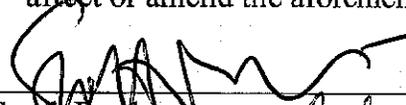


SIDEBAR AGREEMENT

NOW COME the City of South Portland (hereinafter the "City"), the South Portland Police Command and Supervisory Unit (hereinafter the "Unit"), and The Maine Association of Police (hereinafter "MAP") and agree as follows:

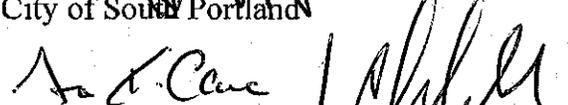
1. The parties hereto are subject to a Collective Bargaining Agreement covering the period from July 1, 2018 to June 30, 2021.
2. The Collective Bargaining Agreement contained a Memorandum Of Understanding related to a Drug-Free Workplace Policy. This Memorandum Of Understanding is attached hereto as Exhibit 1. Pursuant to the terms thereof, the Unit has approved the policy attached hereto as Exhibit 2.
3. As the result of the approval of Exhibit 2, the Unit will receive a 2% upward adjustment of their wages as provided in Exhibit 1. As the result, the wage scale contained in Article 19 of the Collective Bargaining Agreement is replaced by a new wage scale attached hereto as Exhibit 3. Except as expressly provided herein and in Exhibit 3, the remainder of Article 19 remains in full force and effect.
4. The provisions of Exhibit 1, including but not limited to those provisions related to future modification of Exhibit 2, remain in full force and effect.
5. Other than as specifically provided herein, this sidebar agreement does not alter, affect or amend the aforementioned Collective Bargaining Agreement.



City of South Portland

6/25/19

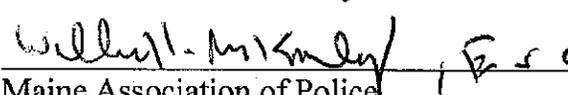
Date



South Portland Police Command and Supervisory Unit

6/19/19

Date



Maine Association of Police

6/13/19

Date

EXHIBIT 1

MEMORANDUM OF UNDERSTANDING – Drug-Free Workplace Policy

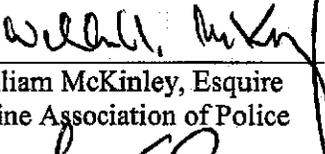
The City of South Portland (hereafter the “City”), the South Portland Police Command and Supervisory Association (hereafter the “Association”), and the Maine Association of Police (hereafter “MAP”) hereby agree as follows:

1. The City shall institute a Labor/Management Committee within sixty (60) days following the effective date of this Memorandum of Agreement to develop an internal Police Department Policy for random and for-cause drug testing for illegal and controlled drugs/substances. The purpose of this policy shall be to outline and enforce procedures for maintaining a drug-free workplace in conformity with the Police Department’s prohibition against use of illegal/controlled substances in violation of state or federal law and to provide appropriate rehabilitation measures for first time violations. The Labor/Management Committee shall include a representative from the City’s Human Resources Department and up to two (2) representatives each from the Police Department administration/designee, the Command and Supervisory Unit, and if it so elects, the Patrol Unit. It is intended that the Committee shall make recommendations for a comprehensive internal Department Drug Free Workplace Policy (including but not limited to the list of drugs to be tested to be included in Section IV (E) of the policy as described below) for the Police Chief’s consideration and approval in accordance with the Department’s normal processes for internal policy adoption no later than July 1, 2020.
2. Upon approval of the policy by the Police Department/Police Chief, the Association may formally elect that Command and Supervisory employees will be subject to jurisdiction of said policy. In the event that the Association elects coverage, without reservation, Command and Supervisory employees shall receive an additional two percent (2%) wage increase on the wage scale effective as of the date of implementation to bargaining unit employees, but in no event earlier than July 1, 2019.
3. Except for those provisions enumerated in Section 4 below, the parties agree that the City retains the right to make reasonable modifications to the internal random and for-cause drug testing policy adopted by the Department, and the Association retains the right to impact bargain over any modification that substantially impacts the employees’ wages, hours, and terms and/or conditions of employment.
4. The parties agree that the draft policy attached hereto as Attachment A will provide the framework for the Labor/Management Committee described above. The parties further agree that the following provision of the Drug Free Workplace Policy shall be binding and may only be modified by mutual written consent of the parties:
 - (i) Section IV(C) Probable Cause Drug Testing (Subsections 1 through 7);
 - (ii) Section IV(D) Random Drug-Testing (Subsections 1 through 3);
 - (iii) Section IV(E) Prohibited (Tested) Drugs (Subsection 1 and 2);
 - (iv) Section IV(I) Drug Testing Results (Subsection 3 through 6)
 - (v) Section IV(K) Disciplinary Action/Second Chance Policy (Subsections 1 and 2);
 - (vi) Section IV(L) Return to Duty/Follow-up Testing (Subsections 1 and 2); and
 - (vii) Section IV (M) Administration/Records (Subsections 1 through 4).

