

City of Santa Fe, New Mexico

memo

DATE: October 10, 2014

TO: Finance Committee
Public Safety Committee
Governing Body

FROM: Debbie Rouse, ^{DRR} Drug & Alcohol Program Manager

SUBJECT: Request for Approval to Amend Rule 16A of the City of Santa Fe Personnel Rules and Regulations Regarding Drug and Alcohol Testing Policies for Transit Division Employees Who Perform Safety Sensitive Functions

ITEM

The Federal Transit Administration (FTA) conducted an on-site review of the City of Santa Fe – Transit Division September 24-25, 2014. This review, conducted once each three years, is FTA's assessment of the City's compliance with Federal requirements.

The review focused on the City's compliance in 17 areas, including the Drug & Alcohol Testing Program, which is regulated by 49 CFR Part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

During the review, the FTA review team identified that Rule 16A was missing key elements from Part 40, namely, a complete listing of what constitutes a "refusal to test" for both drug (§40.191) and alcohol (§40.261) tests. FTA's guidance for drug and alcohol testing programs is that both lists should be included in their entirety – or not at all, with a simple reference to the pertinent sections of Part 40.

Thus, in Rule 16A, Section 5.B, it is proposed that the partial listing of behavior that constitutes a refusal to test be removed, and that this be replaced with the statement, "An employee will be deemed to have refused to take a drug or alcohol test if any of the conditions listed in 49 CFR Part 40.191 or 49 CFR Part 40.261 are met."

ACTION REQUESTED

Recommend to the City Council to approve the amendment to Rule 16A of the City of Santa Fe Personnel Rules and Regulations Regarding Drug and Alcohol Testing Policies for Transit Division Employees Who Perform Safety Sensitive Functions.

1 CITY OF SANTA FE, NEW MEXICO

2 RESOLUTION NO. 2014-____

3 INTRODUCED BY:

4 Councilor Patti Bushee

5 Councilor Signe Lindell

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9
10 A RESOLUTION

11 AMENDING RULE 16A OF THE *CITY OF SANTA FE PERSONNEL RULES AND*
12 *REGULATIONS* REGARDING DRUG AND ALCOHOL TESTING POLICIES FOR
13 TRANSIT DIVISION EMPLOYEES WHO PERFORM SAFETY SENSITIVE FUNCTIONS.

14
15 WHEREAS, Section 19-5.1 SFCC 1987 requires that personnel rules and regulations ("*Rules*
16 *and Regulations*") be adopted by resolution of the governing body; and

17 WHEREAS, Rule 16A of the *Rules and Regulations* relates to drug and alcohol testing
18 polices for the City Transit Division who perform "safety sensitive functions;" and

19 WHEREAS, Rule 16A needs to be amended to be consistent with the requirements of the
20 Omnibus Transportation Employee Testing Act of 1991 and Federal Transit Administration
21 Regulations, 49 CFR Parts 655 which sets standards for the collection and testing of urine and breath
22 specimens; and

23 WHEREAS, Rule 16A is intended to achieve a drug and alcohol-free workplace and to
24 reduce the probability of accidents or incidents related to the use and/or abuse of alcohol and other
25 drugs by employees and to establish procedures for drug and alcohol testing and to encourage early

1 intervention through supervisory involvement.

2 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**
3 **CITY OF SANTA FE** that Rule 16A of the *Rules and Regulations* is hereby amended and adopted in
4 accordance with the changes reflected on the attached "Exhibit A."

5 PASSED, APPROVED, and ADOPTED this ____ day of _____, 2014.

6
7 _____
8 JAVIER M. GONZALES, MAYOR
9

10 ATTEST:

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12 _____
13 YOLANDA Y. VIGIL, CITY CLERK

14 APPROVED AS TO FORM:

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16 _____
17 KELLEY A. BRENNAN, CITY ATTORNEY
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25 *M/Melissa/Resolutions 2014/Drug and Alcohol Testing Policy_Rule 16A*

RULE 16A

PERSONNEL RULES, REGULATIONS AND POLICIES FOR DRUG AND ALCOHOL

TESTING POLICY FOR TRANSIT DIVISION

SECTION 1. PURPOSE AND APPLICABILITY.

The purpose of this policy is to establish the City of Santa Fe’s program and procedures for implementing the requirements of the Omnibus Transportation Employee Testing Act of 1991 and Federal Transit Administration Regulations, 49 CFR Parts 655, as amended, and the regulation published in CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens, with regards to certain Transit Division employees performing “safety sensitive functions, “ as that term is defined in the federal law and in this policy. This policy is intended to achieve a drug and alcohol-free workplace and to reduce the probability of accidents or incidents related to the use and/or abuse of alcohol and other drugs by employee, to establish procedures for drug and alcohol testing and to encourage early intervention through supervisory involvement.

