 Hemp-Derived Products: Certain hemp-derived products, including those containing Delta-9 THC derived from industrial hemp, may not meet the definition of "cannabis" under the California Health and Safety Code but may nonetheless have psychoactive properties and may trigger a positive test result. Use of such products does not excuse a positive test or on-duty impairment under this Policy.

### **3. Prohibited Conduct**

Employees shall not:

3.1 Report to duty or remain on duty while impaired by cannabis.

3.2 Use, ingest, smoke, vape, or otherwise consume cannabis during Work Time.

3.3 Distribute, sell, or manufacture cannabis on Premises, in agency vehicles, or while performing agency business, except as required for bona fide law enforcement or evidence-handling functions.

3.4 Use or possess cannabis on Premises at any time, including during breaks or meal periods. For purposes of this section, “possess” includes cannabis on the employee’s person, in personal lockers or storage areas on District property, in personal vehicles parked on District property, or in any District-owned or controlled space; provided, however, that this prohibition shall not apply to the lawful use of medical cannabis as a reasonable accommodation in accordance with applicable law, except where such use would impair job performance, create a safety risk, or otherwise be prohibited by law.

3.5 Operate agency vehicles, heavy equipment, or perform Safety-Sensitive functions while impaired by cannabis.

3.6 Refuse or fail to cooperate with drug testing authorized under this Policy, including refusal to provide an adequate specimen, tampering, or obstructing the process.

3.7 Violate any stricter federal, grant, licensure, or contractual requirements applicable to the employee’s role.

3.8 Notwithstanding any other provision of this Policy, the District shall not discriminate against an employee or applicant based on the person’s use of cannabis off the job and away from the workplace, consistent with California Government Code section 12954. This protection does not apply to employees in positions that require a federal government background investigation or security clearance, positions subject to federal testing mandates as a condition of funding or licensure, or where otherwise excepted by law.

3.9 The District shall not request information from an applicant for employment relating to the applicant’s prior use of cannabis, except as permitted under California Government Code section 12954, subdivision (b), or other applicable law.

Nothing in this Policy permits employees to be impaired at work, to possess or use cannabis on the job, or to violate federal law. This Policy shall be interpreted consistent with California Government Code section 12954 and Health and Safety Code section 11362.45.

#### **4. Testing Methods and Panels**

4.1 Testing Approach: The District's detection methods indicative of recent cannabis use and potential current impairment shall include oral fluid (saliva) testing as the default method for cannabis where permitted by state law.

4.2 Specimen Types:

- a) Oral Fluid/Saliva: Primary method for cannabis testing due to its focus on active psychoactive THC detection and shorter detection windows aligned to recent use.
- b) Urine/Hair: Not used for cannabis except where legally required by federal mandates, grant conditions, court orders, or when oral fluid testing is not feasible due to documented collection limitations.
- c) Blood: Used only when medically indicated post-incident or required by law, with appropriate consent or legal authority.

4.3 Analytes and Cutoffs: Testing shall target active THC in oral fluid consistent with scientifically supported cutoffs and standards adopted by the Designated Testing Vendor/Lab and permitted by state law. Consistent with California Government Code section 12954, the District shall not rely on drug screening tests that detect only nonpsychoactive cannabis metabolites as the basis for adverse employment action.

4.4 Confirmation and Review: Non-negative screening results will be confirmed using validated methodologies. A Medical Review Officer (MRO) or qualified reviewer will evaluate confirmed results, consider legally protected medications, and address potential confounders consistent with state law and applicable CBAs.

## **5. Impairment-Based Standards and Testing Circumstances**

5.1 No Automatic Termination: A cannabis-positive test, standing alone, does not automatically result in termination. Disciplinary action shall be based on impairment indicators, role sensitivity, incident context, prior history, and applicable law/CBAs.

5.2 Reasonable Suspicion Testing: Authorized when two trained supervisors, or one trained supervisor where a second is unavailable, document contemporaneous, articulable observations suggesting impairment. Supervisors authorized to make Reasonable Suspicion determinations shall receive training that includes, at minimum: recognition of physical and behavioral indicators of impairment; documentation standards and legal requirements; awareness of the employee's baseline performance and conduct patterns; and distinguishing between impairment indicators and other conditions (e.g., fatigue, medical conditions, or disability-related

symptoms). Where feasible, supervisors should maintain awareness of employees' normal work performance to support objective deviation-based assessments. Observations may include:

- a) Slurred speech, unsteady gait, delayed response, or impaired coordination;
- b) Marked changes in demeanor, confusion, or unsafe behavior;
- c) Odor consistent with cannabis use on the person or breath;
- d) Significant performance degradation or safety rule violations;
- e) Possession of cannabis or paraphernalia on Premises.

5.3 Documentation Procedures: Supervisors shall promptly complete a Reasonable Suspicion Checklist, noting date/time, location, specific observations, witness names, photographs/video if appropriate, and employee statements. The Checklist should include a comparison of the employee's observed condition against the employee's known baseline behavior and performance patterns, where such baseline information is available. Employees will be offered an opportunity to provide an explanation. Documentation will be submitted to the District's Human Resources (HR) Management and maintained confidentially per Section 8.