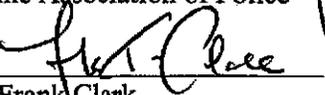
In addition, to the extent that a modification of any of the defined terms contained in Section III (Definitions) of the Drug Free Workplace Policy would alter the provisions identified in subsection (i) through (vii) above, such terms may only be modified through mutual written consent of the parties.

5. It is further agreed that this Memorandum is not intended to supersede or supplant any Department policy currently in effect unless otherwise expressly agreed by the parties.

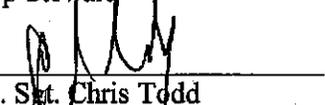
SOUTH PORTLAND POLICE COMMAND
AND SUPERVISORY UNIT
MAINE ASSOCIATION OF POLICE



William McKinley, Esquire
Maine Association of Police

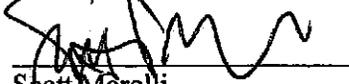


Lt. Frank Clank
Shop Steward



Det. Sgt. Chris Todd
Shop Steward

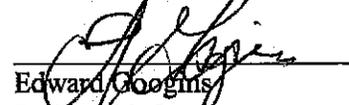
CITY OF SOUTH PORTLAND, MAINE



Scott Morelli
City Manager



Stephanie Weaver
Human Resources Director



Edward Googins
Police Chief

EXHIBIT 2

**SOUTH PORTLAND POLICE DEPARTMENT
STANDARD OPERATING PROCEDURES**

Subject:	Drug Free Workplace Policy	Policy #	1-5-B
Effective Date:	July 1, 2019	Review:	Annually
Distribution:	All Personnel	# of pages:	6

I. PURPOSE:

The purpose of this policy is to outline procedures for maintaining a healthy, safe and drug-free workplace.

II. POLICY:

The critical mission of law enforcement establishes a compelling need to maintain a drug-free work environment. Employees who engage in unauthorized and illegal use of drugs risk their safety, and that of their coworkers and the community they serve, while undermining the standing and integrity of the agency, and increasing the potential for liability, misconduct and corruption. It is, therefore, the policy of this agency to maintain a drug-free workplace, in part, through the use of pre-employment drug testing of all applicants and random drug testing for applicable sworn personnel, both in compliance with this policy and 26 M.R.S.A. Subchapter 3-A: *Substance Use Testing*, together with the use of educational and rehabilitation programs, substance use disorder professionals, and disciplinary action.