Rule 16A, as set forth herein, applies only to Transit employees who perform safety sensitive functions. A list of all covered positions/classifications is set forth in Section 3 of this Policy. Rule 16 of the City of Santa Fe Personnel Rules and Regulations, entitled “Drug and Alcohol Testing Rule for Federally Mandated Employees,” shall not apply to Transit employees: Rule 16A supersedes Rule 16 with respect to Transit employees only. All other federally mandated employees, as that term is described in Rule 16, are subject to the provisions of Rule 16.

This policy outlines four principles as a means to achieve the goal of providing workplace free from the effects of drug an alcohol use and abuse for its employees: deterrence, treatment and rehabilitation, detection and enforcement. Deterrence will be emphasized through education and training. Information regarding the effects of substance abuse in the workplace will be made available to all safety sensitive classified employees, and supervisors and managers will receive special training in detection, early intervention and enforcement. The City’s Employee Assistance

1 Program provides assistance to employees with personal problems, including those associated with
2 the misuse of drugs and alcohol. The City supports rehabilitation before an employee's job is in
3 jeopardy. Employees are encouraged to seek help for drug and alcohol problems.

4 The City employs the following drug and/or alcohol testing for the purpose of detection: pre-
5 employment, reasonable suspicion, post accident, return to duty, follow up and random.

6 **SECTION 2. POLICY STATEMENT.**

7 A. The City of Santa Fe is committed to maintaining a drug-free workplace to promote both the
8 quality of its services and the safety of its employees, its customers and the public. Every
9 City of Santa Fe Transit Division or employee of a Transit contractor who holds a position
10 which would be defined as safety-sensitive (covered employee) is subject to regulations
11 issued pursuant to the Omnibus Transportation Employee Testing Act of 1991 (the Act).
12 Each covered employee under the City of Santa Fe's authority is:

- 13 1. prohibited from using, possessing, selling, purchasing manufacturing, distributing, or
14 transferring alcoholic beverages (except off-duty use at public events) or controlled
15 substances or other performance-impairing substance while on duty or on City of
16 Santa Fe property; and
- 17 2. prohibited from being present on City of Santa Fe property (except off duty alcohol
18 use at public events), reporting to work or performing work while that employee is
19 under the influence of alcohol or has any controlled substance or other performance-
20 impairing substance in his/her system; and
- 21 3. required to submit to an alcohol and/or drug test when directed by the City of Santa
22 Fe; and, prohibited from tampering or attempting to tamper with such alcohol and/or
23 drug test.

24 Under FTA authority, employees are prohibited from the consumption of alcohol within four
25 (4) hours of the employee's scheduled time to report for work, or within eight (8) hours

1 following an accident or until the employee takes a post-accident alcohol and or drug test,
2 whichever occurs first; and

3 B. Each covered employee, under the City of Santa Fe's own authority:

4 1. shall be responsible for informing his/her supervisor when being prescribed
5 medication that is covered under the terms of this policy and shall use medically
6 authorized drugs or over the counter medications in a manner which will not impair
7 on-the-job performance; and

8 2. shall promptly report to his/her supervisor whenever he/she observes or has
9 knowledge of another employee who poses a hazard to the safety and welfare of
10 others.

11 C. In accordance with the Omnibus Transportation Employee Testing Act of 1991 And the
12 regulations issued pursuant to this Act:

13 1. It is the City of Santa Fe's policy that every covered employee comply with the
14 City's Drug and Alcohol Testing Policy for Transit Division which details the City's
15 program.

16 2. Compliance with the Policy is a condition of employment with the City of Santa Fe
17 for all covered employees.

18 3. Under the City of Santa Fe's own authority, violations will result in discipline in
19 accordance with Section 13 of this Policy.

20 D. Prescription drugs may be used in amounts as lawfully prescribed. As necessary, Employees
21 shall be required to provide proof of lawful prescription. Employees shall advise their
22 supervisors if the prescription drugs may affect their ability to perform work duties safely and
23 efficiently.

24 E. This policy is intended to comply with all applicable Federal regulations governing
25 workplace anti-drug and alcohol in the transit division. Specifically, the Federal Transit

1 Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part
2 655, as amended, and 49 CFR Part 40, as amended, that sets standards for the collection and
3 testing of urine and breath specimens.