5.4 Post-Incident Testing: Testing may be conducted following:

- a) A workplace injury requiring medical treatment beyond first aid;
- b) A vehicular or equipment incident involving property damage;
- c) A safety-related incident with reasonable potential for serious harm;

Testing will occur as soon as practicable, consistent with medical needs and law.

5.5 Transportation/Regulated Roles: Employees subject to federal or state-specific testing regimes shall comply with those standards to the extent applicable. Where such regimes conflict with this Policy, the stricter, legally required standard governs.

## **6. Discipline and Consequences**

6.1 Progressive Discipline: Violations are addressed through progressive discipline consistent with District's policies and applicable CBAs, considering role sensitivity, severity, aggravating/mitigating factors, and prior record.

6.2 First Violation/Positive Test (Absent Aggravating Factors):

- a) Non-Safety-Sensitive: Written warning, mandatory education, and, where appropriate, referral to Employee Assistance Program (EAP); provided, however, that the District reserves discretion to impose heightened discipline, up to and including termination, for a

first violation involving aggravating circumstances as described in Section 6.3, consistent with applicable CBAs and due process requirements.

- b) Safety-Sensitive: Suspension from Safety-Sensitive duties pending assessment; at minimum, written warning, education/EAP referral; temporary reassignment or paid leave may be used pending results.

6.3 Aggravating Factors: May warrant heightened discipline, including suspension or termination, and include: accident causing injury or significant property damage; willful misconduct; refusal to test; possession/distribution on Premises; testing adulteration/tampering; repeated violations; or violation of federal/grant/licensure requirements.

6.4 Repeated Violations: A second substantiated violation within six (6) months may result in suspension, last-chance agreement, demotion, or termination, depending on circumstances and CBAs.

6.5 Safety-Sensitive Standards: Employees in Safety-Sensitive Positions who are found impaired on duty or who test positive in a Post-Incident or Reasonable Suspicion context may be removed from Safety-Sensitive duties pending evaluation and may be required to complete EAP and satisfy further testing as conditions of continued employment where permitted by law and CBAs.

6.6 Due Process: Disciplinary action will follow applicable pre-disciplinary notice and hearing requirements under state law, local rules, and CBAs.

## **7. Employee Accommodation**

7.1 Disability Accommodation: Requests for accommodation related to medical conditions, including conditions for which an employee uses medical cannabis, will be handled through the interactive process under the California Fair Employment and Housing Act (FEHA) and the Americans with Disabilities Act (ADA), consistent with the District's accommodation policies. While on-duty impairment is not permitted and the District is not required to accommodate on-duty cannabis use, employees with qualifying disabilities are entitled to reasonable accommodation of the underlying medical condition. Off-duty, off-premises use of cannabis for a medical condition shall not, standing alone, be the basis for adverse employment action, consistent with California Government Code section 12954.

## **8. Confidentiality and Records**

8.1 Confidentiality: Testing results, Reasonable Suspicion documentation, and records related to an employee's cannabis use are confidential and will be disclosed only to those with a business need-to-know or as required by law, subpoena, a court order, or employee authorization.

8.2 Records Retention: Records will be retained in accordance with state retention laws and the District's retention policy.

8.3 Employee Access: Employees may request access to their own testing records and related documentation consistent with law and policy.

## **9. Compliance with Law; Federal Landscape and Funding Requirements**

9.1 Compliance: This Policy will be administered consistent with applicable federal, state, and local laws, and CBAs, including but not limited to California Government Code section 12954 (employee cannabis protections), Health and Safety Code section 11362.45 (employer drug-free workplace rights), and applicable provisions of the Fair Employment and Housing Act. Where specific statutes, regulations, or grant terms impose stricter requirements, those terms control.

9.2 Evolving Federal Landscape: Recognizing that federal law and policy concerning cannabis use are evolving, including potential reclassification and federal funding conditions, The District reserves the right to modify this Policy at any time to maintain compliance with federal/state/local law, funding, licensing, and accreditation requirements, with appropriate notice and bargaining where required.

## **10. Implementation**

10.1 Communication: This Policy will be distributed to all employees, available on the District's website, and provided to new hires during the onboarding process. All District employees will review this Policy upon implementation.

## **11. Procedures**

11.1 Initiating Reasonable Suspicion Testing:

- a) Ensure immediate safety; remove employee from safety risks.
- b) Contact a second supervisor if available.
- c) Document objective observations.
- d) Notify HR Management.
- e) Request employee to test with the Designated Testing Vendor/Lab.
- f) Place the employee on paid leave or temporary reassignment pending results, as appropriate.

### 11.2 Refusals and Tampering:

- a) A refusal, adulteration, or obstruction constitutes a policy violation and may result in discipline up to and including termination.
- b) Document the conduct and proceed per disciplinary protocols.

### 11.3 Return-to-Employment:

- a) Require clearance from Medical Health Professional that includes confirmation of fitness for duty, and negative test results where applicable.

## **12. Administration and Questions**

Questions regarding this Policy should be directed to HR Management. This Policy will be reviewed at least annually and updated as needed to reflect legal developments, scientific standards for impairment detection, and operational needs.