III. DEFINITIONS:

- A. **Controlled Substance:** Any drug that is illegal to consume, possess, manufacture or distribute, or any substance, drug, or medication that requires the prescription of a licensed medical practitioner. For purposes of this policy, this includes any possession and use of marijuana, including medical marijuana, which remains a violation of U.S. federal law.
- B. **Drug:** Any substance, including but not limited to, controlled substances, alcohol, and over-the-counter medications, that has the potential to impair judgment or functioning.
- C. **Drug Test:** The compulsory production and submission of a urine, breath or other sample, consistent with law or best practice, for laboratory analysis to detect prohibited drug usage.
- D. **Medical Review Officer (MRO):** A licensed physician who has knowledge of substance use disorders and has appropriate medical training to interpret and evaluate an individual's drug test result, coupled with their medical history and any other relevant biomedical information.
- E. **Probable Cause:** A reasonable belief in the existence of facts that cause a person to believe that an employee may be under the influence of a drug. Such a belief may not be based solely upon an anonymous informant, or as a result of a single, work-related accident.
- F. **Random Selection:** A method of selection, controlled by a licensed, third-party administrator, in which every employee has an equal chance to be chosen for drug testing each time a selection is conducted. There is no discretion on the part of management, or any other department personnel or city staff, in the selection and notification of individuals for testing.
- G. **Safety-Sensitive Position:** Any employee whose duties, by their nature, would create an unreasonable threat to the health or safety of the public or the employee's co-workers if the employee was under the influence of a drug.¹ For the purposes of this policy, this includes all sworn police department personnel.
- H. **Substance Use Disorder Professional (SUDP):** A licensed or certified physician, psychologist, social worker, employee assistance professional or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

¹ See *Skinner v. Railway Labor Executives' Association* (1989); *National Treasury Employees Union v. Von Raab* (1989) and 26 M.R.S.A. § 684

IV. PROCEDURES:

A. Prohibited Activity:

1. No employee shall *illegally* possess or use any controlled substance. This includes possession or use of any illegal drug, misuse of legally prescribed drugs, and possession or use of any illegally obtained prescription drugs. Irrespective of Maine state law, use, possession or cultivation of marijuana, unless in the performance of duty, is prohibited. Such acts remain crimes under superseding federal law, and users of the drug are also prohibited from purchasing or possessing a firearm or ammunition.
2. No employee shall report for work or be on duty when his or her judgment or physical condition has been impaired by a controlled substance or drug.
3. No employee shall ingest a controlled substance in any form unless prescribed for the employee and taken in accordance with the directions of a licensed medical practitioner.
4. The appropriate use of legally prescribed drugs and non-prescription or over the counter medications is not prohibited, however use of any substance carrying a warning label that indicates that mental functioning, motor skills (e.g., ability to drive), or judgement may be adversely affected may likewise impair job performance. Therefore, any employee taking any such legally prescribed or non-prescription medication is required to report the potential impacts, known side effects and anticipated period of use of such medication to the Chief of Police or designee when the resulting inability or impaired ability to perform the job functions will result in a direct threat (i.e., a substantial risk of significant harm to the health or safety of the employee or another that cannot be eliminated by reasonable accommodation). In the event the use of such medication is demonstrated to impair the employee's ability to perform the essential functions of his or her job and will result in a direct threat, the employee may be temporarily re-assigned, or allowed to take appropriate leave. Information related to the employee's disclosure under this section will be maintained within a secure medical file until the employee reports that the use of such medication has been suspended and / or the resulting impairment no longer exists.
5. With regard to the use of alcohol, employees shall not:
 - a. serve or consume alcohol while on duty or in a law enforcement premises or vehicle, unless expressly authorized by a supervisor in the course of their employment and when it serves a legitimate law enforcement purpose (e.g., undercover capacity);
 - b. consume alcohol in a public place when on duty or in uniform; or
 - c. report to work under the influence of alcohol.
6. Failure to provide a sample or otherwise comply with the testing will be considered a refusal to submit to a drug test, subject to disciplinary action. The following would be examples of failing to comply:
 - a. Failure to promptly appear for any test or remain at the collection site until the testing is complete;
 - b. Failure to provide a sufficient amount of urine or breath specimen when directed, without adequate and validated medical explanation for the failure;
 - c. Failure or decline to take an additional drug test when directed to do so by the employer or collector;
 - d. Failure to cooperate or disrupting any part of the testing process;
 - e. Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process, or any tampering, contamination, adulteration, or substitution in order to falsify or attempt to falsify the test results.
7. Officers shall not use a tobacco product while on duty and in public view; in vehicles owned or maintained by the agency; and in any agency buildings, in accordance with state law.