4 **SECTION 3. COVERED EMPLOYEES.**

5 As required by the regulations issued pursuant to the Omnibus Employee Testing Act of
6 1991, the City of Santa Fe shall conduct drug and alcohol testing for all covered employees. Covered
7 employees are those employees who occupy positions that perform a “safety –sensitive” function and
8 applicants for a safety-sensitive position. “Safety sensitive” functions are defined as:

- 9 1. operating revenue service vehicles, including operation when the vehicle is not in
10 revenue service;
- 11 2. operating non-revenue service vehicles when operation of such vehicles requires the
12 driver to hold a Commercial Driver’s License (CDL);
- 13 3. controlling the dispatch or movement of a revenue service vehicle;
- 14 4. maintaining a revenue service vehicle or equipment used in revenue service; or
- 15 5. carrying a firearm for transit security purposes.

16 A list of all covered positions/classifications is attached as Exhibit 1 to this Policy. In
17 addition, all employees of independent contractors who perform services for the City of Santa Fe’s
18 Transit Division in positions which are safety-sensitive, as outlined above, will also be subject to the
19 testing requirements outlined in this Policy.

20 **SECTION 4. EDUCATION.**

21 Every covered City of Santa Fe employee will receive a copy of this Policy. Transit Division
22 employees will receive a minimum of sixty (60) minutes of training regarding this Policy and the
23 effects of prohibited drug use and alcohol misuse that impacts and individual’s biological, emotional,
24 psychosocial well being. The effects of misuses can be seen in an individual’s work performance,
25 attitude and social interaction. Training shall be provided to each covered employee within 60 days

1 of adoption of this Policy for current employees, and within 60 days of a new employee's date of hire.

2 All City of Santa Fe Transit supervisory personnel who are designated to determine whether
3 reasonable suspicion exists to require a covered employee to undergo alcohol and/or drug testing will
4 also receive a minimum of one hundred and twenty (120) minutes of training on the physical,
5 behavioral, speech, and performance indicators of probable prohibited drug use and alcohol misuses.

6 **SECTION 5. SUBSTANCES TESTED**

7 A. Alcohol

8 Employees subject to alcohol testing will have a sample of their breath tested for the presence
9 of the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight
10 alcohol including methyl or isopropyl alcohol. U.S. Department of Transportation 49 CFR
11 Part 40, as amended breath alcohol testing forms shall be used. A breath alcohol level of 0.04
12 or greater constitutes a positive test result. In addition, under its own authority the City
13 considers a second breath alcohol test level between 0.02 and 0.039 within a 12-month period
14 to constitute a positive test result. A confirmation test will be given if an employee's initial
15 breath alcohol test level exceeds 0.04.

16 In accordance with the regulations, covered employees shall only be randomly tested for
17 alcohol misuse while the employee is performing safety-sensitive functions; just before the
18 employee is to perform safety-sensitive functions; or just after the employee has ceased
19 performing such functions.

20 Any refusal to submit to an alcohol test, and all positive alcohol tests, will be reported
21 immediately by the testing facility to the City of Santa Fe (DER) Designated Employer
22 Representative as required by law.

23 B. Drugs

24 Employee subject to drug testing will have a sample of their urine tested for the presence of
25 five (5) drugs, as follows:

- 1 1. Marijuana (THC)
- 2 2. Cocaine
- 3 3. Opiates
- 4 4. Amphetamines (MDMA, MDA, MDEA)
- 5 5. Phencyclidine (PCP)

6 Under its own authority, the City does not retest negative dilute specimens. The original test
7 will stand as the result of record. ~~[Any refusal to submit to a required drug and/or alcohol test or
8 failure to provide a sufficient specimen and/or breath with no medical explanation is considered a
9 refusal and will be immediately reported by the collection site to the City of Santa Fe Designated
10 Employer Representative. Additionally, failure to undergo a medical evaluation related to testing as
11 required by the MRO or DER for drug and alcohol testing shall also constitute a refusal.]~~

12 ~~[Failure to permit monitoring or observation under drug testing, failure to take a second test
13 as directed by the collector or employer under drug testing and an attempt to alter, taint or otherwise
14 provide a false sample as verified by the MRO also constitutes a refusal.]~~

15 ~~[Failure to cooperate with any part of the testing process (e.g., refuse to empty pockets when
16 so directed by the collector, behave in a confrontational way that disrupts the collection process), or
17 failure to sign the certification at Step 2 of the Alcohol Testing Form (ATF) is considered a refusal.]~~

18 An employee will be deemed to have refused to take an drug or alcohol test if any of the
19 conditions listed in 49 CFR Part 40.191 or 49 CFR Part 40.261 are met (Part 40 is available in the
20 office of Risk Management).

21 All drug tests will be reported by the testing laboratory to a medical review officer (MRO)
22 who will evaluate the results. U.S. Department of Transportation 49 CFR Part 40, as amended drug
23 testing forms shall be used. After evaluation and interpretation, all verified positive test results will
24 be reported by the MRO to the employee and to the City of Santa Fe Designated Employer
25 Representative.