B. Applicant Drug Testing:

1. All applicants to the police department, sworn and civilian, will be required to take a drug test as a condition of continued employment consideration. The drug test should be administered on the basis of a conditional offer of employment.

2. Applicants will be disqualified from further consideration for employment should they refuse to submit to or fail a required pre-employment drug test. In either case, the applicant will not be considered for re-application or employment for a period of three (3) years.
 - a. This may be waived if the applicant is otherwise qualified, but was unable to provide an adequate sample due to a permanent or long-term disability that directly renders them unable to do so.
 - b. The city's MRO will determine any long-term inability of an employee to provide a urine specimen by medical examination and consultation with the employee's physician.

C. Probable Cause Drug Testing:

1. All sworn employees are trained to detect impairment. Any employee who reasonably believe that another employee is illegally using or in illegal possession of, or is under the influence of any controlled substance or drug while on-duty will immediately report those concerns to a supervisor. If the suspected person is a supervisor, a superior officer and / or the city's Human Resources Department, should be notified.
2. Authorized supervisory and command personnel may order a drug test of any on-duty employee when there is probable cause to believe the employee is intoxicated, impaired, or under the influence of alcohol or another drug. The employee will be immediately relieved from duty pending investigation and verification of condition
3. Similar to the criteria used in detecting impaired drivers, probable cause to request a drug test is based on a totality of the facts and circumstances that may include, but are not limited to:
 - a. physical appearance and abnormal conduct or aberrant behavior;
 - b. information provided by reliable and credible sources;
 - c. presence of associated odors related to recent alcohol or drug use, and
 - d. performance, speech, concentration, or movement, or the behavior characteristics otherwise symptomatic of controlled substance or drug usage.
4. The Chief of Police or designee will be immediately notified of any such suspicion.
5. Appropriate testing may include an Intoxilyzer (for suspected alcohol involvement), administered by a certified Intoxilyzer operator, preferably of a supervisory rank and different from the supervisor establishing probable cause, and / or alcohol and drug testing administered at the city's contracted local collection site. An employee believed to be under the influence of a controlled substance or drug may not operate a motor vehicle.
6. Consistent with SOP #3-26, DISCIPLINE, an employee under probable cause suspicion may be removed from duty pending the outcome of a drug test. Refusal to submit to a probable cause test will be grounds for disciplinary action; the Shift Commander will immediately relieve the employee from duty, and initiate an administrative investigation consistent with SOP #5-52 ADMINISTRATIVE COMPLAINTS / INTERNAL AFFAIRS.
7. The involved supervisor(s) will complete a written summary of the facts supporting probable cause, submitting it to the Chief of Police and the impacted employee before the end of the tour of duty in which the incident arose.

D. Random Drug-Testing:

1. On-duty, sworn employees, consistent with their applicable collective bargaining agreements, will be randomly selected for drug testing during their normally scheduled work hours. Because this testing may require the employee to remove some of their equipment, all testing will be completed at the South Portland police station or other designated secure city facility.
2. After being notified of their selection, employees must immediately report to the designated collection area. If the employee is unable to meet this requirement, he or she must immediately notify the Chief of

Police, in writing, through the chain of command. Exceptions to this immediate requirement may only be made by the Chief of Police for reasonable cause (e.g., priority call for service or authorized leave).

3. No employee will be required to provide a urine sample while being directly observed by another person.
4. Any employee outside of the official and appropriate notification process who discloses the identity of another employee selected for random testing, or who discloses that a random selection is scheduled, or the date on which specimens will be collected, will be subject to disciplinary action.

E. Prohibited (Tested) Drugs:

1. Drug testing may screen for any of the following drugs, as well as any other illicit (street) drugs that may be identified in the future:

- Marijuana
- Cocaine
- Phencyclidine (PCP)
- Methamphetamine
- MDMA (Ecstasy)
- MDA
- 6-Acetylmorphine (Heroin)
- Morphine
- Oxycodone
- Methadone
- Anabolic Steroids

2. Alcohol will not be screened for during random drug testing, but will be screened for on a probable cause basis, as outlined above.

F. Drug Testing Frequency:

1. This agency will follow Federal Transit Authority (FTA) guidelines in relation to the number of employees subject to random testing. The FTA currently requires 25% of the total number of covered employees to be randomly tested for drugs on an annual basis. These rates are subject to annual review.
2. Employees may be required to undergo drug testing as a pre-condition of an assignment or transfer to the Maine Drug Enforcement Agency.
3. Employees driving a vehicle owned by the agency are subject to post-crash drug and alcohol testing when there is probable cause to believe that death has occurred or will occur as a result.² This testing will be conducted by a supervisor or trained officer, as directed, similar to the procedures for OUI.

G. Drug Testing Methodology – Urine Samples:³

1. All urine drug testing performed under this policy will be performed by a professionally qualified laboratory meeting standards defined by local, state, and / or federal regulations and approved by this agency.
2. The testing will consist of a scientifically validated procedure, such as to allow for the final test results to be accurate and confirmatory. Only confirmed (not any initial) test results will be provided to the Chief of Police or designee.

H. Chain of Evidence and Storage:

1. Each step in the collection and processing of urine specimens will be documented to establish procedural integrity and the chain of custody. Employees will provide a urine sample at the collection site, which will be split into two separate samples in the employee's presence, one to be tested and one to be retained for re-testing; each will be sealed in the employee's presence and initialed by the employee prior to submission.

² 29-A M.R.S.A. § 2522

³ See 49 CFR, Part 40

2. Where a positive result is confirmed, split urine specimens will be appropriately maintained in secured, refrigerated storage for one year. If there is no appeal or legal challenge pending, after the one-year retention period, the sample may be destroyed.

I. Drug Test Results:

1. An alcohol test result of 0.02 g/dL or higher, or the quantifiable presence of another prohibited drug in the body above the minimum thresholds defined in 49 CFR, Part 40, Subpart F, as amended, will be considered positive for purposes of this policy.
2. In the event of a positive test result, the MRO will contact the employee first to discuss the test findings and afford the employee an opportunity to question the results and provide any factors that could have attributed to the positive test (e.g., use of a lawfully prescribed medication or workplace drug exposure).
 - a. If the positive laboratory result is explained and validated as appropriate by the MRO (as opposed to possible abuse), the result will be deemed negative and not in violation of this policy.
 - b. If an explanation is unavailable or invalidated, the test will be deemed positive and handled accordingly.
3. Employees who test positive on the first test but believe the test result is false or inaccurate may have a second test done on the split sample.
 - a. The employee must make this request for split sample testing to the MRO within 72 hours of notice of the original test result. If the request is not made within 72 hours, an extension will be granted by the city for up to one year.
 - b. This second test will also be conducted at the city's expense, and at a different certified laboratory selected in consultation with the MRO.
 - c. An employee who wishes to appeal the results of a second confirmed positive test result following the second test may do so, in writing, to the Chief of Police.
 - d. With the Chief's approval, and at the city's expense, the employee will contact a local MRO, designated by the city, to discuss the circumstances that the employee feels may have impacted the second positive test result. The decision of the local MRO will then be controlling.
 - e. If there is no appeal or legal challenge pending after the one year retention period, the sample may be destroyed.
4. All positive confirmatory test results will be immediately relayed to the agency's Human Resources Department, who will advise the Chief of Police or designee. Written results will be submitted, in writing by the laboratory, within a pre-determined period of time. Reports may show what drugs or controlled substances were tested for, the cutoff levels, and the results. Reports will not show the quantity of any substance detected, but only the presence or absence relative to the cutoff level.
5. An employee with a positive confirmatory test result should be removed from duty in accordance with the disciplinary / second chance policy outlined below.
6. The legal right of all personnel to maintain confidentiality in the results of their drug tests will be observed by all employees.

J. Drug Exposures:

1. For the employee's protection, any employee who unintentionally ingests, is made to ingest, or has had an unprotected exposure to a controlled substance or drug, on or off-duty, will immediately report the matter to the Shift Commander, if the officer is concerned or reasonably believes that the exposure may cause or result in a positive drug test.
2. The Shift Commander and employee will seek medical evaluation, or otherwise ensure the employee's health and safety, as appropriate, and properly document the incident in a memorandum, email, CAD

notes, an incident report, and / or a First Report of Injury. All documentation will be forwarded to the Chief of Police through the chain of command.