1 With respect to verified positive drug tests, employee will be notified by the MRO that they
2 have seventy-two (72) hours following this notification in which they can request, at their own
3 expense, that split urine specimen be tested by another Department of Health and Human Services
4 (DHHS) certified testing laboratory. However, in the event that the split sample test is negative, the
5 employee will be reimbursed for the test.

6 Failure to request testing of the split specimen within seventy-two (72) hours of being
7 notified of a positive test by the MRO will result in the test results from the original specimen being
8 accepted as the final test results.

9 **SECTION 6. TYPES OF TESTING**

10 The following tests will be required of all covered employees in accordance with the City of
11 Santa Fe alcohol and drug testing procedures:

- 12 1. Pre-employment tests
- 13 2. Post-accident tests
- 14 3. Random tests
- 15 4. Reasonable suspicion tests
- 16 5. Return to duty/Follow-up tests

17 The City of Santa Fe alcohol and drug testing procedures will be conducted in accordance
18 with 49CFR Part 40, as amended, and will incorporate all requirements set forth in the federal
19 regulations to ensure employee confidentiality and the integrity of the testing process, to safeguard
20 the validity of the test results, and to see that test results are attributed to the correct covered
21 employee.

22 **SECTION 7. PRE-EMPLOYMENT TESTING.**

23 A. The following persons will be subject to pre-employment drug testing in accordance with the
24 City of Santa Fe alcohol and drug testing procedures:

- 25 1. Applicants selected for one of the covered positions listed in Section 3.

1 2. Any covered employee who has not performed safety-sensitive duties and has not
2 been in the random pool for 90 days or more must provide a verified negative result
3 before returning to safety-sensitive duties.

4 3. Current City employees selected for assignment into one of the covered positions
5 listed in Section 3, if not currently employed in one of these positions.

6 B. Individuals identified in Section 7.A. will be informed that they are subject to pre-
7 employment drug testing at the time they apply for a covered position. Once a job offer is
8 made, covered employees shall have a urine sample collected and tested for evidence of the
9 substances listed in Section 5.B. For individuals identified in Section 7.A.1, tests may be
10 conducted as part of a routine pre-employment physical examination. The time, date and
11 location of the physical examination and drug test will be announced in advance of the test.
12 Individuals identified in Section 7. A.2 who do not require a routine pre-employment physical
13 examination will be notified, in advance, of the time, date and location of the drug test only.

14 Individuals identified in Section 7.A.2 who do not require a routine pre-employment physical
15 examination will be notified, in advance, of the time, date and location of the drug test only.

16 An applicant must produce a negative drug test result prior to first performing a safety
17 sensitive duty; if the test is canceled, the employee must retake and pass the test before being
18 hired; and an employee being transferred must provide a verified negative urinalysis prior to
19 performing a safety-sensitive function.

20 C. Disqualification from City of Santa Fe Employment

21 1. Applicants for initial hire will be disqualified from City of Santa Fe employment if
22 they:

23 a. fail to appear for the physical examination and urine collection on the
24 designated day unless excused by the City for good and verifiable cause; or

25 b. refuse to provide a urine sample; or

- c. to alter, taint or otherwise provide a false sample; or
- d. test positive for the presence of one of the substances listed in Section 5.B; or
- e. refuse to consent under Federal Transit Administration (FTA) regulations to allow the City of Santa Fe to obtain the drivers' previous employer's information on positive controlled substances and/or alcohol test results and refusal to be tested within the previous two (2) years; or
- f. have tested positive or have refused to be tested when required by a previous employer within the last (2) years and have not successfully completed required recommendations of a substance abuse professional.

2. Current employees subject to pre-employment drug testing will be disqualified from the position they are seeking if they commit one of the acts listed in 1(a) 1(f) of Section 7.C above. Current employee subject to pre-employment drug testing will also be subject to discipline in accordance with Section 13 if they commit one of the acts listed in 1(c) or 1(d) of Section 7.0 above.

3. Persons who are disqualified from the position that required the pre-employment test shall be disqualified from applying for any covered City of Santa Fe position for a period of (2) years. Applications from such persons will hereafter only be accepted if accompanied by a current written statement from licensed substance abuse professional verifying that the applicant is not then an abuser of alcohol and/or active user of drugs.

SECTION 8. POST-ACCIDENT TESTING.

All employees in covered positions as identified in Section 3 of this Policy will be subject to post-accident alcohol and drug testing in accordance with this the City's alcohol and drug testing procedures.