K. Disciplinary Action / Second Chance Policy:

1. An on-duty employee who had a confirmed positive test result during random employee testing, or any employee who voluntarily presents and seeks help with a potential substance use disorder, will be removed from the Safety Sensitive position and referred to the Employee Assistance Program (EAP).⁴
 - a. The EAP will provide the employee with counseling and a referral to a SUDP. No disciplinary action will be taken as long as the employee participates in such a rehabilitation program and complies with the return to duty and follow-up testing, outlined below.
 - b. Any second or subsequent violation of this policy (e.g., positive confirmed test result during a random testing) will be cause for disciplinary action, consistent with SOP #3-26, DISCIPLINE.
2. An on-duty employee found under the influence and / or who had a confirmed positive test result in connection with a probable cause test will be also be referred to the EAP and a SUDP, but will also be subject to disciplinary action in accordance with SOP #3-26, DISCIPLINE, on the first incident.

L. Return To Duty / Follow-up Testing:

1. Before an employee is allowed to return to duty performing safety-sensitive duties following a verified positive drug or alcohol test, they must 1) be evaluated by a SUDP, 2) complete any recommended treatment, and 3) provide a negative return to duty test. Return to duty testing is done at the recommendation of the SUDP and may be for drugs and / or alcohol.
2. Once the employee is allowed to return to duty, they will be subject to unannounced random follow-up testing for at least 12 months, but not more than 36 months with a minimum of 6 tests being done during the first 12 months. The SUDP will determine the frequency and duration of the follow-up testing. Follow-up testing is separate from and in addition to the regular random testing program.

M. Administration / Records:

1. The city's Human Resources Department or designee will maintain all employee drug test results and records in a secure location with controlled access, separate from any personnel files.
2. These documents will remain confidential and will not be provided to other employees, employers, agencies, or those without a valid and lawful right and need to know without the written permission of the person whose records are sought.
3. Upon written request, the city will provide an employee with any records relating to his/her test(s), including calibration and laboratory certification records.
4. Employee drug test records will be retained for five (5) years in accordance with Schedule 4 of the Maine Records Retention schedule and SOP #8-82-H, RECORDS RETENTION. All such records in excess of the prescribed retention requirement will be promptly purged in a manner ensuring their confidentiality.

By Order Of:

Edward J. Googins
Chief of Police

⁴ See SOP #9-95, EMPLOYEE ASSISTANCE PROGRAM

Exhibit 3

	<i>Current</i>	Eff 7/1/18	Eff 7/1/19	Eff 7/1/20
Sergeants	Incr:	3%	5%	3%
START	30.59	31.51	33.10	34.09
2 YEARS	31.59	32.54	34.18	35.21
4 YEARS	32.67	33.65	35.35	36.41
6 YEARS	33.32	34.32	36.06	37.14
10 YEARS	33.98	35.00	36.77	37.87

	<i>Current</i>	Eff 7/1/18	Eff 7/1/19	Eff 7/1/20
Lieutenants	Incr:	3%	5% or 8% > SGT	3% or 8% > SGT
START	33.11	34.10	35.83	36.90
2 YEARS	34.11	35.13	36.91	38.02
4 YEARS	34.71	35.75	38.18	39.33
6 YEARS	35.28	36.34	38.94	40.11
10 YEARS	35.99	37.07	39.71	40.90

* Effective July 1, 2019, the Lieutenants scale shall be increased by five percent (5%) over the prior year or the Lieutenant's scale shall be reconfigured to reflect an eight percent (8%) increase of the Sergeant's scale, whichever is greater. *

* Effective July 1, 2020 the Lieutenant's scale shall be increased by three percent (3%) over the prior year or the Lieutenant's scale shall be reconfigured to reflect an eight percent (8%) increase over the Sergeant's scale, whichever is greater. *