A. An "accident" requiring an alcohol and drug test is any accident where:

1. a fatality has occurred; or
2. non-fatality, a City of Santa Fe safety officer, supervisor or other qualified person shall be responsible for making a determination whether a post-accident drug and alcohol test is required at the time any covered employee is involved in a non-fatal accident involving a bus, automobile, van or commercial motor vehicle that requires the driver to carry a commercial driver's license (CDL); all covered employees operating the mass transit vehicle must test unless their performance can be completely discounted as a contributing factor based on the best information available at the time of the decision in which:
 - a. injuries were sustained requiring the injured person to immediately receive medical attention away from the scene, or any vehicle involved in the accident is disabled and towed away; or
 - b. one or more vehicles receives disabling damage; or
 - c. an individual falls on a vehicle and requires immediate transport to a medical treatment facility

B. The City of Santa Fe will also test any covered employee whose performance could have contributed to the accident.

C. Employees required to submit to post-accident drug and alcohol testing shall be tested as soon as possible (in all cases drug tests shall be conducted within thirty two (32) hours following the accident and alcohol tests shall be conducted within eight (8) hours of the accident). In the event an alcohol test is not completed within two hours of the accident, the supervisor will document in a report, the reason and if not able to obtain a specimen in 8 hours, the attempt will be ceased and the two hour report will be updated. Records shall be submitted to FTA upon request of the Administrator.

D. An employee required to submit to a post-accident drug and alcohol test will be transported by the City to the collection site and will be required to sign the required form. The

1 employee must provide a urine and breath sample unless it is determined by medical
2 personnel present that the employee is medically unable to provide the required samples.
3 Following the test, the employee will be relieved of duty with pay pending the City's receipt
4 of the results of the tests from the MRO.

5 E. It is the City of Santa Fe's policy that employees who are required to submit to a post-
6 accident drug and alcohol test will be subject to discipline in accordance with Section 13 of
7 this Policy if they:

- 8 1. refuse to sign the required form or refuse to provide a breath and/or urine sample
9 (such refusal shall constitute a verified positive drug and/or alcohol test result); or
- 10 2. attempt to alter, taint, or otherwise provide a false sample; or
- 11 3. test positive for the presence of one or more of the substances listed in Section 5 in
12 this Policy.

13 F. Covered employees must be readily available for post-accident testing. If an employee fails
14 to remain readily available, e.g., notifying supervisor where employee can be located if
15 employee leaves scene of the accident prior to submitting to testing, the employee will be
16 deemed to have refused to submit to testing which shall constitute a verified positive drug
17 and/or alcohol test result. The requirement to immediately report for post-accident testing is
18 stayed while an employee assists in resolution of an accident or receives medical attention
19 following an accident. In such cases, the employee shall report for post-accident testing
20 immediately after the employee completes provision of necessary post-accident assistance or
21 after necessary medical attention is provided.

22 **SECTION 9. RANDOM TESTING**

23 A. The City of Santa Fe will maintain a listing of the names of all employees in the covered
24 positions listed in Section 3. During each calendar year, alcohol and/or drug tests will be
25 administered to these employees on a random-selection basis in accordance with federal

1 alcohol and drug testing regulations and with the City of Santa Fe's alcohol and drug testing
2 program. Federal Transit Administration regulations require random drug and alcohol testing
3 for all Transit employees performing safety sensitive functions. The City will test at FTA
4 annual minimum random testing rates as set in the Federal Register as per 49 CFR Part
5 655.45 (b).

6 B. All covered employees will be subject to unannounced drug and alcohol testing on a random
7 basis and a covered employee may be randomly tested for prohibited drug use anytime while
8 on duty. The dates for administering unannounced testing of randomly selected employees
9 shall be spread reasonably throughout the calendar year. Employees will be selected through
10 the use of a scientifically valid random number selection method. All covered employees
11 will remain in the random pool, even after being selected for testing. Thus, it is possible for
12 an employee to be selected for testing more than once within a given time period.

13 C. Employees subject to random drug and alcohol testing will be required to sign the required
14 form at the time of testing/collection.

15 D. Employees selected for random alcohol and/or drug tests will be provided with transportation
16 and will immediately report to the collection site where they will be required to provide a
17 breath and/or urine sample.

18 E. It is the City of Santa Fe's policy that employees will be subject to discipline in accordance
19 with Section 13, of this Policy if they:

- 20 1. do not appear and complete a random drug and/or alcohol test immediately following
21 notification to appear for such tests, refuse to sign the required form or refuse to
22 provide a breath and/or urine sample (such failure to appear or refusal shall constitute
23 a verified positive drug and/or alcohol test result); or
- 24 2. attempt to alter, taint or otherwise provide a false sample; or
- 25 3. test positive for the presence of one or more of the substances listed in Section 5 of

1 this Policy.

2 **SECTION 10. REASONABLE SUSPICION TESTING.**

3 A. All employees in the covered positions listed in Section 3 of this Policy may be required to
4 submit to a reasonable suspicion alcohol and/or drug test.

5 B. Employees who are reasonably suspected by a supervisor of violating this Policy will be
6 required to submit to an alcohol and/or drug test in accordance with the City of Santa Fe's
7 alcohol and drug testing procedures. A trained supervisor who makes a determination that a
8 test is required will complete a form indicating the grounds for such determination.
9 Reasonable suspicion testing is required when a trained supervisor can articulate and
10 substantiate physical, behavioral and performance indicators of probable drug use or alcohol
11 misuses by observing the appearance, behavior, speech or body odors of the covered
12 employee.

13 Testing may be requested only if the observation of reasonable suspicion has been observed
14 while the covered employee is performing safety-sensitive functions; just before the
15 employee is to perform safety-sensitive functions; or just after the employee has ceased
16 performing such functions.

17 C. An employee who is required to submit to an alcohol and/or drug test under this section must
18 sign the required form.

19 D. Employees will be transported by the City of Santa Fe to the collection site and will be
20 required to provide a breath and/or urine sample. Following completion of the test,
21 employees will be transported home and relieved of duty with pay pending the City's receipt
22 of the results of the test from the MRO.

23 E. It is the City of Santa Fe's policy that employees will be subject to discipline in accordance
24 with Section 13 of this Policy if they:

25 1. refuse to sign the required form or refuse to provide a urine and/or breath sample

1 (which refusal shall constitute a verified positive drug and/or alcohol test result); or

2 2. to alter, taint, or otherwise provide a false sample; or

3 3. test positive for the presence of one or more of the substances listed in Section 5 of this
4 Policy.

5 **SECTION 11. RETURN TO WORK TESTING**

6 Employees who have been disciplined in accordance with Section 13 of this Policy as a result
7 of their first positive test indicating the presence on one or more of the substances listed in Section 5
8 will be required, prior to returning to work, to take a return to duty alcohol and/or drug test with a
9 verified negative result in accordance with 49 CFR Part 40, as amended and the City of Santa Fe's
10 alcohol and drug testing procedures.

11 Employees who have been separated from duty for a period of (90) days or more, due to
12 reclassification, layoff, leave of absence, seasonal employment or workers compensation must be
13 tested prior to reassignment to a safety-sensitive job function.

14 **SECTION 12. FOLLOW-UP TESTING.**

15 Current employees who have been disciplined in accordance with Section 13 of this Policy as
16 a result of a positive alcohol and/or drug test required under Section 6, upon return to work shall be
17 subject to a minimum of six (6) unannounced drug and/or alcohol follow up tests during the first
18 twelve (12) months following the employee's return to work, and further testing as recommended by
19 the substance abuse professional for up to a maximum of sixty (60) months. In addition, employees
20 who have been disciplined in accordance with Section 13 of this Policy will also be subject to the
21 testing requirements of Section 6 and in accordance with 49 CFR Part 40, as amended.

22 **SECTION 13. CONSEQUENCES OF THE MISUSE OF DRUGS AND ALCOHOL.**

23 Any employee testing positive for any of the drugs specified in Section 5B of this Policy, or
24 who has a breath alcohol concentration of 0.04 or greater for the FTA-mandated alcohol screening
25 test, or who has a second breath alcohol test level between 0.02 and 0.39 within a 12-month period,

1 will be immediately removed from his/her safety-sensitive position and placed on leave with pay
2 status pending disciplinary action. Regardless of the outcome of a drug screen and the possible
3 consequences, the employee will be provided with information from the City's employee assistance
4 program (EAP) regarding alcohol and/or substance abuse and the names, addresses and telephone
5 numbers of substance abuse professionals and counseling and treatment programs. The City will
6 have no responsibility to pay for any necessary treatment on the part of the employee.

7 An employee who for the first time in a 12-month period is found to have an alcohol
8 concentration of 0.02 or greater by less than 0.04 shall not be permitted to perform safety-sensitive
9 functions until the employee's alcohol concentration measures less than 0.02, or the start of the
10 employee's next regularly scheduled duty period, but not less than eight hours following
11 administration of the test.

12 A. Consequences of a Positive Drug or Alcohol Test

13 1. Any job applicant who tests positive for drugs will not be hired. Any employee who
14 tests positive for drugs or alcohol for a post-accident test or who has a second
15 confirmed positive drug or alcohol test will be terminated from employment with the
16 City.

17 2. Conditional Retention

18 It is the City of Santa Fe's policy that current employees, who have a verified positive
19 drug or alcohol test and are not subject to termination under Section 13A.1 or 13B of
20 this Policy, will be offered conditional retention of employment if the employee:

- 21 a. submits to an evaluation by a substance abuse professional approved by the
22 City's EAP; and
23 b. signs a conditional retention of employment agreement; and
24 c. is determined by a substance abuse professional to require assistance in
25 resolving problems associated with drug abuse and/or alcohol misuse (the

1 employee must agree to attend a City of Santa Fe approved treatment
2 program and sign a monitoring agreement with the City's EAP to ensure
3 successful completion of the treatment program specified by the substance
4 abuse professional); and

5 d. upon return to work, is subject to a return to duty drug and/or alcohol test
6 (follow-up tests are required if recommended by the substance abuse
7 professional).

8 e. The employee who is conditionally retained must fully comply with the
9 conditions of retention of employment, including successful completion of
10 the treatment program specified by the substance abuse professional.

11 3. Discipline for a Positive Drug or Alcohol Test

12 Current employees who have a confirmed positive drug or alcohol test will
13 immediately be removed from duty and disciplined as follows:

14 a. Consequences for a Positive Drug or Alcohol Test:

15 (1) Employees with their first confirmed positive drug or alcohol test
16 shall be suspended for two (2) weeks without pay.

17 B. Termination

18 It is the City of Santa Fe's policy that current employees will be terminated if the employee:

19 1. uses, possesses, sells, purchases, manufactures, distributes, or transfers alcohol
20 beverages (except off-duty use at public events), or controlled substances or other
21 performance-impairing substances while on duty or on City property; or,

22 2. consumes alcohol within four (4) hours of the employee's scheduled time to report
23 for work, or within eight (8) hours following an accident or until the employee takes
24 a post-accident alcohol and/or drug test, whichever occurs first; or,

25 3. refuses to submit to an alcohol and/or drug test when so directed by the City of Santa

1 Fe, or tampers or attempts to tamper with an alcohol and/or drug test; or,

2 4. tests positive and was involved in an accident resulting in death, serious injury or
3 extensive property damage (post-accident drug and/or alcohol test) or

4 5. tests positive and is also being terminated for other misconduct which could
5 independently result in their discharge; or

6 6. tests positive and has not completed the initial probationary period following hire
7 into the employee's first position with the City of Santa Fe; or

8 7. does not appear and complete a random or follow-up drug and/or alcohol test within
9 two (2) hours following notification to appear for such tests, refuses to sign the
10 required form or refuses to provide a breath and/or urine sample; or

11 8. has a second confirmed positive drug or alcohol test.

12 **SECTION 14. CONFIDENTIALITY.**

13 All testing will be conducted in accordance with the federal regulations to ensure test results are
14 accurate and reliable. Further, the City of Santa Fe will carry out this policy in a manner that respects
15 the dignity and confidentiality of those involved. No laboratory reports or test results shall appear in
16 the employee's employment history unless they are a part of a disciplinary action taken. Laboratory
17 reports and test results shall be placed in a special locked file maintained by the Drug Abuse
18 Coordinator. Files relating to laboratory reports or test results maintained by the Drug Abuse
19 Coordinator must be kept confidential and shall e disclosed only by consent of the patient. Upon
20 request, an employee is entitled to obtain copies of any records pertaining to the employee's use of
21 prohibited drugs, including any records pertaining to the employee's drug tests.

22 **SECTION 15. EMPLOYEE ASSISTANCE PROGRAMS/SELF-REFERRAL**

23 The City of Santa Fe takes seriously its commitment to provide safe conditions to the public
24 and its employees. Recognizing this commitment, the City maintains employee assistance programs
25 that can provide access to professional services in an effort to aid any employee who has an alcohol

1 or chemical dependency problem. Participation in this program is voluntary and all records regarding
2 self-referral or acknowledgement will be kept confidential to the extent required by law.

3 All employees who suspect they may have alcohol or substance abuse problems are strongly
4 encouraged to utilize employee assistance program resources before the problem affects their
5 employment status. There will be no disciplinary action involved for self-referral to the EAP.
6 Voluntary self-referral, however, shall not relieve the employee from responsibility for adequate job
7 performance. Self-referral after notification of a required drug or alcohol test will not eliminate
8 requirement to take such a test and will not preclude the taking of disciplinary action against an
9 individual who fails a required drug or alcohol test.

10 Any costs for counseling or rehabilitation shall be the responsibility of the employee. Because
11 the City realizes that financial considerations might prevent some employees from seeking help,
12 however, it is the City's policy to allow employees (upon recommendations of their counselor) to use
13 any and all earned benefits. This includes medical insurance, annual and sick leave, short-term
14 disability (physician must certify disability), and leave of absence, if needed.

15 Questions about the City of Santa Fe's employee assistance programs should be addressed to
16 the City's Designated Employer Representative, who serves as the drug and alcohol program
17 administrator.

18 **SECTION 16. MODIFICATIONS.**

19 The program administrator shall propose for adoption by the City Council such modifications,
20 amendments and revisions to the City's drug and alcohol program as he deems necessary after a
21 review process and concurrence by the affected department to carry out the provisions of regulations
22 issued pursuant to the Omnibus Transportation Employee Testing Act of 1991 and to enact such
23 additional procedures as may be necessary to insure the City of Santa Fe's compliance with state and
24 federal law affecting drug and alcohol matters. Nothing herein is intended to waive a union's legal
25 right to mandatory subjects of bargaining.

1 **SECTION 17. DOCUMENTATION INCORPORATED BY REFERENCE INTO POLICY.**

2 The following documentation is incorporated by reference into this policy:

3 Exhibit 1. Safety Sensitive Positions

4 Exhibit 2. City of Santa Fe DAPM/SAP/MRO Identification

5 Exhibit 3. 49 CFR Part 40, as amended

6 Exhibit 4. 49 CFR Part 655, as amended

7 **SECTION 18. CONFLICT.**

8 In the event of any conflict between Rule 16A and the FTA regulations, the FTA regulations shall
9 prevail.

10 APPROVED this _____ day of _____ 2014.

11
12
13 _____
14 BRIAN K. SNYDER

15
16 ATTEST:

17
18 _____
19 YOLANDA VIGIL, CITY CLERK

_____ DATE

20
21 APPROVED AS TO FORM:

22
23 _____
24 KELLEY BRENNAN, CITY ATTORNEY

_____ DATE

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APPROVED:

NICK LOVATO, AFSCME PRESIDENT

DATE

City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

Section A. General Information

(Check) Bill: _____ Resolution: X

(A single FIR may be used for related bills and/or resolutions)

Short Title(s): A RESOLUTION AMENDING RULE 16A OF THE CITY OF SANTA FE PERSONNEL RULES AND REGULATIONS REGARDING DRUG AND ALCOHOL TESTING POLICIES FOR TRANSIT DIVISION EMPLOYEES WHO PERFORM SAFETY SENSITIVE FUNCTIONS.

Sponsor(s): Councilors Bushee and Lindell

Reviewing Department(s): City Attorney's Office

Persons Completing FIR: Rebecca Seligman Date: 10/14/14 Phone: 955-6501

Reviewed by City Attorney: Kelly A. Brennan Date: 10/14/14
(Signature)

Reviewed by Finance Director: Inesite Garcia Date: 10/15/14
(Signature)

Section B. Summary

Briefly explain the purpose and major provisions of the bill/resolution:

The purpose of the resolution is to amend Rule 16A of the City of Santa Fe Personnel Rules and Regulations regarding drug and alcohol testing policies for Transit Division employees who perform safety sensitive functions.

Section C. Fiscal Impact

Note: Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)*

1. Projected Expenditures:

- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
- b. Indicate: "A" if current budget and level of staffing will absorb the costs
"N" if new, additional, or increased budget or staffing will be required
- c. Indicate: "R" – if recurring annual costs
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
- e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

Finance Director: _____

X Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
	Expenditure Classification	FY <u>2014</u>	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs – Recurring or "NR" Non-recurring	Fund Affected

Personnel*	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Fringe**	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Capital Outlay	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Land/ Building	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Professional Services	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
All Other Operating Costs	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Total:	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____

* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. **For fringe benefits contact the Finance Dept.

2. Revenue Sources:

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
	Type of Revenue	FY _____	"R" Costs Recurring or "NR" Non-recurring	FY _____	"R" Costs – Recurring or "NR" Non-recurring	_____

_____	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
Total:	\$ _____	_____	\$ _____	_____	_____	_____

3. Expenditure/Revenue Narrative:

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

None

Section D. General Narrative

1. Conflicts: Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

No

2. Consequences of Not Enacting This Bill/Resolution:

Are there consequences of not enacting this bill/resolution? If so, describe.

The city's Transportation Division would not be consistent with the requirements of the Omnibus Transportation Employee Testing Act of 1991 and Federal Transit Administration Regulations, 49 CFR 655 which sets standards for the collection and testing of urine and breath specimens.

3. Technical Issues:

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

No

4. Community Impact:

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

By adopting the resolution, the City would achieve a drug and alcohol-free workplace and would reduce the possibility of accidents or incidents related to drug and alcohol. Adoption of the resolution would also establish procedures for drug and alcohol testing to encourage early intervention through supervisory involvement.

Form adopted: 01/12/05; revised 8/24/05; revised 4/17/08